

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P. No.(IB)1425(MB)/2017

CORAM:

SHRI V. P. SINGH

MEMBER (J)

SHRI RAVIKUMAR DURAISAMY

MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 18.2.2019

NAME OF THE PARTIES: Bank of India

Vs

Nimit Steel & Alloys Pvt Ltd

Section 7 of the Insolvency and Bankruptcy Code, 2016.

ORDER

32. CP (IB)-1425/MB/2017

MA 484/2019 has been filed by the Resolution Professional under Section 33(1) (a) of the IBC, 2016, seeking liquidation of the Corporate Debtor given the Provision of Section 33(1) of the IBC, 2016.

It is stated in the application that CP 1425/2017 filed under Section 7 of IBC was admitted by the order dated 23.4.2018 and the applicant was appointed as Interim Resolution professional who was later on confirmed as Resolution Professional.

During the CIRP period, meetings of CoC took place on 7.6.2018, 24.6.2018, 6.8.2018, 24.8.2018, 26.9.2018, 19.10.2018, 27.11.2018 and lastly on 14.1.2019.

It is further stated in the application that under CoC meeting held on 7.6.2018, two registered Valuers namely Adroit Technical Services Pvt Ltd and Anmol Sekhri Consultants Pvt Ltd were appointed to determine the fair value and liquidation value of the assets of the company. The average fair value of the Corporate Debtor is ₹3,18,58,173/- and the average liquidation value of the Corporate Debtor is ₹2,52,92,938/-

It is further stated that during CIRP an Expression of Interest from M/s. Prudent ARC Limited was received on 30.9.2018. However, under it, no resolution plan from the said the Resolution Professional had received prudent ARC Limited or any other entity. It is further stated that given the approval of the CoC MA 1226/2018 was filed seeking an extension of the CIRP period by 90 days. This Tribunal vide order dated 23.10.2018 extended 90 days for completion of CIRP with effect from 21.10.2018 and extended period expired on 18.1.2019.

It is further stated that during 8thCoC meeting held on 14.1.2019, the CoC observed that *“Hence, after due discussion and deliberation the members of the CoC reiterated that if they do not receive any resolution plan before the expiry of the CIRP period the Corporate Debtor will go into Liquidation and the Resolution professional shall act as the Liquidator subject to providing the consent letter along with the application of Liquidation.”*

The RP has stated that no resolution plan has been received during the CIRP period. Therefore, the applicant has submitted the present application under Section 33(1) (a) of the Code for the liquidation of the Corporate Debtor. Additional Affidavit has also been filed by the RP wherein it is stated that CIRP in respect of the Corporate Debtor commenced under order dated 23.4.2018 passed by this Tribunal and the extended period of CIRP ended on 18.1.2019.

It is further stated that the Expression of Interest in respect of the Corporate Debtor was submitted by Prudent ARC Limited on 30.9.2018, however, pursuant thereon, no resolution plan from the said Prudent ARC had been submitted in respect of the Corporate Debtor. Since no resolution

plan has been submitted in respect of the Corporate Debtor within the statutory period of 270 days for completion of the CIRP, the request has been made by the RP for passing an order under Section 33(1)(a) of IBC for the liquidation of the Corporate Debtor.

It is clear from the record that Section 33(1)(a) provides that where Adjudicating Authority 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, then Adjudicating Authority shall pass requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter.

Given the provisions of Section 33(1)(a) of the Code, we at this moment allow MA 484/2019 and pass the order for liquidating the Corporate Debtor. It also appears from the minutes of the CoC dated 14.1.2019 that CoC after due discussion and deliberation arrived at the conclusion that if they don't receive the resolution plan before the expiry of the CIRP period the Corporate Debtor will go into Liquidation and the Resolution professional shall act as the Liquidator subject to providing the consent letter along with the application of Liquidation and fees of the liquidator shall be as per Regulation 4 of IBBI (Liquidation Process) Regulations, 2016.

The applicant has annexed the consent of the proposed Liquidator which is Annexure 9 to the applicant which shows that Mr Amit Gupta has given his consent for being appointed as a Liquidator of the Corporate Debtor.

In the circumstances, we at this moment allow MA 484/2019 under Section 33(1)(a) of the Code and pass an order for the liquidation of the Corporate Debtor and appoint Mr Amit Gupta as a Liquidator. This Bench at this moment orders as follows:

- 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, the Resolution Professional, i.e. the applicant herein is at this moment directed to act as a Liquidator for 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 proceeding 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 workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continuing during the liquidation process by the Liquidator.

Moratorium declared vide Order dated 23.4.2018 in CP No.: 1425/2017 ceased to exist.

Accordingly, the MA No. 484/2019 in CP-1425/2017 is at this moment **allowed.**

The registry is directed to communicate this order to the Applicant immediately even by way of e-mail.

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-
V. P. SINGH
Member (Judicial)