

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

IA 22/2018 in CP(IB)1024(MB)/2017

(Under Section 33 of the IBC, 2016)

Mr Anil Goel

... Applicant/RP

In the matter of

Punjab National Bank ... Financial Creditor

Vs

Charbhujia Industries Pvt Ltd. ... Corporate Debtor

Order delivered on 2.5.2019

Coram:

Hon'ble Member (Judicial) Shri V.P. Singh

Hon'ble Member (Technical) Shri Ravikumar Duraisamy

For the Applicant: Advocate Rishab Shahbazkar

Member (Judicial) Shri V.P. Singh

Member (Technical) Shri Ravikumar Duraisamy

ORDER

MA 1327/2019 had been filed for hearing of IA 22/2018. IA 22/2018 has been filed by the Resolution Professional under section 33 of IBC, 2016 for the liquidation of the Corporate Debtor, Charbhujia Industries Pvt Ltd.

2. The applicant states that he is the Resolution professional in the ongoing CIRP of the Corporate Debtor, Charbhujia Industries Pvt Ltd.

3. It is further stated by the applicant that Petition for initiation of CIRP was admitted by order of this Bench dated 19.6.2017 and Mr Rahul Kavathekar was appointed as IRP. After that, the CoC under Section 22(3)(b) of the IBC, 2016 recommended the name of Mr Anil Goel to be appointed as RP. This Tribunal by order dated 10.10.2017, approved the appointment of Mr Anil Goel as RP.

4. It is further stated by the RP that in the 2ndCoC meeting held on 29.11.2017, the RP called for proposals from various registered valuers and appointed two registered valuers namely Thite Valuer & Engineers Pvt Ltd and Anmol Sekhri Consultants Pvt Ltd. for the valuation and determination of liquidation value of Corporate Debtor on 22.11.2017. Further subsequently, it was ascertained that the agenda for approval of the application for extension of CIRP to extend the period of corporate insolvency resolution process beyond 180 days which ends on 15.12.2017 and seek extension under Section 12(2) and (3) of the Code which was approved by the CoC in its 2nd meeting. Copy of the minutes of the 2ndCoC meeting is annexed with the application as Annexure 4. The application regarding extension of CIRP period was filed on the recommendation of the CoC before this bench and by order dated 15.12.2017, CIRP period was extended for a further period of 90 days.

5. It is further stated that the RP has appointed Mr. Vishal Sharma (Chartered Accountant) from Advarisk, SLO Technologies Pvt Ltd on 6.12.2017 for conducting the transactional audit of CIPL to comply with amended Regulation 39(2) of IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016, the scope of audit to be conducted by forensic auditor has been extended to cover Specified Transactions. Copy of the letter of appointment of a forensic auditor is annexed with the application as Annexure 6.

6. The applicant further states that in the third meeting of CoC held on 11.1.2018, the RP presented the resolution plan submitted by "Your's Faithfully Advisors LLP", the resolution applicant through email on 27.11.2017. The Chairman informed the CoC that no firm offer had been received from the prospective investor. Hence, the CoC decided to invite expression of interest by the publishing of advertisement. Copy of the Minutes of 3rdCoC meeting and Expression of Interest published in Economic Times on 4.12.2017 is annexed with the application as Annexure 7A and 7B.

7. The applicant further states that he has received the Resolution plan from Greenway Advisors Pvt Ltd on 15.2.2018 which was specific towards Nagpur unit only and not for the whole company (CIPL) and the same could not be accepted as per the guidelines laid down in the judgement of Roofit Industries Ltd which particularly stated that the assets of the Corporate Debtor cannot be sold in piecemeal.

8. The applicant further states that in the 4thCoC meeting held on 30.1.2018, the CoC was in the opinion that no formal resolution plan is pencilled for discussion and in the absence of any resolution plan the ultimate result will lead to the liquidation of the Corporate Debtor. Copy of the minutes of the 4thCoC meeting is enclosed with the application as Annexure 8.

9. The applicant further states that in the 5thCoC meeting held on 5.3.2018, the CoC members decided that in the absence of any resolution plan for the Corporate Debtor, the CoC members authorize the RP to file liquidation application under Section 33(2) and 34(1) of IBC, 2016. Copy of the minutes of the 5thCoC meeting and the voting register is annexed with the application as Annexure 9A and 9B.

10 It is further submitted that based on a resolution passed by the CoC, the applicant has filed this application under Section 33(1) for liquidation of the Corporate Debtor. On perusal of the minutes of 5thCoC meeting, it is clear that CoC in the said meeting “Resolved that the CoC of Charbhujia Industries Pvt Ltd be and hereby authorize the Resolution professional to file a liquidation application under Section 33(2) and Section 34(1) of the IBC, 2016 for liquidating the Corporate Debtor and for appointment of Liquidation. The CoC further resolved that;

“the CoC as a result of this approve that the Resolution professional, Mr Anil Goel be appointed as Liquidator by Section 34(1) of the IBC, 2016.”

Copy of voting register (part of attendance sheet) is annexed with the application as Annexure 9B, which shows that CoC with 100% voting share has approved the resolution for liquidation of the Corporate Debtor and appointment of Mr Anil Goel as Liquidator.

11. Given the resolution passed by the CoC, we **allow IA 22/2018 and order for liquidation of the Corporate Debtor with immediate effect** under Section 33 of IBC and issue directions as under:

- a. That the Corporate Debtor is liquidated in the manner as laid down in the Chapter by issuing a Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to RoC under which this Company has been registered.
- b. As to the appointment of Liquidator, Mr.Anil Goel, Resolution professional is at this moment appointed to act as a Liquidator for the

liquidation of Corporate Debtor company with all powers as envisaged in the Code.

- c. On such appointment under Section 34 of the Code, all powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor shall cease to affect and shall be vested in the Liquidator.
 - d. That the personnel of the Corporate Debtor shall extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
 - e. That the Insolvency Resolution Professional appointed as Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate/assets as specified under Regulation 4 of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.
 - f. Since this liquidation order has been passed, subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, in the event of initiation of a suit or legal proceeding by the liquidator on the corporate debtor behalf, it may initiate such proceedings with prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the Code.
 - g. This liquidation order shall be deemed to be notice of discharge to the officers, employees and workers of the Corporate Debtor except to the extent of the business of the Corporate Debtor continuing during the liquidation process by the Liquidator.
12. Moratorium declared vide Order dated 19.6.2017 in CP No.: 1024/2017 ceased to exist.
13. The registry is directed to communicate this order to the corporate Debtor and the Liquidator immediately even by way of e-mail.
14. IA 22/2018 and MA 1327/2019 is accordingly disposed of.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

V. P. SINGH
Member (Judicial)