

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**IA (IB) No. 699/KB/2021
in
CP (IB) No. 1284/KB/2019**

An Application under section 33(2) of Insolvency & Bankruptcy Code, 2016.

In the matter of:

State Bank of India

... Financial Creditor

Versus

Ess Dee Aluminium Limited

... Corporate Debtor

-And-

In the matter of:

Deepika Bhugra Prasad,

Resolution Professional of Ess Dee Aluminium Limited

... Applicant

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearances (through video conferencing):

For the Applicant

1. Mr. Rishav Banerjee, Advocate
2. Mr. Aditya Gauri, Advocate
3. Mr. Dhananjaya Sud, Advocate
4. Mr. Amar Vivek, Advocate
5. Mr. Arun Kumar Gupta, Pr. C.A.

Resolution Professional

1. Ms. Deepika Bhugra Prasad

Order reserved on: 11.08.2021

Order pronounced on: 08.10.2021

ORDER

Per Rajasekhar V.K., Member (Judicial)

1. This court convened *via* video conferencing.
2. This is an application filed by the Resolution Professional upon the instructions of the Committee of Creditors ('CoC') seeking liquidation of the Corporate Debtor, viz., Ess Dee Aluminium Limited [CIN: L27203WB2004PLC170941], on the ground that the resolution plan was not approved by the Committee of Creditors.
3. This Adjudicating Authority *vide* its order dated 14.02.2020 on a Petition filed by the State Bank of India (*'financial creditor'*) under section 7 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) directed initiation of the Corporate Insolvency Resolution Process (*'CIRP'*) against the Corporate Debtor and appointed Ms. Deepika Bhugra Prasad as the Interim Resolution Professional (*'IRP'*). The IRP was appointed as the Resolution Professional (*'RP'*).
4. The Applicant submits that in terms of section 15 of the Code, public announcement was made on 20.02.2020, in Financial Express, Bhaangarbhuin, The Free Press Journal, Navnshakti, The Goan Everyday, Aajkal and Gujarat Samachar newspapers circulated in Kolkata, Mumbai, Goa and Daman & Diu, fixing 02.03.2020 as the last date for submitting the claim. The public announcement was uploaded on the website of IBBI and Bombay Stock Exchange (BSE).
5. The Committee of Creditors was duly constituted with nine financial creditors and the Report certifying the constitution of the CoC was filed with the Adjudicating Authority on 16.03.2020. The CoC was reconstituted on 06.08.2020.

6. The first meeting of the CoC was held on 18.03..2020 wherein the CoC confirmed the appointment of the IRP as the RP. The Applicant states that the publication for invitation of Expression of Interest (EOIs) in Form G was done on 03.07.2020 in Financial Express (English) (All-India edition), Tarunbharat (Marathi) (Mumbai edition), Janadesh (Gujarati) (Daman and Diu edition) and Ek Din (Bengali) (Kolkata edition) newspapers. Form G was re-published seven times, on 19.07.2020, 19.08.2020, 30.11.2020, 28.01.2021 and 02.03.2021. The last date of submission of EOI was 07.03.2021.
7. It is submitted that the RP received five EOI's but four prospective Resolution Applicants withdrew from submitting their Resolution Plans.
8. Only one Resolution Plan was received from Molisati Vinimay Private Limited, which was opened and presented to the CoC in the 11th CoC meeting held on 20.04.2021. The CoC rejected the Resolution Plan by 84.78% voting share.
9. Hence, the RP has filed an application under section 33 of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor on expiry of the CIRP period.
10. That the CoC has passed resolution by 84.78% voting shares¹ that the Corporate Debtor be liquidated under the provisions of section 33(2) of the Code.
11. The Applicant/Resolution Professional, Ms. Deepika Bhugra Prasad [Reg. No. IBBI/IPA-003/IP-N000110/2017-2018/11186], has agreed to act as liquidator to carry on the process of liquidation and given her consent to act as Liquidator, in terms of section 34(1) of the Code² and has also filed a valid Authorisation for Assignment (AFA) issued by the

¹ Annexure 31 in pages 338-339 of I.A.

² Annexure 34 in pages 344-345 of I.A

Insolvency Professional Agency (IPA) of which she is a professional member, which is valid till 24.12.2021.

12. We have considered the submission made by the learned Counsel on behalf of the Applicant/RP and perused the record.
13. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 84.78% voting share to liquidate the Corporate Debtor.
14. This Bench, therefore, hereby orders as follows: -
 - a. Prayers as sought for in I.A. (IB) No. 699/KB/2021 filed by Ms. Deepika Bhugra Prasad, RP of Ess Dee Aluminium 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. **Ms. Deepika Bhugra Prasad [Reg. No. IBBI/IPA-003/IP-N000110/2017-2018/11186]**, is hereby appointed as Liquidator as provided under section 34(1) of the Code.
 - 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, Bhaangarbhuin, The Free Press Journal, Navnshakti, The Goan Everyday, Aajkal and Gujarat Samachar newspapers circulated

in Kolkata, Mumbai, Goa and Daman & Diu, 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.

15. The application bearing **IA (IB) No. 699/KB/2021** shall stand disposed of in accordance with the above directions.

16. 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.
17. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
18. List the main **CP (IB) No. 1284/KB/2019** for reporting progress on _____.____.2021.

[Harish Chander Suri]

Member [Technical]

[Rajasekhar V.K.]

Member [Judicial]

08 .10. 2021.

GGRB[LRA]