

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

CA- 1144(PB)/2018 in
C.P. NO.IB-64(PB)/2017

IN THE MATTER OF:

Macquarie Bank Ltd.

....Financial Creditor

vs.

Shilpi Cable Technologies Limited

....Corporate Debtor

AND IN THE MATTER OF:

Mr. Huzefa Fakhri Sitabkhan

Resolution Professional

..... Applicant

For Shilpi Cable Technologies Limited

**SECTION: Under Section 33 of the Insolvency and
Bankruptcy Code, 2016**

Order delivered on:.01.05.2019

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

SHRI S.K. MOHAPATRA
Hon'ble Member (Technical)

PRESENTS:

For the Applicant : Mr. Akshay Gupta, Mr. Deepak Chawla,
Ms. Nameeta Singh & Mr. Prateek, Advs.

For the Ex-
Management : Ms. Ridhima Gulati, Advocate

For CoC : Mr. Ankur Mittal & Ms. Jasveen Kaur, Advs.

For RP : Mr. Puneet Singh, Mr. Dhiraj, Ms. Simran
Jeet, Mr. Sanampreet Singh, Advocates

For the HDFC :Mr. Simran Sharma, Advocate

ORDER
M.M.KUMAR, PRESIDENT

1. This is an application filed by the Resolution Professional under Section 33 (1) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the “Code”) for issuance of directions for liquidation of the corporate debtor, Shilpi Cable Technologies Limited.
2. The facts in brief are that the financial creditor, Macquarie Bank Ltd. had filed a petition bearing no. IB 64(PB)/2017 under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this tribunal vide order dated 24.05.2017 and Ms. Rita Gupta was appointed as Interim resolution Professional (IRP).
3. Thereafter, in terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) the said Interim Resolution Professional made a public announcement in FORM-A on 15.07.2017. The Public



announcement was also duly uploaded on the website of Insolvency and Bankruptcy Board of India (IBBI).

4. Thereafter, the Corporate Debtor challenged the admission Order before the National Company Law Appellate Tribunal in Company Appeal (AT)(Insolvency) No. 101 of 2017 and vide an order dated 01.08.2017 the Hon'ble Appellate Tribunal set aside the admission order. Subsequently the Financial creditor filed an appeal before the Hon'ble Supreme Court in Civil Appeal No. 15135 of 2017 and vide an order dated 15.12.2017, the Hon'ble Supreme Court quashed the order of the Appellate Tribunal and remanded the matter back to the Hon'ble NCLAT. The Appellate Tribunal vide an order dated 15.01.2018 directed the IRP to continue the CIRP as it was on 01.08.2017.

5. Thereafter in the first meeting of Committee of Creditors (for brevity 'CoC') held on 15.02.2018 the IRP was appointed as Resolution Professional (RP). Further in the second meeting of CoC held on 09.04.2018, a resolution was passed to replace the RP and by an order dated 07.06.2018, the



applicant herein was appointed as the new Resolution Professional.

6. On a perusal of the minutes of the second meeting of CoC it can be made out that the IRP had appointed two registered valuers namely P & A Valuetech Pvt. Ltd. and Anmol Sekhri Consultants Pvt. Ltd. to determine the liquidation value of the corporate debtor. Further as the difference in valuation was more than 40%, it was decided to appoint a third valuer and the report of the same was submitted in the third meeting of the CoC. The IRP also appointed M.K. Aggarwal & Co., Chartered Accountants to conduct a forensic audit. The Resolution Professional had also appointed Mott Macdonald to undertake feasibility study of the Resolution plans submitted.

7. As per the Evaluation Matrix approved by the committee of creditors in the meeting held on 16.01.2018, the resolution professional had invited the prospective resolution plan applicants to submit resolution plan, by publishing Expression of interest.



8. Pursuant to the publication, the Resolution Professional received Expression of interest from six prospective Resolution Applicants and thereafter gave access to the virtual data room and the Information Memorandum. Further it is submitted by the applicant that only one resolution plan was received by the stipulated last date.
9. Subsequently, in the twelfth meeting of CoC held on 18.09.2018, the authorised representatives of the lone resolution applicant presented and discussed their plan and the resolution plan was put to vote. In the meeting the resolution to approve the plan received 0% of the voting share and another resolution was passed with 91.17% voting share where the CoC decided to refloat the invitation for submission of the Resolution plan.
10. Pursuant to the same, the Resolution Professional re-invited Resolution Plans from the prospective resolution applicants and received Expression of Interest from four entities. Out of the four entities, two submitted their resolution plan till the stipulated date, i.e. 05.10.2018. The



authorised representatives both the resolution plan applicants presented and discussed their resolution plan in the fourteenth meeting of CoC held on 11.10.2018 wherein the CoC directed them to make few modifications in the Plan and submit the addendum to the plan.

11. Thereafter both the Resolution Plan applicants submitted the addendum to the plan and the CoC evaluated both the resolution plans as per the evaluation matrix approved by them. In the fifteenth meeting of the CoC held on 16.10.2018 the CoC declared the consortium consisting of Vichitra Enterprises Private Limited and Combine Overseas Limited as the H1 bidder and directed the Resolution Professional to put the plan for approval of CoC through e-voting. Further the CoC also directed the Resolution Professional to file an application under Section – 33 of the Code if the resolution plan is not approved by requisite majority. The resolution for the approval of the resolution plan by H1 bidder received only 19.56% votes and thereafter another resolution for liquidation received 78.25% of the voting share.



12. It is further submitted that as per the resolution passed in the Fifteenth meeting of the CoC the Resolution Professional filed the present application bearing No. 1144(PB)/2018 on 18.10.2018 under Section 33 of the Code for the liquidation of the Corporate Debtor- Shilpi Cable Technologies Limited. Notice was issued to the non-applicant respondents to file their objections, if any, to the application.

13. Reply was filed by the H1 Resolution Applicant namely Vichitra Enterprises Private Limited in CA-1146(PB)/2018 where it sought another chance to submit the revised resolution plan and vide order dated 11.01.2019 this Tribunal directed the CoC to convene another meeting to consider the revised plan. In compliance of the same sixteenth meeting of the CoC was convened on 16.01.2019 and subsequently a revised plan was submitted on 21.01.2019. However before the plan could be considered by CoC, on 25.01.2019 the plan was withdrawn through an e-mail. Therefore, CA-1146(PB)/2018 was dismissed vide an order dated 04.02.2019.



14. Another CA-1143(PB)/2018 was filed by the second successful resolution plan applicant namely RCI Industries and Technologies Limited with a prayer to permit them to participate in the resolution process. On a perusal of the said application this Tribunal vide an order dated 04.02.2019 dismissed the same as the offer made by them was Rs. 85 Crores as against the liquidation value of Rs. 168 Crores.

15. The objection raised by the Ex- Director concerning the liquidation value would not require any detailed consideration. The Resolution Professional is under a mandatory statutory duty by virtue of Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, to appoint two registered valuers within 7 days of his appointment but not later than 47th day from the insolvency commencement date to determine the fair value and liquidation value of the corporate debtor in accordance with Regulation 35. In the present case the the IRP had appointed the registered valuers on 15.02.2018 and keeping in view the wide difference between the two valuation reports he appointed a third valuer and worked out the mean value based on the three valuation reports. In term of the proviso

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to Regulation 27 of the CIRP Regulations, objection could have been raised that the valuer is a relative of the resolution professional, a related party of the corporate debtor, an auditor of the corporate debtor or a partner or director of the Insolvency Professional entity of which the resolution professional is a partner or director. The RP has thus religiously complied with this statutory requirement and thus no ground is made out for issuing a direction for fresh valuation report. The case of the Ex- director is that the value of assets has decreased which in any case is not going to help maximisation of the assets of the corporate debtor. Therefore, we are not able to persuade ourselves to accept the prayer made by the objectors and accordingly the same is rejected.

16. That the CIRP in the present matter expired on 19.10.2018 and in the absence of any successful Resolution Plan the CoC in its 15th meeting dated 16.10.2018 passed the following resolution with 78.25% vote share:

a. To direct the Resolution Professional to file an application under Section-33 of the Insolvency and Bankruptcy Code,2016 read with the relevant regulations for the



Liquidation of the Corporate Debtor and take the necessary actions in connection therein, subject to the resolution number 1, i.e., Resolution Plan of the Consortium of Vichitra Enterprises Private Limited and Combine Overseas Limited not being approved by requisite majority by the CoC.

17. In the factual background and in the absence of any resolution plan and for want of time beyond statutory CIRP period; there is no other alternative but to order in conformity with the required majority decision of the CoC for liquidation of the corporate debtor under Section 33 of the Code.

18. The Resolution Professional has submitted its written consent by filing an affidavit, in Form AA under the Code, to be appointed as Liquidator in the present case.

19. As a result the application is allowed by ordering liquidation of the corporate debtor, namely Shilpi Cable Technologies Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:



- a.** Mr. Huzefa Fakhri Sitabkhan, Resolution Professional holding registration no. IBBI/IPA-001/IP-P00031/2017-18/10115 is appointed as Liquidator in terms of Section 34(1) of the Code;
- b.** Mr. Huzefa Fakhri Sitabkhan is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c.** The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d.** The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;



e. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.

f. The Liquidator shall follow up and investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section-35(1) of the Code read with relevant Rules & Regulations.

g. The liquidator is directed to consider the claim of M/s. BDR Builders and Developers Pvt. Ltd. in accordance with law. I.A.- 324(PB)/2018 is disposed of with liberty to the applicant namely BDR Builders and Developers Pvt. Ltd. to approach the liquidator and lodge its claim before him for due consideration as per law.

h. The liquidator shall also follow up the pending company applications and file its response for disposal of pending CAs during the process of liquidation.



i. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

j. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

k. C.A. 1144(PB) /2018 filed in IB 64(PB)/2017 is disposed of in the aforesaid terms.

Sd/-

(M.M.KUMAR) 1/5/2019
PRESIDENT

Sd/-

(S.K. MOHAPATRA)
MEMBER (TECHNICAL)

01.05.2019
VIDYA