

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT 1, MUMBAI BENCH

Under Section 33(2) of the IBC, 2016

MA 684/2020 in CP(IB)4694 (MB)/2018

Santanu T Ray

...Applicant/
Interim Resolution Professional

In the matter of

Prabhat Steel Traders Pvt Ltd

...Petitioner

Vs

Ankur Iron (India) Pvt Ltd

... Corporate Debtor

Order delivered on :03.08.2020

Coram:

Smt Suchitra Kanuparthi, Member (Judicial)

Shri V Nallasenapathy, Member (Technical)

For the Applicant: Adv. Rubina Khan, i/b Fortis India Law

Per: V Nallasenapathy, Member(Judicial)

ORDER

1. MA 684/2020 is filed by the Interim Resolution Professional (IRP), seeking Liquidation order under Section 33 of the Insolvency and Bankruptcy Code,2016 ("Code") thereby requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter III of the Code.

2. The applicant submits that the Company Petition was admitted by an order of this Bench dated 10.1.2020 and Mr. Santanu T Ray was appointed as the Interim Resolution Professional. Copy of the said admission order is enclosed with the application as Exhibit A.

3. Thereafter, public announcement in Form A under Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was made by the IRP on 15.1.2020 which was published in two newspapers. Pursuant to the said public announcement, the IRP received and verified claims from one financial creditor amounting to Rs.18,97,37,781.29 and two claims from Operational Creditors amounting to Rs.1,58,23,846/-.

4. Thereafter, the CoC was constituted. The IRP wrote several communications to the suspended Board of Directors to co-operate with him in running the affairs of the Corporate Debtor in accordance to the Code and requesting them to provide the financial information of the Corporate Debtor. However, all the communications sent to the suspended directors have returned back. The applicant submits that the suspended Directors/Key Managerial Persons of the Corporate Debtor have remained untraceable in spite of the best efforts made by the IRP and his staff.

5. The applicant further submits that the property belonging to the Corporate Debtor which is situated at 404/405, Dhoot Business Centre, R B Mehta Marg, Ghatkopar East, Mumbai – 400 077 was personally visited by the Legal Associate of IRP. On visit, it came to the notice of the IRP that the said property has already been sealed by the Corporation Bank (Sole Member of the CoC of the Corporate Debtor) and is in their possession.

6. The applicant contends that in furtherance of the constitution of CoC, he issued a notice dated 5.2.2020 to conduct the First CoC meeting on 10.2.2020. In the first CoC meeting held on 10.2.2020, the IRP informed the members of CoC about the financial position of the company and presented the documents procured by him from public domain.

7. The applicant further contends that the Registered office of the Corporate Debtor is sealed, the directors of the Corporate Debtor are untraceable and the books of accounts are also not available, therefore there is absolutely no details or information with regards to the inventories and trade receivables of the Corporate Debtor. Additionally, the Corporate Debtor does not possess any major asset other than the Registered office.

8. The applicant submits that taking into consideration the facts and circumstances, CoC elaborately discussed in the first meeting and it was decided by the sole member of CoC that it would be in the best interest of the Corporate Debtor to initiate liquidation proceedings against the Corporate Debtor. The following reasons were cited for taking the Corporate Debtor into liquidation:

- (a) The accounts of the Corporate Debtor has become NPA since 31.3.2016;
- (b) The Directors of the Corporate Debtor are untraceable and no information can be received;
- (c) The Corporate Debtor has only one property which is situated at 404/405, Dhoot Business Centre, B Mehta Marg, Ghatkopar East, Mumbai – 400 077 which is sealed by the Corporation Bank under SARFAESI Act;

- (d) The Corporate Debtor has not been functioning since past three years;
- (e) Resolution Applicants are not expected, and if any are expected, it is for the purpose of the property only, which purpose can be served in liquidation as well.
- (f) Liquidation will speedup the process of realization.

9. Therefore, in the said CoC meeting, a resolution for liquidation was passed with 100% voting share and further the IRP/Applicant was authorized to file the present application before this Tribunal.

10. Section 33 of the Code provides as 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 non-compliance 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 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 (1).

(3)

(4)"

11. 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 2 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.

11. 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.

12. The registry is directed to communicate this order to the Liquidator.

13. MA 684/2020 is hereby allowed and disposed of with the above directions.

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V NALLASENAPATHY
Member (Technical)

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SUCHITRA KANUPARTHI
Member (Judicial)