(2024) 02 NCLT CK 0003

In the National Company Law Tribunal

Case No : IA-3789(MB)2023 IN C.P.(IB)/2127(MB)2019

Ultratech Cement Limited Vs M/s. Aniirudh Civil Engineers and Contractors Private Limited ?

Date of Decision : 01-02-2024

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9, 33(2), 34(1), 52
Insolvency and Bankruptcy Board of India (Liquidation Process Regulations), 2016 — Regulation 4(2)(b), 6(1)

Citation : (2024) 02 NCLT CK 0003

Hon'ble Judges : Kishore Vemulapalli, Member (J);Anu Jagmohan Singh, Member (T)

Bench : Division Bench

Advocate : Nitu Chaturvedi, Aditya Raval

Final Decision : Disposed Of

Judgement

1. This is an application filed by Mr. S. Gopalakrishnan, Resolution Professional of the Corporate Debtor seeking liquidation of M/s. Aniirudh Civil Engineers and Contractors Private Limited under Section 33(2) of Insolvency and Bankruptcy Code, 2016 (hereinafter called as the "Code").

Brief facts of the Application are as follows:

2. This Tribunal vide an order dated 03.03.2023, in Company Petition bearing C.P.(IB)/2127(MB)2019 filed under Section 9 of the Code, by Ultratech Cement Limited (hereinafter referred to as the "Operational Creditor"), admitted the petition and Corporate Insolvency Resolution Process (CIRP) was initiated against M/s. Aniirudh Civil Engineers and Contractors Private Limited [CIN: U45400MH2011PTC223994] (hereinafter called as the "Corporate Debtor").

3. Mr. S. Gopalakrishnan was appointed as Interim Resolution Professional by this Tribunal vide order dated 03.03.2023 and was confirmed as Resolution Professional in the first CoC meeting held on 03.04.2023.

4. Form-A public announcement for Invitation of claims under Regulation 6(1) of

the Code was published on 05.03.2023 and the last date for submission of claim was 18.03.2023.

5. It is submitted that in the second meeting of the CoC held on 09.06.2023 the COC members after detailed discussion proposed liquidation of the Corporate Debtor as there are no tangible asset in the company, only intangible assets. Further, the books of accounts were not prepared since the Financial year 2016-17 and the annual returns are not filed.

6. It is submitted that there being no tangible assets of the Corporate debtor and only Financial assets, the resolution to initiate Liquidation proceedings was passed with 100% majority of the CoC. Further, the COC also approved the appointment of RP Mr. S. Gopalakrishnan as Liquidator in the same meeting. The same are reproduced below:

" RESOLVED THAT consent of members of CoC be and is hereby accorded to approve the Liquidation of the Corporate Debtor u/s 33 (2) of the Insolvency and Bankruptcy Code, 2016 and any other applicable provisions.

RESOLVED FURTHER THAT the Committee of Creditors be and is hereby authorized to apply and intimate to Hon'ble Adjudicating Authority decision of the Committee of Creditors to liquidate the Corporate Debtor and obtain the order of liquidation.

RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorized to take such steps as shall be necessary in relation to the above, to the extent required and to settle the matters arising out of and incidental thereto sign and execute all applications documents and writings that shall be required and generally to do all acts, deeds and things that shall be necessary, proper, expedient or incidental for the purpose of giving effects to the aforesaid resolution.

7. In the present case, the CoC via E-voting Poll Result resolved with the majority of 100% of the votes to proceed with the liquidation of the Corporate Debtor.

8. Thereafter, the Applicant filed an affidavit in compliance of Order dated 20.12.2023 and 10.01.2023. It is submitted that the 7th COC meeting was called on 22.12.2023 and the list of certain pending receivable was given to COC, wherein the transaction audit report was placed before the COC and the total receivables are to the tune of Rs. 62,64,57,114/-. The Applicant informed COC that pending receivables are classified as Non-Readily Realizable assets (NRRA). Further, after detailed discussion the agenda of approving the NRRA assignment was declined by the COC by 100% voting.

9. Considering the facts and circumstances of the present case, the Bench is of the considered view that the Corporate Debtor be liquidated. Accordingly, this Bench orders that:

a. IA-3789(MB)2023 IN C.P.(IB)/2127(MB)2019 filed by the Applicant for the Liquidation of the Corporate Debtor viz. M/s. Aniirudh Civil Engineers and Contractors Private Limited is allowed and the company to be liquidated in the following manner:

b. Though the CoC recommended the present RP to be appointed as Liquidator, this Bench considers appointing another Insolvency Professional from the panel approved by the IBBI. Accordingly, this Bench hereby appoints Ms. Kala Agarwal, having Registration No. IBBI/IPA-002/IP-N00841/2019-2020/12734 (email: agarwalkala@gmail.com Mob. 9819888185 as the Liquidator as provided under Section 34(1) of the Code to conduct the liquidation process of the Corporate Debtor.

c. The Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.

d. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

e. The Liquidator appointed under Section 34(1) of the Code, will have all powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, hereafter ceased to exist and henceforth be vested with the Liquidator.

f. The Corporate Debtor to be Liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the RoC under which this Company has been registered.

g. The personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

h. On having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding 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 this Adjudicating Authority.

i. This liquidation order u/s 33(7) shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

10. With the above directions, the IA-3789(MB)2023 IN C.P.(IB)/2127(MB)2019 filed u/s 33(2) by the Applicant is hereby allowed and disposed of.

