

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I

*** **

IA No. 1986 of 2020
in
C.P. (IB) No. 4738/MB/2018

Application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016

Mr. Santanu T. Ray,
Resolution Professional for Neo Corp International Limited,
Registration No.: IBBI/IPA-002/IP-N00360/2017-18/11055
AAA Insolvency Professionals LLP, A-301, 'A' Wing,
BSEL Tech Park, Sector 30A, Opp. Vashi Railway Station,
Vashi, Navi Mumbai – 400 705. ...Applicant

In the matter of
Plastiblends India Limited ...Operational Creditor
V/s
Neo Corp International Limited ...Corporate Debtor

Date of Order: 05.08.2021

CORAM:

Shri. Bhaskara Pantula Mohan, Hon'ble Acting President
Shri. Narendra Kumar Bhola, Hon'ble Member (Technical)

Appearance:

For the Applicant: Mr. Rohit Gupta with Ms. Rubina Khan, Advocates i/b
Fortis India Law.

Sd/-

Per: Shri. Bhaskara Pantula Mohan, Hon'ble Acting President

ORDER

1. This is an application filed by the Resolution Professional Mr. Santanu T. Ray under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating Liquidation Process against the Neo Corp International Limited (Corporate Debtor).
2. The facts leading to the Application are as under.
 - a.—Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Tribunal vide order dated 19.09.2019 upon admission of a Petition under Section 9 of the Code and ms. Asha Manajit Ghoshal was appointed as the Interim Resolution Professional (erstwhile IRP).
 - b. The erstwhile IRP made a public announcement for inviting claims from the creditors of the Corporate Debtor. After receipt of the claims, the erstwhile IRP constituted the Committee of Creditors (CoC) of the Corporate Debtor and filed the report for the same with this Tribunal on 16.10.2019.
 - c. The CoC in its 1st meeting held on 19.10.2019 resolved to appoint Mr. Shantanu T. Ray (Applicant) as Resolution Professional (RP). Accordingly, an application in MA No. 3522 of 2019 was filed to replace the erstwhile IRP with the Applicant and same was allowed by this Tribunal vide order dated 13.11.2019.
 - d. The Applicant had issued Form-G on 16.01.2020, inviting expression of interest (EOI) from prospective resolution applicants (PRAs). Thereupon Applicant received only two EOIs from PRAs namely, J.C.

Sd/-

Flowers Asset Preconstruction Private Limited and Prudent ARC Limited.

- e. The CoC in its 6th meeting held on 15.02.2020 decided to proceed with the reissue of the Form-G, as there was only one EOI received from Prudent ARC Limited was found eligible. Accordingly, the Applicant reissue the Form-G on 27.02.2020 and last date of submission of Resolution Plan was 23.03.2020. In the same meeting CoC resolved to file an Application for extension of CIRP Period by 90 days. Accordingly, the Applicant filed an Application in MA No. 743 of 2020 which was allowed by this Tribunal vide order dated 03.03.2020 by extending the CIRP period ends on 16.06.2020.
- f. The Applicant submitted that in furtherance of the reissue of Form G, he received only one EOI from PRA i.e. Prudent ARC Limited. Further in view of the fact of outbreak of Covid-19 and nationwide lockdown and upon the request of the PRA, the last date of submission of Resolution Plan was extended till 31.05.2020.
- g. Further the Applicant submitted that the PRA failed to submit the Resolution Plan and he proposed to the CoC to start with fresh EOI process which was approved by the CoC in its 7th meeting held on 15.06.2020. Accordingly, Applicant reissue the Form-G on 29.06.2020. In view of the same the Applicant has received 3 EOIs from PRAs namely, Prudent ARC Limited, Midland Polymers Limited and Trident Limited.
- h. The applicant submitted that valuers and transaction auditor were appointed by the erstwhile IRP and the Applicant with the approval of CoC.
- i. The Applicant submitted that the plans received from the PRA was non-compliant to the provisions of the Code and PRA failed to deposit

Sd/-

the amount towards EMD II, therefore the CoC decided to proceed with liquidation Process.

- j. The CoC in its 11th and 12th meeting held on 16.10.2020 and 22.10.2020 respectively, decided to go for liquidation process as it is the last option available with the creditors and the CoC members opined that the liquidation of the Corporate debtor is carried as a going concern in accordance with Regulation 39C of the Regulations. Thereafter CoC members decided to pass resolution through e-voting. Accordingly, e-voting for the CoC members was opened from 23.10.2020 at 3.00 pm to 24.10.2020 at 6.00 pm. The resolution for liquidation was approved by the CoC with 91.04% voting shares and the said resolutions are as below:

“RESOLVED THAT, the Corporate Debtor i.e. Neo Corp International Limited be liquidated as going concerns as per the provision of Section 33 of the Insolvency and Bankruptcy Code, 2016. Read with Regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016.

RESOLVED THAT Mr. Santanu T. Ray, Resolution Professional of Neo Corp International Limited is recommended to be appointed as the Liquidator of the Corporate Debtor i.e. Neo Corp International Limited.

FURTHER RESOLVED THAT the fees of the Liquidator will be as per Regulation 4(2) of IBBI Regulation (Liquidation Process), 2016 with a discount of 34% as per on the fee structure prescribed in the said Regulation.

FURTHER RESOLVED THAT pursuant to Regulation 39B Insolvency and Bankruptcy Board of India (Insolvency) Resolution Process for

Sd/-

Corporate Persons) Regulations, 2016 and other relevant provisions of the Insolvency and Bankruptcy Code, 2016, the Committee of Creditors hereby approved the estimate Liquidation cost of Rs. 73,46,500/- plus applicable GST”.

3. Hence the Applicant came up with present application on 28.10.2020.
4. The Hon'ble Apex Court in **K. Sashidhar v. Indian Overseas Bank and Ors: (2019) 148 LA 497 (SC)** *inter alia* held that,

“The Adjudicating Authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under section 33 (1) of I & B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors”.

5. Section 33 of the Code reads as below:

“33. Initiation of Liquidation

(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

Sd/-

- (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 [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 (1).
- (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."*

6. Regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 reads as below:

"39C. Assessment of sale as a going concern.

(1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.

(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(3) The resolution professional shall submit the recommendation of the committee under sub regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be."

7. From the above, it would appear that despite all possible steps as required under the Code taken during the CIRP, the CoC did not receive any viable resolution plan/proposal for revival of the Company. The CoC in its wisdom has resolved with 91.04% voting share in favour of the liquidation of the

Sd/-

Corporate Debtor as a going concern. The Applicant RP has given his consent to act as Liquidator. This Authority has no reason before it to take a contrary view in terms of Section 33(1)(a) of the Code. Therefore, it has no option than to pass an order for liquidation of the Company in the manner laid down in Chapter III of the Code. Hence ordered.

ORDER

The Application be and the same is allowed. The Corporate Debtor, Neo Corp International Limited, shall be liquidated in the manner as laid down in Chapter-III of the Code with the following directions:

- a) Mr. Shantanu T. Ray having Registration No. IBBI/IPA-002/IP-N00360/2017-18/11055 is appointed as Liquidator. He shall be entitled to fees as may be specified in the Resolution passed by the CoC.
- b) The Liquidator shall endeavour to sale the Company as a going concern during the liquidation in terms of Regulation 32A of the Liquidation Process Regulations. In case he is not able to do so within a period of 90 days from this date, he shall proceed in accordance with clauses (a) to (d) of Regulation 32 of the Liquidation Process Regulations.
- c) The Liquidator shall issue public announcement stating that the Corporate Debtor is in liquidation.
- d) The Moratorium declared under section 14 of the Code shall cease to operate here from.
- e) Subject to Section 52 of the Code no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however 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.

Sd/-

- f) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- g) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code read with the Liquidation Process Regulations.
- h) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- i) This Order 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.
- j) The Liquidator is directed to send a copy of this Order to Registrar of Companies concerned and Insolvency and Bankruptcy Board of India, New Delhi.

Sd/-

Narendra Kumar Bhola
Member (Technical)

Sd/-

Bhaskara Pantula Mohan
Acting President