



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 206

(IB)-984(ND)2019

Cont. Pet. 40/2023 IA-2078/2023 IA-5756/2020

IN THE MATTER OF:

M/s. A. C. Goel Paper Distributing Co. (P) ... Applicant/Petitioner Ltd.

Versus

M/s. Webtech Packaging (India) Pvt. Ltd. ... Respondent

Under Section: 9 of IBC, 2016 (R. Plan)

Order delivered on 02.08.2023

CORAM:

**SHRI. ASHOK KUMAR BHARDWAJ,
HON'BLE MEMBER (J)**

**SHRI. L. N. GUPTA,
HON'BLE MEMBER (T)**

PRESENT:

For the Applicant : Adv. Ashish Kothari & Adv. Niharika, Advocates for Applicant M/s. Modern Trading & Mfg. Co. in Contempt Application No. 40/2023, Adv. Saurav Agarwal, Adv. Asav Ranjan, Adv. Ajay Sharma, Adv. Devpriya Singh in IA. No. 2078/2023

For the RP : Adv. Vinod Khanna, Mrs. Ashu Gupta

ORDER

IA-5756/2020: As can be seen from the order dated 12.11.2021 passed in IA-102/2021 filed under Section 66 of IBC 2016, the Successful Resolution Applicant herein was found responsible for the fraudulent transactions.

Para 46 to 50 of the said order reads thus:

“46. We further notice that as per the schedule of the amounts identified by the Forensic Audit and submitted by the RP/Applicant in para 7 discussed supra, a total amount of Rs.29,75,73,550/ has been misappropriated or written off or diverted by the respondents with intent to defraud the creditors of the corporate debtor or for any fraudulent purpose.

47. Hence, we are of the considered view that the respondents/Suspended Board of Directors of the Corporate Debtor have carried on the business with intent to defraud the creditors of the Corporate Debtor or with fraudulent purpose. Accordingly, we



direct the Respondents to make total contributions of Rs.29,75,73,550/- to the assets of the Corporate Debtor within two months from the date of the order.

48. Apart from that, the RP/Applicant is directed to institute a Criminal prosecution against the respondents under Chapter VII (Part II) of IBC under Section 69 and other relevant provisions, in accordance with the provisions of law.

49. Accordingly, the present application is hereby Allowed.

50. The Learned Registrar is directed to send a copy of this order to the IBBI with a request to make necessary amendment in Regulation 35A and 40A of the IBB! (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, in terms of Section 12 of the IBC, as referred in Para 26 of the Order.”

As can be seen from the Section 29A(g) of IBC 2016, a person shall not be eligible to submit a resolution plan if such person or any other person acting jointly or in concert with a person has been a promoter or in the management of control of a Corporate Debtor in which the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by this Adjudicating Authority under this code. The sub-Clause (g) of Section 29A reads thus:

(g) “has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:

Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;”



Apparently, in the present case, the SRA is the promoter/ex-director of the Corporate Debtor and in terms of the aforementioned order dated 12.11.2021 passed by this Adjudicating Authority, he was found involved in the fraudulent transactions. We find from Section 240A of IBC 2016, that the MSME are exempted from application of certain clauses of Section 29A but the sub-Clause (g) is not one of the such clauses. In the wake, as the instant Resolution Plan having been submitted by an ineligible person, the Resolution Plan is liable to be rejected, since, the SRA is barred under Section 29A(g).

Accordingly, IA-5756/2020 praying for approval of the Resolution Plan is rejected.

In terms of Section 33(1)(b) of IBC, where the resolution plan is rejected by this authority, the Corporate Debtor is required to be liquidated. Ordered accordingly.

Thus **Ms. Ashu Gupta** with **Reg. No: [IBBI/IPA-002/IP-N00339/2017-2018/10943]** (e-mail ID: ashugupt.cs@gmail.com), the RP who gives her consent in open Court for the purpose, is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process of the CD. It is further ordered that:

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 (viz. Sections 35, 36, 37, 38, 39 and 41 thereof) and other relevant rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date enjoined upon him.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.



- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file a suitable application before this Adjudicating Authority.
- d) The Registry is directed to communicate this order to the Registrar of Companies, having jurisdiction over the Corporate Debtor and the Insolvency and Bankruptcy Board of India;
- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company applications during the process of liquidation.
- i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation. 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further reports as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.



j) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary cooperation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

It goes without saying that fee of the Liquidator would be payable in terms of the provisions of Section 34 (7) of the IBC, 2016 read with Regulation 4 of IBBI (Liquidation Process) Regulation 2016.

List on 29.08.2023.

Contt.Pett.40/2023: Issue notice to the Respondent returnable on 29.08.2023. The Applicant undertakes to serve notice upon the Respondent through all modes viz. registered post, speed post and E-mail. Affidavit of service be filed within one week. The reply may be filed by the Respondent within one week from the date of receipt of the notice. Rejoinder, if any, may be filed before the next date of hearing.

List the matter on 29.08.2023.

IA-2078/2023: List on 29.08.2023.

**Sd/-
(L. N. GUPTA)
MEMBER (T)**

**Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**