

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH – I
KOLKATA**

**IA (IB) No. 441/KB/2022
in
CP (IB) No. 1303/KB/2019**

An application under section 60(5) of Insolvency & Bankruptcy Code, 2016

In the matter of

Gagan Ferrotech Limited

...

Operational Creditor

Versus

RDG Interior Decoration Exterior Architecture Private Limited

... **Corporate Debtor**

And

In the matter of:

Tapan Chakraborty, Resolution Professional of

RDG Interior Decoration Exterior Architecture Private Limited

... **Applicant**

Order reserved on: 07.06.2022

Order pronounced on: 17.06.2022

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances:

For the Applicant

: Mr. Tapan Chakraborty
Resolution Professional in person

ORDER

Rajasekhar V.K, Member (Judicial)

1. This is an application filed by the Resolution Professional with the approval of the Committee of Creditors ('CoC') seeking liquidation of the Corporate Debtor, viz., **RDG Interior Decoration Exterior Architecture Private Limited [CIN: U74994WB1999PTC088977]**, on the ground of lackadaisical attitude of the CoC during the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor.
2. It is submitted that six CoC meetings were held, the last being on 25.03.2022. From the very first meeting, the members of CoC were on one hand showing reluctance in continuing with the CIRP on the ground of the insignificant net

worth of the CD and on the other hand avoiding accepting the role and responsibility as CoC members (Annexure 5, 6, 7 & 8). The Information Memorandum could not be delivered to the members of the CoC as the confidentiality undertaking was not submitted; no decision was taken towards publication of Form G calling for Expressions of Interest (EoI) from prospective resolution applicants and to pass the resolution for liquidation of the Corporate Debtor. Even the payment of cost and fees of the Resolution Professional for the CIRP was not resolved, which ultimately had to be adjudicated by the Adjudicating Authority.

3. The majority voting shareholder Punjab and Sind Bank (voting share 66.93%) sought time to refer the matter to their higher authorities and they proposed the next date of CoC meeting on 25.03.2022 to convey their decision on the matter. However, no decision was arrived at on the said Agenda item by the members of the CoC. It is relevant to mention here that the 180 days of the CIRP was over on 20.06.2020 and period of 330 days also lapsed on 12.11.2020. In these circumstances, the Applicant has sought an order of liquidation.
4. This Adjudicating Authority *vide* its order dated 19.12.2019 on a petition filed by Gagan Ferrotech Limited ('Operational Creditor') being CP (IB) No. 1303/KB/2019 under section 9 of the Insolvency and Bankruptcy Code, 2016 ('the Code') directed initiation of the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and appointed Mr. Tapan Chakraborty as the Interim Resolution Professional ('IRP') and subsequently the CoC approved the IRP as Resolution Professional ('RP') in the present CIRP in the 1st CoC meeting dated 22.01.2020.
5. The Applicant submits that in terms of section 15 of the Code, public announcement was made on 25.12.2019, in *Financial Express* (English) and *Aajkal* (Kolkata Edition) (Bengali) newspapers, fixing 06.01.2020 as the last date for submitting the claim. The public announcement was uploaded on the website of IBBI.

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6. The Committee of Creditors (CoC) was duly constituted on 15.01.2020 with one claim from Punjab and Sind Bank, *i.e.*, the financial creditor was received. After the constitution of CoC further claims were received - till 31.01.2020 and were admitted and thus, CoC was reconstituted on 01.02.2020.
7. In response to the said advertisement two claims, one each from an operational creditor and a financial creditor were received, and the report certifying the constitution of CoC was filed with the adjudicating authority on 15.01.2020 and the first meeting of the CoC was held on 22.01.2020.

Claims received by the IRP:

8. Until the stipulated date, two claims, from Financial Creditor and from Operational Creditor, were received as per the provision of Sec 15 of IBC,2016. The details of the claims are summarised below:

Sl. No.	Name of Creditor	Voting Share	Amount of Claim (₹)	Total Amount of Claim	Security interest
Financial Creditor:					
1.	Punjab and Sind Bank	66.93	2,89,04,791	4,31,84,172	Equitable Mortgage of property measuring 2040 sq. ft. situated at 16 G-A, Khanpur Road, Kolkata
	Bharat Hotels Ltd	33.07	1,42,79,381		
Operational Creditor:					
2.	Employees State Insurance Corporation			1,50,23,327 NIL	None
	Director of Commercial Taxes, WB				
	Bharat Hotels Limited				
	Gagan Ferrotech Limited				

9. The Applicant states that the publication for the invitation of Expression of Interests (EoI) in **Form G** was not allowed from the prospective resolution

applicants by the CoC nor they took resolution for liquidation of the Corporate Debtor.

10. The applicant/RP stated that at the 5th and 6th CoC meeting specific agenda about fate of CIRP were taken up for discussion to bring the process to a logical course but the members of CoC abstained from taking any decision pertaining to continuation of CIRP. Simply recommending for exclusion and extension of time-period of CIRP or recommending liquidation of the Corporate Debtor may not be fruitful. Therefore, the Adjudicating Authority has to decide about next course of action in the Company Petition.
11. Hence, the RP has filed an interlocutory application under section 60(5)(a) seeking liquidation under section 33(1)(a) of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor on expiry of the CIRP period since the stipulated time-period of CIRP is over, it is proposed to liquidate the Corporate Debtor.
12. This is a matter where CoC is first required to take the call on whether to liquidate the Corporate Debtor or not. Otherwise, this responsibility will remain with the Adjudicating Authority to step into this role, which we are loathed to do. We, therefore, hereby direct CoC to take a view on the matter fifteen days from today. The Resolution Professional shall call a meeting of CoC with this one-point agenda, on 28.06.2022 and the outcome shall be placed before Adjudicating Authority on the next date of hearing.
13. List the matter for further consideration on 04.07.2022.

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Sneh, LRA