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IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.A. No. 523(PB)/2018

IN

C.P. NO. (IB)-84(PB)/2017

IN THE MATTER OF:

M/s. Jindal Saxena Financial Services Pvt. Ltd.....Petitioner
v.

M/s Mayfair Capital Private Limited Respondent

SECTION :

Under Section 33 (1) & 34(3) read with Section 19 of the Insolvency and Bankruptcy Code, 2016

Order delivered on 04.07.2018

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

S.K. MOHAPATRA
Hon'ble Member (T)

PRESENTS:

For the Applicant: Mr. Umesh Mishra, Advocate with Mr. Sanjay Agrawal, Resolution Professional

For the Respondent:

M.M. KUMAR, PRESIDENT

ORDER

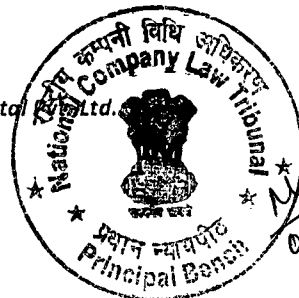
C.A. No. 523(PB)/2018

This order shall dispose of C.A. No. 523(PB)/2018 (Diary No. 3862 dated 11.06.2018) filed by the Resolution Professional under Section 33 (1) & 34(3) read with Section 19 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer for allowing the application

C.P. No. (IB)-84(PB)/2017

M/s. Jindal Saxena Financial Services Pvt. Ltd. v. M/s. Mayfair Capital

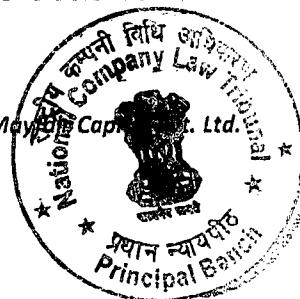
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and initiation of liquidation process of the Corporate Debtor in terms of the aforesaid provisions.

Brief facts of the case necessary for disposal of the aforesaid application are that C.P. (IB) No. 84(PB)/2017 was admitted by this Tribunal vide order dated 27.06.2017 which was filed by the Financial Creditor under Section 7 of the Code. Mr. Sanjay Agarwal was appointed to act as an Interim Resolution Professional (for brevity 'IRP'). A public announcement was made by IRP on 29.06.2017 in the newspapers and same was posted on the website of Insolvency and Bankruptcy Board of India for intimating the commencement of Corporate Insolvency Resolution process of the Mayfair Capital Private Limited. IRP also sent intimation to Principal officer of Corporate Debtor, its directors & Statutory Auditor, about commencement of CIRP and sought their co-operation in the matter on 09.07.2017 & 12.07.2017 respectively. Accordingly, claims were filed by the creditors and others before him. The IRP submitted a list of creditors and constitution of Committee of Creditors (COC) as required under regulation 13 (2) (d) & 17 (1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (for brevity 'CIRP Process'), respectively before the Tribunal on 20.07.2017.

The IRP thereafter on 24.07.2017 submitted first status report under section 19 (2) and 19 (3) of the Code before the Tribunal with the



prayer for issuance of necessary directions to the directors/managers/Officers of the Corporate debtor to comply with the instructions issued by him and/or provide the requisite information to him.

A first meeting of CoC was conducted on 27.07.2017 after sending notice on 20.07.2017 to all the financial creditors whose names had appeared in CoC. The meeting of the CoC was attended by all the four financial creditors. No representative on behalf of corporate debtor attended the said meeting. In the said meeting the CoC did not approve appointment of IRP as an RP because out of four, two of the financial creditors having aggregate voting rights 77.97 % being financial institutions required internal approval from their competent authorities. Therefore, the said issue was deferred to next CoC meeting. We deprecate this practice. The Financial Creditors/Banks must send only those representatives who are competent to take decisions on the spot. The wastage of time causes delay and allows depletion of value which is sought to be contained. The IRP/RP must in the communication addressed to the Banks/Financial Creditors require that only competent members are authorized to take decisions should be nominated on the CoC. Likewise, Insolvency and Bankruptcy Board of India shall take a call on this issue and frame appropriate Regulations. The IRP, thereafter, submitted his proposal for



consideration of said issue to all the financial creditors through e-mail on 02.08.2017.

2nd Status report along with copy of minutes of the first meeting was submitted by the IRP on 02.08.2017 before the Tribunal seeking similar prayers as sought earlier through first status report filed earlier on 24.07.2017.

It is also pertinent to notice that one of the director of suspended board of respondent-corporate debtor filed an application bearing No. CA-233 of 2017 before the Tribunal on 02.08.2017 with a prayer to recall and set aside the order of initiation of CIR Process passed on 27.06.2017.

During the interregnum period of pronouncement of order on the aforesaid application for recalling of the order, the IRP submitted 3rd status report on 26.09.2017 giving complete facts along with updated list of financial creditors & CoC member as on 25.08.2017 with the similar prayer as sought earlier on two occasions i.e. on 24.07.2017 & 02.08.2017.

2nd meeting of CoC was held on 15.12.2017 in which the IRP conveyed to obtain consent for extension of time as per the requirement of section 12 (2) of IBC, 2016. In the said meeting all the CoC members were not present for voting, therefore, e-voting was conducted as per



the regulation 25 (5) of IBBI (CIRP) regulations, 2016 after circulation of minutes of meeting by electronic means to all the members. The CoC with 79.61 % vote share did not approve resolution for extension of time limit for CIR Process. In spite of aforesaid fragile position, the IRP was performing his duties and discharging his obligation to the best of his professional capability. The IRP put before CoC details of expenses comprising professional fee and other out of pocket expenses for approval through e-voting dividing the expenses in two parts, one for IRP period of 30 days and 2nd for post IRP period. The CoC did not approve with 79.39 % of vote share professional fee and other out of pocket expenses incurred on CIR Process.

4th status report was filed by the IRP on 21.12.2017 before the Tribunal along with proceedings of 2nd CoC meeting held on 15.12.2017 together with result of e-voting on various resolutions put up before CoC.

The time limit of 180 days to complete the CIR Process was to expire on 24.12.2017. In the absence of conclusive information memorandum, no expression of interest for resolution plan could be invited during the aforesaid period. Otherwise also the IRP did not receive any expression of interest or resolution plan from any resolution applicant or corporate debtor.



Vide order dated 08.01.2018 aforesaid application for review was dismissed by the Tribunal. Against the aforesaid order one of the Director of suspended Board of Corporate Debtor has preferred an appeal before the Hon'ble National Company Law Appellate Tribunal being Company Appeal (AT) (Insolvency) No. 32 & 50 of 2018 titled as Randhiraj Thakur v. Jindal Saxena Financial Services Pvt. Ltd. & Anr. The arguments in appeal have been heard by the Hon'ble Appellate Tribunal on 23.04.2018 and the final order is awaited.

An application under Section 33 (1) and 34 (3) read with section 19 of the Code dated 15.01.2018 was filed by the IRP/RP with the averments that in the absence of possibility of resolution plan coupled with non-cooperation of corporate debtor and rejection of resolution for extension of time limit for CIR Process by CoC by 79.61% vote share, he did not have any option but to file the said application and again repeating the request as sought earlier on previous three occasions i.e. on 24.07.2017, 02.08.2017 & 26.09.2017.

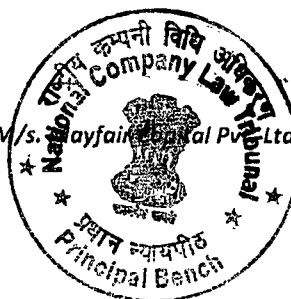
Vide order dated 24.01.2018 certain directions on the aforesaid application were issued by the Tribunal to the IRP/RP to convene the meeting of CoC within a period 15 days and to place before it all relevant facts as a call was required to be taken by the CoC whether the company





was to be liquidated or any forthcoming resolution plan was to be approved.

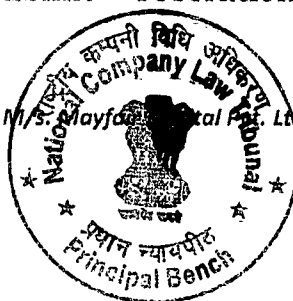
In light of the direction issued by the Tribunal, the IRP/RP issued notice and Agenda to all the CoC members for convening 3rd CoC meeting on 12.02.2018. The said meeting was attended by representatives of 11 financial creditors having vote share of 95.04% out of 16 financial creditors whose name were included in CoC. The IRP/RP informed the CoC members that he is under a duty in terms of section 25 (2) (h) of the code to invite, inter alia, any person to put forward resolution plan. The IRP/RP invited all the representatives of financial creditors to express their view points and opinion on the invitation of expression of interest from resolution applicant(s) or to pass appropriate resolution to liquidate corporate debtor as per the provisions of the Code. In the meeting one 'account executive' namely Mr. Praveen Kumar appeared on behalf of the Corporate Debtor and produced before the IRP/RP a trial balance for the financial year ended 31st March 2017. He gave assurance to the IRP and CoC that he would provide all necessary documents to them and further gave assurance for assistance & cooperation on behalf of the Corporate Debtor. The IRP/RP disclosed before the CoC some of the key financial information/figures extracted from Trial Balance of Corporate debtor for



the year ended as on 31.03.2017 which were taken on record and the same reads as under:-

Total Loan Liability	Rs. 1894.10 Crores
Comprising Secured Loan Rs. 338.82 Crores & Unsecured Loan Rs. 1555.28 Crores.	
Total current liabilities	Rs. 340.98 Crores.
Non Current Investments	Rs. 1852.28 Crores DR
Provision against Non Current Investment	Rs. 1654.20 Crores CR
Net Investments	Rs. 198.08 Crores
Reversal of Diminution in Shares in Unitech Limited	Rs. 70.67 Crores (Income)
Loss on Sale of Investment	Rs. 135.03 Crores (Expenses)
Interest on Loans	Rs. 71.56 crores (Expenses)
Share Capital & Reserves	Rs. 2138.97 Crores.
Accumulated Losses (upto 2015-2016)	(-) Rs. 3947.79 Crores.
Net Worth	(-) Rs. 1808.82 Crores.

The agenda at item No. 11 was also discussed in the said meeting relating to invitation of expression of interest from prospective resolution applicants to submit resolution plan/plans. The



representatives of five of the Financial Creditors having vote share of 66.26% were of the opinion that the Corporate Debtor is not a going concern looking to the facts that corporate debtor is having huge accumulated losses, huge outstanding loans & liabilities, negative net worth and is not having any operating income. On such premises, the CoC expressed their wish that there could not be any feasible resolution plan and therefore corporate debtor should be liquidated as per the provisions of the Code. Representatives of remaining six financial creditors who were present in the COC meeting having vote share of 28.78% did not offer any specific view point on whether expression of interest should be invited from prospective resolution applicants or company should be liquidated. One of the financial creditor among six was of the view that till Corporate Debtor did not provide books to accounts and other financial statements they were unable to decide.

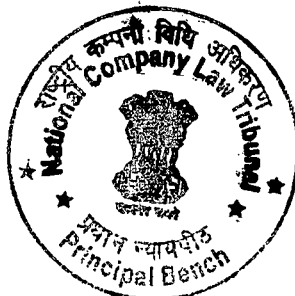
All the CoC members were not present in the 3rd meeting of COC for voting, therefore, e-voting was conducted as per the regulation 25 (5) of IBBI (CIRP) regulations, 2016 by electronic means to all the members. On conclusion of e-voting on various matters of voting placed in 3rd CoC, IRP circulated summary of decision taken on a relevant agenda as per Regulation 2016. Only 11 financial creditors having vote share 87.70% out of 16 participated in e-voting and 5 members remain absent. Seven participants having vote share of 21.60% voted in favour



of the resolution applicants to submit resolution plan/plans, whereas four participants having vote share of 66.10% voted against the resolution. In nut shell resolution was neither accepted or rejected by a vote of not less than seventy five percent of voting share of financial creditors as per the requirement of section 21 (8) of IBC, 2016. The other matters relating to confirmation of appointment of IRP as RP, fixing his remuneration, ratification/approval of CIR Process expense/cost and authority to debit bank accounts of corporate debtor to meet out CIR Process cost was also rejected by CoC as none of resolution was voted for by minimum 75 % of voting share of financial creditors.

5th status report was filed by the IRP before the Tribunal on 19.02.2018 along with proceedings of 3rd CoC meeting which was held on 12th February, 2018. While considering of the aforesaid 5th report by the Tribunal on 20.02.2018, one of the Financial Creditor namely HDFC limited having vote share of 38.47% raised an objection to liquidation.

Vide order dated 19.03.2018 this Tribunal issued directions to the IRP to issue notice for convening the meeting within one week with regard to certain issues relating to his fee and expenses incurred in the CIR Process and shall continue to function as RP till the replacement is provided.



In light of the aforesaid directions issued by the Tribunal, the IRP issued notice and Agenda dated 22.03.2018 to all the CoC members for convening the 4th CoC meeting on 26.03.2018. In the said meeting, members of COC discussed the matters as per the directions issued by the Tribunal which listed at item No. 9 & 10 Agenda relating to 'Replacement of the IRP with another RP and to ratify/approve IRP fee & expenses' apart from other items. The CoC members discussed name of Mr. Udayraj Patwardhan proposed by one of the Financial Creditor namely IL&FS and supported by other Financial Creditors namely HDFC, Jindal Saxena & BR securities to act as RP. Another Financial Creditor namely Seepa Investment proposed the name of Mr. Sanjeev Bindal to act as RP. It was also consented by the CoC members that proposed RP would also act as liquidator, as and when appropriate order of liquidation is passed by the Tribunal. In the said meeting, the representatives of 10 out of 16 financial creditors having aggregate original vote share of 94.12% were present in person. As all the CoC members were not present in the said meeting for voting, therefore, e-voting was conducted as per the regulation 25 (5) of IBBI (CIRP) regulations 2016 by electronic means.

During the course of the said meeting, one of the representatives of HDFC handed over a letter dated 26.3.2018 informing reduction of their claim to Rs. 199.34 crores against initial claim filed by them which



was Rs. 299.70 crores and requested to re-ascertain HDFC vote share. The IRP therefore requested the HDFC to let him know the complete details including circumstances, dates of transactions etc. resulting in reduction of their claims by such a huge magnitude. The IRP subsequently sent an e-mail to HDFC requesting to provide additional information. In response HDFC submitted its reply through letter dated 27.03.2018. The HDFC did not provide complete details of transaction resulting in reduction of their claim, however HDFC confirmed that security interest available with HDFC at the time of commencement of CIR Process is intact. The HDFC also informed that reduction of their claim is due to excess realization of security interest from a series of actions against Unitech Group in general which was appropriated to Corporate Debtor. In view of the fact that HDFC did not disclose complete transaction details and the name of 3rd party whose security realization was appropriated to corporate debtor's account, IRP could not ascertain actual date since when HDFC vote share has reduced and also whether the 3rd party deserves to be included in CoC to the extent of reduction of vote share of HDFC.

In view of aforementioned disclosure by HDFC, IRP prepared a comparative member wise vote share giving original vote share and revised vote share of all the Financial Creditors and circulated the same to all the CoC members through e-mail. On revision of vote share HDFC



vote share reduced to 29.37% from 38.47% with proportionate increase in vote share of other CoC members.

On conclusion of e-voting on various matters of voting placed in the said meeting, IRP circulated summary of decision taken on a relevant Agenda. Only 11 financial creditors having vote share of 94.33% (revised vote share 93.49%) out of 16 members participated in e-voting and 5 members remain absent. In e-voting, CoC members with original vote share 66.10% (revised vote share 61.09%) voted in favour of Mr. Udayraj Patwardhan & CoC members with original vote share of 28.23% (revised vote share 32.40%) voted in favour of Mr. Sanjeev Bindal to act as RP. Thus, none of the RP got the approval by a vote of not less than seventy five percent of voting share of financial creditors as per the requirement of Section 21(8) of IBC, 2016. The other matters relating to ratification/approval IRP fee and expense/cost got the consent of 66.32% of financial creditors by original vote share and by 61.34% based on revised vote share.

On 05.06.2018, during the course of hearing one of the Financial Creditor namely IL&FS Financial Services gave their consent for initiation of liquidation process with regard to the Corporate Debtor which is apparent from a perusal of the order sheet of said date.

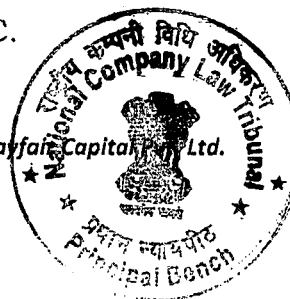


In light of directions issued by the Tribunal, the RP thereafter filed comprehensive certificate by way of affidavit vide diary No. 3862 dated 11.06.2018 certifying that all the steps have been taken by him in accordance with the provisions of the Code and Regulations thereunder.

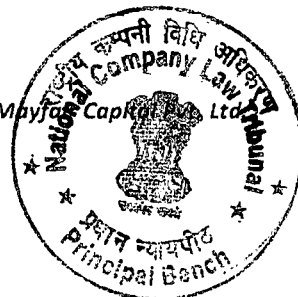
We have thoughtfully considered the submissions made on behalf of the Resolution Professional on the application (C.A. No. 523 (PB)/2018) and are of the view that the application filed by the Resolution Professional under Section 33 (1) & 34(3) read with Section 19 of the Code deserves to be accepted. The reasons for such acceptance are that as on account of huge losses suffered by the Company-Corporate Debtor, majority of the Financial Creditors by vote share are of the opinion that no feasible resolution plan is possible. Accordingly, Financial Creditors by 66.10% vote share rejected the resolution for invitation of expression of interest from prospective resolution applicants to submit resolution plan in third meeting of CoC. Therefore, IRP/RP did not invite any expression of interest from any resolution applicant. The decision of CoC is unanimous by 66.10% vote share. The acceptance of Commercial decisions of Committee of Creditors ordinarily is a rule and interference with it is an exception. The Commercial wisdom in such like circumstances and the decision by the Committee of Creditors meets our approval. There is thus no option except to approve the view of the CoC.

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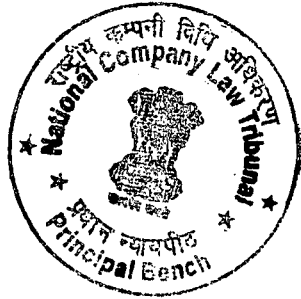


Accordingly, we allow the application namely C.A. No. 523(PB)/2018 and declare that the Corporate Debtor be liquidated in the manner as laid down in Chapter-III. A public notice stating that the Corporate Debtor is in liquidation shall be issued by the Liquidator. A copy of this order be sent to the authorities with which the Corporate Debtor is registered. Subject to the provisions of Section 52 of the Code no suit or other legal proceedings ought to be instituted by or against the Corporate Debtor. However, leave is granted to the Liquidator to institute any proceeding on behalf of the Corporate Debtor with the prior approval of the Adjudicating Authority-NCLT. It is also clarified that the aforesaid condition is not to apply to legal proceedings in relation to such transaction as may be notified by the Central Government in consultation with the Financial Sector Regulator. It is further clarified that the order of liquidation being passed today shall be deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor. Accordingly, we direct the RP, Mr. Sanjay Agarwal to act as a Liquidator. As a Liquidator he is to first pay the dues of insolvency resolution process costs, if any, paid by the IRP or RP as per the provisions of Regulation 53 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. The Liquidator so appointed shall perform all his duties as given in details in Section 55 of the Code and submit his



reports from time to time as per the requirement of the provisions of the Code, Regulations and the Rules.

The application is disposed of in the above terms.

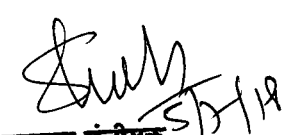



(M.M. KUMAR)
PRESIDENT


(S.K. MOHAPATRA)
(MEMBER TECHNICAL)

04.07.2018
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सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
C.G.O. COMPLEX, NEW DELHI-110003