

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

IA No. 39/KB/2021
in
CP (IB) No. 1572/KB/2018

Under section 33(2) of the Insolvency & Bankruptcy Code, 2016

In the matter of

Kanwaljit Singh, Prop. Of Gobind Shuttering Store

...Operational Creditor

Versus

Sarawgi Builders & Promoters Private Limited
(CIN: U45400WB1995PTC072439)

...Corporate Debtor

And

In the matter of

Mr. Nitesh Kumar More,
Resolution Professional of Sarawgi Builders & Promoters Private Limited

... Applicant

Order reserved on: 11/02/2021

Order pronounced on: 25/02/2021

Coram:

Shri Rajasekhar V.K. : Member (Judicial)

Shri Harish Chander Suri : Member (Technical)

Appearances (through video conferencing):

For the Applicant : CS Rahul Parasrampurua,
Authorised Representative

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This Tribunal convened via video conference.
2. IA/39(KB)2021 is an application filed by the Resolution Professional of Sarawgi Builders & Promoters Private Limited, the Corporate Debtor, on the ground that no resolution plan has been received by him in spite of publication of Form 'G' for liquidation of the Corporate Debtor.
3. This Adjudicating authority *vide* order dated 17/10/2019 in CP(IB) No. 1572/KB/2018 ordered initiation of CIRP against the Corporate Debtor and appointed Mr. Nitesh Kumar More as the Interim Resolution Professional. Interim Resolution Professional appears to have been confirmed as the Resolution Professional of the Corporate Debtor at the first meeting of the Committee of Creditors held on 15/11/2019, in terms of the information contained in the First Progress Report filed by the Resolution Professional. Public announcement in Form 'A' was published in *Financial Express* (English) and *Ekdin* (Bengali) newspapers on 30/10/2019 inviting claims from the creditors on or before 11/11/2019. From the List of Creditors filed before this Adjudicating Authority, it is seen that Bank of India had filed a claim in Form 'C' to the extent of Rs.30,26,57,547/-, who was a secured creditor. However, in the Remarks column of the List of Creditors, the Resolution Professional has stated that the Form was not signed and no documents were annexed. There are two other Operational Creditors, viz., (i) Babadeep Singh Shuttering Pvt. Ltd to the extent of Rs.1,65,66,613.95 and (ii) Govind Shuttering Store, who is the petitioning Operational Creditor, whose claim is to the tune of Rs.92,98,186.97. Again, it appears from the List of Creditors that both these claims were admitted.

4. In so far as the claim of Bank of India to the tune of Rs.30,26,57,547/- is concerned, there is not a single line in the Progress Reports as to whether any steps were taken by the Resolution Professional to approach the concerned officer of the Bank of India. Considering that the Bank's claim was to the extent of Rs.30,26,57,547/-, one would have expected the Resolution Professional to take some steps in this regard.
5. It appears from the 2nd Progress Report dated 23/01/2020 that the Committee of Creditors was re-constituted on 22/01/2020 with three Operational Creditors, with a claim being received from Prism Johnson Limited to the tune of Rs.7,22,055.00. From the 2nd Progress Report, it also appears that Form 'G' was first published in *Financial Express* (English) and *Ekdin* (Bengali) on 23/01/2020. The last date for receiving Expression of Interest was mentioned as 07/02/2020. No Expression of Interests were received until that date.
6. The 3rd Committee of Creditors meeting appears to have been held on 20/06/2020. The minutes of the 3rd Committee of Creditors meeting seem to indicate that the resolution for liquidation was passed with 100% voting share. The voting sheet has not been attached either with the Progress Report or with the application.
7. From the Progress Reports, it appears that the last available Balance Sheet on the MCA Portal was only upto 2016-17. It also records verbal discussions with Mr. Gyan Prakash Sarawgi, members of the suspended Board of Directors of Sarawgi Builders & Promoters Private Limited, who had intimated that the Hard Disk of the Computer has crashed before the CIRP and the company did not have any employees, and that they had worked very hard to prepare the accounts again. It further records that the Corporate Debtor has provided Books of Accounts of the Company. However, in the 3rd Committee of Creditors meeting it has been recorded as follows:

"Forensic audit & valuation could not be completed due to many factors such

as COVIT 19 situation in India, partial cooperation from Corporate Debtors & partial supply of records/information by CD. CD wants more time to supply relevant records & information to valuer & forensic auditor. In past, whenever, RP was about to file Sec. 19(2) petition CD started giving partial information & asking for more time for balance information”

8. It is worthwhile to mention that between the meeting dated 22/01/2020 and 20/06/2020 there were no meetings of the Committee of Creditors. Nothing has been placed on record by the Resolution Professional to indicate that he ever contacted the members of the suspended Board of the Corporate Debtor for any information whatsoever, which could have been done even over email. It is not clear from the documents placed on record as to what further information was required from the members of the suspended Board of the Corporate Debtor, which may not have been given to the Resolution Professional. Therefore, the reasons given for not completing the forensic audit is not very convincing.
9. Item No. 5 of the Minutes at page 18 of the application records only that the CoC passed a resolution to file application for liquidation of the Company.
10. The Resolution Professional has not given his consent to act as a Liquidator of the Corporate Debtor.
11. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass an order of liquidation where no resolution plan is received before the expiry of the CIRP. Sub-section (2) thereof requires the Adjudicating Authority to pass the liquidation order where the Resolution Professional intimates to the Adjudicating Authority the decision of the Committee of Creditors approved by not less than 66% of the voting share to liquidate the Corporate Debtor.
12. Reading these two provisions together, this Adjudicating Authority is left with no option but to order liquidation of the Corporate Debtor.

13. This Bench, therefore, hereby orders as follows: -
- a. IA No.39/KB/2021 filed by Mr. Nitesh Kumar More, RP of **Sarawgi Builders & Promoters Private Limited**, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;
 - b. Mr. Tapan Chakraborty [Reg. No. IBBI/IPA-003/IP-N000173/2018-2019/12121], is hereby appointed as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.
 - c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
 - d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, *i.e.*, *Financial Express* (English) and *Ekdin* (Bengali) of Kolkata edition of the said newspapers stating that the Corporate Debtor is in liquidation.
 - e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
 - f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
 - g. On initiation of the liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.

- h. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
- i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.
14. The application bearing **IA No. 39/KB/2021** shall stand disposed of in accordance with the above directions.
15. **CP (IB) No. 1572/KB/2018** to come up for filing of periodical report on **06/05/2021**.
16. A copy of this order be also sent to the IBBI for information.
17. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
18. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Signed on this, the 25th day of February, 2021.

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