



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

IA-1535/2020

Under Section 19(2) of Insolvency & Bankruptcy
Code, 2016

Mr. Girish Sriram Juneja (Resolution Professional),
..... Resolution Applicant

Vs.

Mr. Nemchand Jethalal Gala ...Respondent No.1
Mr. Tanil Mafatlal Shah ...Respondent No.2
Mr. Hiren Chapsi Boricha ...Respondent No.3
Mr. Dayaram Ramdular Sharma ...Respondent No.4

AND

IA No. 286/2021

Under Section 60(5) of Insolvency & Bankruptcy
Code, 2016

M/s Paras Marketing,
..... Resolution Applicant

Vs.

Mr. Girish Siriram Juneja & Ors.
..... Respondent(s)

In the matter of

CP (IB) No.3482/MB/C-IV/2019

Oriental Bank of Commerce

...Financial Creditor

Vs.

Reliable Paper (India) Limited

...Corporate Debtor



Order Pronounced On: 24.03.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant(s) : Mr. P.S.Thakre, Ld. Authorized Representative.

Per: Prabhat Kumar, Member (Technical)

ORDER

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1. This is an Application filed by the Resolution Professional ("RP") under Section 19(2) of Insolvency and Bankruptcy Code, 2016 seeking cooperation from the suspended board of directors.
2. We find that this Bench has passed an order dated 24.02.2023 in IA-568/2021, allowing the Application of RP seeking liquidation of the Corporate Debtor. Consequently, the Corporate Debtor is under liquidation. In view thereof, this Application has become **infructuous** and **dismissed** accordingly.
3. However, we find from the perusal of minutes of the 8th CoC meeting that the suspended management had not provided information including account books for financial year 2008-09 to 2010-11, due to which the RP could not complete the transaction audit. The CoC took note of this fact and asked the suspended directors to provide the same at the earliest.
4. In view of this, we feel that the Liquidator should be granted a liberty to file an appropriate application for obtaining the records from the suspended directors, in case, the same are not provided to him. Also, the Liquidator shall be at liberty to inform the jurisdictional Registrar of



Companies for taking appropriate action against the suspended Board of Directors for failure to maintain and preserve the statutory records, registers and Books of Accounts in accordance with the provisions of Companies Act, 2013.

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5. This is an IA filed by the Prospective Resolution Applicant i.e. Paras Marketing whose resolution proposal was not considered by the CoC due to delayed filing. It is further stated that Resolution plan dated 11.09.2020 was submitted in response to EOI submitted vide letter dated 28.02.2020. The Resolution Applicant submitted the plan as lockdown period is exempted according to the guidelines of Insolvency and Bankruptcy Code, 2016 issued in view of Covid-19.
6. We have perused the minutes of the 8th CoC meeting, which are reproduced hereunder –

“The representative of the Suspended Board of Directors stated he had received inquiries from parties interested in resolution of the Corporate Debtor. The Chairperson requested the representative to direct those inquiries to him to understand the nature and extent of their interest. The RP then initiated a discussion regarding the direction the CoC would like to take namely whether to rerun the EOI process or not. One of the CoC members requested the team of the RP to provide the timelines if a re-run of the EoI process was to be undertaken. One of the members of the team of the RP explained that as decided by the CoC members in the 7th CoC meeting held on 18th September 2020, the exclusion for the time lost on account of Covid-19 lockdown can be sought. Additionally, the CoC members can also vote for extension of the CIRP period by 90 days under Section 12(2). The team member further added that in order to re-run the EoI process a period of 60-75 days would be required from the date of publication of Form G.



The representative of Punjab National Bank was of the opinion that re-running the EoI process was a futile exercise and was in favour of liquidation of the Corporate Debtor. The representative of Standard Chartered Bank stated that if the representative of the Suspended Board of Directors had any genuine buyers he ought to disclose them right away. He further added that the valuation of Land & Building needs to be undertaken on a priority basis so that the CoC members can take an informed decision on the further course of action. The Chairperson informed the representative of Standard Chartered Bank that the valuation of Land & Building and Plant & Machinery has already been completed. The Chairperson further added that as per Regulation 35(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, after receipt of resolution plans the RP shall provide the fair value and liquidation value with the CoC members upon receipt of confidentiality undertaking from them. Since, in the given instance no resolutions plans have been placed before the CoC members for their consideration the RP is not in a position to share the Valuation Reports with the CoC members. The representatives of Union Bank of India (erstwhile Corporation Bank) and Cosmos Co-operative Bank were in favour of liquidation of the Corporate Debtor”.

7. From the perusal above facts, it is clear that CoC deliberated upon re-run of the process extensively and none of the member, except Standard Chartered Bank having 15.83% vote shares, were in favour of continuing the CIRP. Even Standard Chartered Bank also stressed upon the suspended directors present in the meeting to give the details of enquiries for resolution of the Corporate Debtor but the same was not given. We also note that the resolution professional informed the CoC in that meeting that “*The resolution plan submitted by Paras Marketing could not be presented to the CoC for their consideration because Paras Marketing was not in the list of the Final list of Resolution Applicants. The CoC was requested to*



consider issuing a fresh Form G, however, the suggestion did not find acceptance with the CoC. RP has accordingly refunded the EMD of Rs.10 Lakhs which was provided by Paras Marketing.” We note that the CoC after taking into consideration these deliberations resolved to liquidate the Corporate Debtor. We do not find any prima facie infirmity in the decision of CoC requiring intervention in its decision to liquidate the Corporate Debtor. We feel that the commercial wisdom of CoC can be interfered with only in exceptional circumstances.

8. In view of the above, this application is **dismissed** and **disposed of** accordingly.

Sd/-

Mr. Prabhat Kumar
Member (Technical)

/Akshata-LRA/

Sd/-

Mr. Kishore Vemulapalli
Member (Judicial)