

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT 1, MUMBAI BENCH**

MA 167/2020 in CP(IB)2096 (MB)/2019

(Under Section 33(2) of the IBC, 2016)

Mr. Ram Ratan Kanoongo

...Applicant/
Interim Resolution Professional

In the matter of

Corporation Bank

...Financial Creditor

Vs

Firestar Diamond International Pvt Ltd

... Corporate Debtor

Order delivered on 26th February 2020

Coram:

Hon'ble Member (Judicial) Smt Suchitra Kanuparthi

Hon'ble Member (Technical) Shri V Nallasenapathy

For the Applicant: Adv. Pulkit Sharma i/b Adv. Payal Upadhyay, ANP Chambers and Adv. Anant Upadhyay.

Per: Suchitra Kanuparthi , Member(Judicial)

ORDER

1. MA 167/2020 is filed by the Interim Resolution Professional, seeking the following reliefs:
 - a. Liquidation order as provided under sub clauses (i), (ii) and (iii) of Clause (a) of sub-section (1) of Section 33 of the Code thereby requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter III of the IBC, 2016
 - b. To appoint Mr. Santanu T Ray having Registration No.IBBI/IPA-002/IP-N00360/2017-2018/11055 as Liquidator of the Corporate Debtor as per the provisions of Section 34 of the IBC, 2016
 - c. To direct the Corporate Debtor and its personnel, employee, staff, agents etc to extend all assistance and co-operation to the liquidation as may be required in discharging his functions as

Liquidator of the Corporate Debtor as specified under the provisions of IBC, 2016.

2. Applicant Interim Resolution Professional, Mr. Ram Ratan Kanoongo has filed this application stating that Petition filed under Section 7 of IBC, 2016 was admitted by order of this Bench dated 25.9.2019 and the applicant was appointed as the Interim Resolution Professional.
3. The applicant submits that the Public Announcement in 'Form A' under Regulation 6 of the IBBI (IRP for Corporate Persons) Regulations, 2016 interalia calling upon the creditors of the Corporate Debtor to submit a proof of their claims on or before 24.10.2019 was updated on the website of IBBI and was also released in the newspapers.
4. Thereafter, the CoC was constituted on 1.11.2019. In the second CoC meeting held on 16.11.2019, the CoC informed the Applicant that the CoC does not wish to appoint a RP as they wish to take the Corporate Debtor into liquidation in line with Section 33(2) of IBC, 2016 without going through the Resolution Plan for the following reasons:
 - (a) There are no business prospects with the Corporate Debtor;
 - (b) There is no substance in chasing the legal suits and cases of recovery;
 - (c) There is no point in spending goods money to make efforts to recover bad money, having very remote chance of recovery;
 - (d) The assets with the company are not sufficient to repay the amounts of creditors;
 - (e) Any resolution plan is not possible, which could enable the company to pay the entire debts.
5. In the said second meeting, the CoC further informed that a decree has already been passed by the DRT against the Corporate Debtor and Recovery Certificate (RC) also issued. Corporate Debtor is not a running concern and recovery action has already been initiated by the Banks against the Corporate Debtor and guarantors. Furthermore, all secured and unsecured assets are attached by the ED and under the Adjudication before various forums. Banks are contesting the PMLA cases for releasing the secured assets and to take the unsecured assets

as per the provisions of PMLA Act. As per CoC, getting possession of those assets by RP is very time consuming/expensive exercise and will have to go through multifarious litigations which the bank is already going on with the respective agencies. Hence, no resolution looks possible, therefore, moving ahead with the resolution process will not serve the purpose in any manner. Copy of the minutes of the 2nd CoC meeting is annexed with this application as Exhibit 7.

6. In the 3rd CoC meeting held on 20.11.2019, a resolution for liquidation of the Corporate Debtor was put for voting. Since the requisite 66% of votes were not received in the said meeting, the said resolution was again put for voting in the 4th CoC meeting held on 2.12.2019. In the said 4th CoC meeting, the resolution for liquidation of Corporate Debtor for put for voting and got passed with 98.25% voting share. The CoC approved the appointment of Mr. Santanu T Ray having Registration No.IBBI/IPA-002/IP-N00360/2017-2018/11055 to act as the Liquidator of the Corporate Debtor. The written consent in the prescribed consent form under Section 34(1) of IBC, 2016, read with Rule 3 of the IBBI (Liquidation Process) Regulations, 2016 was obtained and is annexed with the application as Exhibit 11.
7. It is further submitted that in the 4th CoC meeting, pursuant to Regulation 39B(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and relevant provisions of the IBC, 2016, the CoC resolved and approved the best estimate made by them of Rs.50 lacs as liquidation cost. The CoC further approved that the amount of Rs.50 lacs and further cost overruns, if any, will be contributed as per Regulations 2A of IBBI (Liquidation Process) Regulations, 2016. The said resolution received 98.24% votes and got passed by the CoC.
8. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, we are of the view that this case is fit to pass liquidation order under sub-section 1 of section 33 of the Code as no resolution plan has been submitted before the Adjudicating Authority by the Resolution Professional, and accordingly, this Bench orders;
 - a. that 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.

- b. that Mr. Santanu T Ray, having Registration No.IBBI/IPA-002/IP-N00360/2017-2018/11055 is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
 - c. all the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
 - d. that 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.
 - e. that the Liquidator will charge fees for conduct of the liquidation proceedings as provided in Regulation 4(3) of the IBBI (Liquidation Process Regulations), 2016.
 - f. that 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 proceeding on behalf of the corporate debtor with prior approval of this Adjudicating Authority.
 - g. This liquidation order shall be deemed to be 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.
9. The Liquidator appointed in this case is directed 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.
10. The registry is directed to communicate this order to the Liquidator.
11. MA 167/2020 is hereby allowed and disposed of with the above directions.

Sd/-
V NALLASENAPATHY
Member (Technical)

Sd/-
SUCHITRA KANUPARTHI
Member (Judicial)