NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

MA/544/IB/2018
In
CP/104A/(IB)/CB/2018

Under Section 33(1)(a), 33(2) & 34(1) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016

In the matter of
M/s.Jaimurugan Textiles Limited

Shri.Mahalingam Suresh Kumar *.....Applicant*
(Resolution Professional)

Vs.

Shri.Vigneshraj Manisekaran & 2 ors. *.....Respondent/CD*

Order delivered on 18.12.2018

CORAM:
B.S.V.PRAKASH KUMAR, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Applicant/Petitioner: Shri.Mahalingam Suresh Kumar, RP
For the Financial Creditor: Shri.Sri Ganesh

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

1) Under reference is an Application filed before this Adjudicating Authority by Shri.Mahalingam Suresh Kumar, Resolution Professional for **M/s.Jaimurugan Textiles Limited** (in short 'Corporate Debtor'), which is under CIRP as per the Order dated 04.04.2018 moratorium was declared and Mrs.Revathi Sridharan was appointed as the Interim Resolution Professional. The IRP had convened the 1st COC meeting held on 03.05.2018 wherein the COC appointed the Applicant herein as the Resolution Professional for the CD.

8/

2) The applicant had constituted the 2^{nd} COC meeting on 09.06.2018 wherein the following resolutions were passed. The resolutions passed by the COC are as follows;

i) The CD does not own any moveable or immovable properties thereby the requirement of appointment of Land & Building/Machinery Valuers doesn't arise.

ii) Considering the balance in the current assets and loan & advances (including security deposits), the COC authorised RP to evaluate and appoint 2 valuers to ascertain the realizable/liquidation value of such current assets. The COC authorised RP to incur expenditure upto a maximum of ₹50000 for valuation work without seeking approval of COC.

iii) The company was earlier engaged in the business of manufacture of yarn. As the business became unviable, the CD has sold all the moveable and immovable assets and used the entire funds to repay the bank loan. As on date, all the bank loans are closed. However, the borrowings from other lenders for the settlement of employees and other dues remain outstanding, for which the directors have issued cheques and their personal guarantees.

iv) Given the fact that no physical assets and that there is no feasibility of re-commencing the business operations, COC unanimously decided not to proceed with issue of EOI in

gJ

newspaper and incur additional cost burden on account of the CIRP and to the remaining creditors. The RP was directed to ascertain and recover all the assets and arrange for liquidation of the company.

v) It was decided to reduce the notice time period from 7 days to 2 days.

vi) The RP has placed on table the suggestion of carrying out special audit to ascertain the preferential/undervalued transaction under IBC.

vii) The RP has been hereby directed to engage appropriate professions to get the audit done at optimal price and report the findings to the COC. The COC hereby authorise RP to incur expenditure upto ₹50000 for special audit assignment without seeking approval of COC.

3) It has been stated that the 3rd COC meeting was convened on 15.09.2018. It has been stated that the COC is constituted by three financial creditors who hold 100% voting share. The applicant confirms that there are no immovable properties in the name of the CD as per the books of accounts. The resolution passed by the COC are as follows;

i) The Operational creditor has raised a point and necessity for carrying out a detailed Forensic Audit. However, the COC is not

N

willing to spend money for forensic audit and decided to close it with the special audit report.

ii) The COC has decided not to apply for any extension. However, the decision of liquidation is deferred until next COC which shall happen at the verge of 180 days period.

iii) The RP has appointed 2 valuers for ascertaining the liquidation value of the financial assets (current assets).

iv) The RP has appointed independent auditor for carrying out the special audit of the transactions under section 43-50 under the IBC, 2016.

4) The applicant (RP) has appointed 2 valuers to ascertain the liquidation value of the financial assets of the CD. The only asset standing in the name of the CD as reflected in balance sheet is the current assets. The valuation report submitted by the valuers stated that the liquidation value of the financial assets in only ₹0.30 lakhs. This is based on valuation of the current assets since there are no immovable assets in the name of the CD.

5) The 4th meeting of the COC meeting held on 06.10.2018, the following resolutions were passed;

i) The Operational Creditor (OC) has expressed its interest to buy-out the company and hence asked the COC to call for Resolution Plan. The IRP informed the OC that the company does not have

fv

any assets and hence the COC in its 2nd meeting unanimously decided not to call for any resolution plan and expedite the CIRP to liquidate the company. The FC's representatives have mentioned that as the company does not have any assets, there is no logic in continuing this process resulting in unnecessary cost and hence intends to liquidate the company. However, the FC also mentioned that, if the OC is willing to purchase the company, the FCs are open to get their rights in favour of the said OC. As the settlement between the creditors among themselves is outside the purview of RP's role, RP informed the COC that the creditors can decide this matter among themselves and report to NCLT accordingly.

ii) The erstwhile director present in the meeting has expressed his concern that the RP and the COC are biased towards the OC and his continuous request for rejecting the claim of the OC is not heard. The erstwhile Director insisted to record the following statement that

"the company doesn't owe any money to the Operational creditor for the main reason of breach of contract by the operational creditor along with various quality and non-supply issues which are already disputed earlier. This company has been dragged to this condition of insolvency mainly because of cheating by the said operational creditor, due to which they are compelled to sell the factory and settle the bank liabilities".

8

The RP informed the erstwhile director and the COC that the claims where originally admitted in April, 2018 by the erstwhile IRP and reported to this Tribunal. In case of any disagreement with the claim admission, either party has the right to approach the Tribunal and was further clarified that the OC was invited for the meeting as per the provisions of IBC as their total claim admitted by IRP is more than 10% of the total debt.

iii) The FC mentioned that, the COC has already ordered for conducting a special audit u/s 43 to 50 to identify preferential/undervalued transactions as required under IBC and the said audit is in progress. Considering the cost involved in detailed forensic audit, the COC has decided to wait for the report of the special audit. The COC further indicated that the FCs are not willing to commit/spend any further money for this CD and further informed that, if any other audits are needed, the requisitioner of such audit shall deposit the full expense amount in advance to the RP for consideration of the request.

iv) The OC has requested the COC to consider the resolution of seeking extension of CIRP period for 90 days and have offered to bear 50% of the cost to be incurred for extension period. However, the FCs have unanimously refused to extend the CIRP period citing the reason that the CD doesn't own any asset and hence there is no scope of resolution. RP clarified that the requirement of Forensic Audit can be taken up even during the liquidation process (as it is not restricted to CIRP).

v) The COC has unanimously decided not to apply for any extension and passed the following resolution;

> *"RESOLVED TO liquidate the Corporate Debtor and appoint the present RP as the Liquidator to conduct the Liquidation of the corporate debtor.*
> *RESOLVED FURTHER that the COC hereby directs RP to file application before Adjudicating authority for liquidation of the Corporate debtor immediately."*

The Applicant in the present application has prayed for the following;

a) Pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in Section 33(1)(a) of Chapter III of IBC, 2016;
b) Issue a public announcement stating that the Corporate Debtor is in Liquidation;
c) Notify such order to the Authority with which the Corporate Debtor is registered, the Registrar of Companies-Tamil Nadu, Coimbatore;
d) To appoint the Resolution Professional Mr.Mahalingam Suresh Kumar as Liquidator of the Corporate Debtor.
e) To pass such other orders as may deem fit and proper in the facts and circumstances of the case and thus render justice.

In the light of the facts and circumstances stated in the Affidavit filed by the RP, this Adjudicating Authority in exercise of powers conferred under Section 33(2) of the I&B Code, 2016, proceed to pass the following order:

i.In view of the fact that no Resolution Plan was called for as per the recommendations of the COC this Tribunal has proceeded to consider the proposal for liquidation of the CD by the Applicant under Sec 33(2) of the IBC, 2016.

ii. We order for liquidation of the Corporate Debtor viz., M/s.Jaimurugan Textiles Limited, which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;

iii. We appoint RP viz., Shri.Mahalingam Suresh Kumar as Liquidator, who shall issue a public announcement stating therein that the Corporate Debtor is in liquidation as recommended by the Committee of Creditors;

iv. With regard to the prayer (c) of the Application this Tribunal observes that from the Annexure-F available with the application it is seen that the COC has not approved the pre-payment of CIRP cost by the sole FC. In this case if the COC consisting of the sole FC agrees for the payment of CIRP process then this bench will have no objection for the same. In terms of Section 53(a) of the IBC, 2016 the CIRP cost has to be recovered first from the liquidation proceeds. In case the FC agrees to pay the amount then it is eligible to recoup the same from the liquidation proceeds.

v. The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of liquidation;

vi. Copy of this Order shall be sent to the Registrar of Companies, RD, OL and the Registered Office of the Corporate Debtor.

vii. As stated in Section 33(5) of the I&B Code 2016, subject to Section 52, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.

viii. We make it clear that para (v) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

ix. In terms of Section 33(7) of the I&B Code 2016 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.

x. All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Liquidator viz., Shri.Mahalingam Suresh Kumar. In addition to this, the Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

xi. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

xii. The Liquidator shall be entitled to charge such fee for the conduct of the liquidation proceedings in such a proportion to the value of the liquidation estate assets as may be specified by the IBBI. Accordingly, the fees of the conduct of the liquidation proceedings shall be paid to the Liquidator from the proceeds of the liquidation estate.

xiii. The Tribunal directs the liquidator to submit progress reports before this Tribunal as per Rule 15 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. As per the said rule, the liquidator is directed to submit the 1st progress report within 15 days after the end of the quarter in which he is appointed and subsequent progress reports within 15 days after the end of every quarter during which he acts as a liquidator.

In terms of the above application **MA/544/IB/2018 In CP/104A/(IB)/CB/2018** by the RP under Section 33(2) of the I&B Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor stands **disposed of.**

S. Vijayaraghavan.

(S.VIJAYARAGHAVAN)
MEMBER (TECHNICAL)

(B.S.V.PRAKASH KUMAR)
MEMBER (JUDICIAL)