

(2020) 06 NCLT CK 0037

In the National Company Law Appellate Tribunal, Principal Bench, New Delhi

Case No : (IB) No. 1492 (ND) Of 2019

Sudha Rani Tayal And Ors

APPELLANT

Vs

Vintron Communications Pvt. Ltd. And Ors

RESPONDENT

Date of Decision : 08-06-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7, 12, 15, 21(1), 30(6), 31, 33, 33(I)(a), 33(2), 52, 53, 56, 60(5)
Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 6

Citation : (2020) 06 NCLT CK 0037

Hon'ble Judges : Abni Ranjan Kumar Sinha, J;Kapal Kumar Vohra, Member (Technical)

Bench : Division Bench

Advocate : Vikky, Radhika Rai

Final Decision : Disposed Of

Judgement

Abni Ranjan Kumar Sinha, J

1. The present application is filed on behalf of IRP under Section 60(5) of the IBC praying therein to pass an order for winding up/Liquidation of the Corporate Debtor.

2. We have heard the Ld. Counsel for IRP and perused the averment made in the application.

3. The facts of the case in short is that One Ms. Sudha Rani Tayal had filed an application under Section 7 of the IBC and on her prayer vide order dated 15.10.2019, application was admitted and Mr. Sandeep Chandna was appointed as IRP. Further, thereafter IRP on 20.10.2019 had made a public announcement in accordance with Section 15 of the IBC, 2016 read with Regulation 6 of Chapter III of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in the newspaper that is Jan

Satta and Financial Express. Further, in response to the public announcement, IRP has received the claims from the financial creditors and Committee of Creditors was constituted comprising of the financial creditor, Mrs. Sudha Rani Tayal and further list of creditors was filed before this adjudicating authority on 07.11.2019. Further, the first meeting of CoC was convened on 14.11.2019, in which Financial Creditor Mrs. Sudha Rani Tayal disclosed to the applicant (IRP) that she was a related party and therefore, the business cannot be transacted and meeting was adjourned. Further, the auditors of the Corporate Debtor, Mr. Vipin Bansal, proprietor of M/s. Vipin K Bansal & Co., who was also present in the meeting, informed the applicant (IRP) that corporate debtor had not made the payment for audit of accounts for the Financial Year 2018-2019 and therefore, he would file his claim against the Corporate Debtor. Further, the suspended Board of Directors informed in the meeting that the Corporate Debtor is not operational since 2014-2015 and there have been no tangible assets of the Corporate Debtor. Further, the 2nd CoC meeting was held on 30.11.2019 and progress was informed by the applicant to the CoC members and the applicant came to know that the financial creditor and Corporate Debtor are related parties.

4. Further, applicant (IRP) had scrutinized the books of accounts and other relevant documents of the Corporate Debtor and had found that all the financial creditors as stated i.e. HDFC and Citibank whereas the debt of the said financial creditors amounting to Rs. 5,95,000/- were related to the Corporate Debtor. The applicant was informed by the Suspended Board of Directors that the debt of the said Financial Creditors was cleared. On that applicant had sent an email dated 11.12.2019 to confirm that whether the debt has been cleared or not, but he has not received any reply from the above mentioned banks. Further, after perusing the books of accounts it was found that it does not show any liability towards Indian Overseas Bank and at the same time, no objection certificate was issued as on 24.04.2012 by the Indian Overseas Bank. Further, website of MCA shows a charge subsisting of Rs. 1,42,00,000/- on the Corporate Debtor. Further, In view of peculiar facts and circumstances as explained above, the CIRP of the Corporate Debtor will not be resolved, inter alia in absence of any tangible assets and the Corporate Debtor is not operational since 2014-2015, therefore, the present application has been filed on behalf of IRP for winding up/liquidation of the Corporate Debtor.

5. We have heard the Ld. Counsel for IRP and perused the averments as well as documents enclosed with the application.

6. Ld. Counsel for applicant submitted that since the financial creditor, Mrs. Sudha Rani Tayal is the mother of the Corporate Debtor, therefore, the meeting of the Corporate Debtor was not held although it was convened. He further submitted that since there were no tangible assets of the Corporate Debtor and it is very difficult to proceed further with the CIR proceedings against the Corporate Debtor and So under such peculiar circumstances, IRP has filed an application and make submissions of either winding up or liquidate the Corporate Debtor. He

further submitted that the present application is filed under Section 60(5) of the IBC, 2016.

7. In the light of submissions raised on behalf of IRP, we have gone through the averments made in the application as well as documents enclosed with the applications and we find that it is specifically mentioned in the application that twice the meeting was convened, first on 14.11.2019 and second on 30.11.2019 but in the absence of any other financial creditor, the meeting could not be conducted. We further notice that so far other claimant is concerned applicant (IRP) informed that Indian Overseas Bank had issued "No Due Certificate" which is at page 48 of the application. We further find, in course of CoC meeting the Suspended Board of Directors informed IRP that the debt of the said Financial Creditors (i.e. HDFC and Citibank) was cleared and on that applicant (IRP) had sent an email dated 11.12.2019 to confirm that whether the debt has been cleared or not, but he has not received any reply from the above mentioned banks.

8. At this juncture, we would like to refer the Section 33 of the IBC and the same is quoted below:-

"33. (1) Where the Adjudicating Authority, --

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the noncompliance of the requirements specified therein, it shall--

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a. public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors 1 [approved by not less than sixty-six per cent, of the voting share/to liquidate the corporate debtor, the Adjudicating Authority shall pass a. liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (J).

2[Explanation. - For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and

before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

(3) Where the resolution plan approved by the Adjudicating Authority is contravened, by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator."

9. Mere plain reading of the provisions shows that there are so many circumstances under which the Adjudicating Authority pass an order requiring the Corporate Debtor to be liquidated.

10. The provision quoted in the aforementioned paras shows that Section 33(I) (a) says Where the Adjudicating Authority before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30 then adjudicating authority shall pass an order regarding the liquidation of the Corporate Debtor, if we shall consider the case in hand in the light of aforesaid provision then we find, in the case in hand it is specifically mentioned in the application filed by the IRP that there is one financial creditor i.e. Mrs. Sudha Rani Tayal, who is the mother of the Corporate Debtor and since she was related with the Corporate Debtor, therefore, although CoC was constituted but could not be convened. We further notice that it is specifically mentioned in the application that there is no tangible assets of the Corporate Debtor and the Corporate

Debtor is not operational since 2014-2015 and under such circumstances it is submitted by the IRP that it is not possible to resolve the CIRP of the Corporate Debtor. In our opinion, under the peculiar circumstances, the present application has been filed before the completion of CIRP and since no meeting was convened, therefore, IRP has not filed application under Section 33(2) of the IBC rather present application is filed under Section 60(5) of the IBC. If we shall read Section 60(5) along with the Section 33(1)(a) of the IBC then we are of the considered view since there is no other Financial Creditor except the mother of the Corporate Debtor i.e. Mrs. Sudha Rani Tayal and there is no tangible assets of the Corporate Debtor under such circumstances, we think it proper to allow the prayer of the IRP.

11. Accordingly, it is therefore, ORDERED

A. That the Corporate Debtor be liquidated in the manner as laid down in the code by issuing a public announcement stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send a copy of this order to the ROC under which the Corporate Debtor is registered.

B. Mr. Sandeep Chandna, who is IRP, is appointed as Liquidator.

C. All the powers of the Board of Director, Key managerial persons, the partners of the corporate Debtor hereafter ceased to exist and it is vested with Liquidator.

D. That the personal of corporate debtor are directed to extend all cooperation to the Liquidator as required by him in managing the liquidation process of the corporate debtor.

E. That liquidator will charge fees as specified by the IBBI and same shall be paid to the Liquidator from the proceeds of the liquidation estates U/S 53 of the code.

F. No suit or other legal proceedings shall be instituted by or against the corporate debtor save and except the liberty to the liquidator to institute suit or other legal proceedings on behalf of the corporate debtor with prior approval of the Adjudicating Authority.

12. With this order the present application filed on behalf of IRP stands disposed off.