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3/10/2019.

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

Free of Cost Copy

IA 133 of 2019 in C.P.(I.B) No. 46/NCLT/AHM/2017

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 30.09.2019

Name of the Company: Chandra Prakash Jain RP
V/s
Mekaster Engineering Ltd.

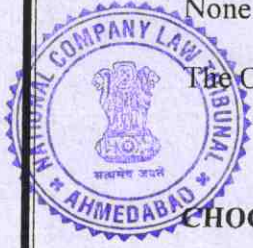
Section of the Companies Act : Section 33(1), 33(2), 34(1) of the Insolvency and
Bankruptcy Code

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

- 1.
- 2.

ORDER

None appeared on behalf of the parties.
The Order is pronounced in the open court, vide separate sheet.



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CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL
Dated this the 30th day of September, 2019

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MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

IA No. 133/NCLT/AHM/2019
in
C.P. No. (I.B) 46/9/NCLT/AHM/2017

Mr. Chandra Prakash Jain
Resolution Professional

... Applicant

Versus

M/s Mekaster Engineering Ltd.

... Respondent
[Corporate Debtor]

Order delivered 30th September, 2019

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance: Mr. Nipun Singhvi, Mr. Vishal J. Dave and Ms. Pragati Tiwari are present for the Applicant. Advocate Mr. Vishal Raval for IDBI

ORDER

[Per: Ms. Manorama Kumari, Member (J)]

1. The instant application is filed by the Resolution Professional (hereinafter referred as "RP") seeking order of the liquidation under section 33(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IB Code"). The Applicant is represented through learned counsels.
2. On perusal of the records, it is found that a petition bearing No. CP (IB) 46/2017 was admitted on 04.08.2017 under section 9 of the IB Code and the Interim Resolution Professional (hereinafter referred as "IRP") was appointed.



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3. Accordingly, IRP constituted the Committee of Creditors (hereinafter referred as "CoC") on 15.09.2017, consisting of three financial creditors. In the 1st CoC meeting held on 19.09.2017, it was brought to the notice of the IRP by the representatives of Financial creditors that a Notice, Ref. No. OL/Mekaster Engi. Ltd/2441/2017 dated 12.09.2017 was received by them from the Official Liquidator stating that Corporate Debtor Company, earlier known as Gujarat Filament Limited, has been ordered to be wound up by the Hon'ble High Court of Gujarat vide order dated 06.07.2017 in the Company Petition No. 436 and 437 of 2015 and the Official Liquidator has been directed to take charge of the assets and properties of the Corporate Debtor Company.
4. It is further stated by the RP that aforesaid 1st meeting of CoC which was held on 19.09.2017 was adjourned till the necessary instructions were received from this Tribunal and the Hon'ble High Court of Gujarat. Subsequently, on 03.10.2017 IA bearing No 323 of 2017 was filed before this Adjudicating Authority by the RP. During the pendency of the IA 323 of 2017, it is stated that winding up order dated 06.07.2017 passed by the Hon'ble High Court of Gujarat was recalled vide its order dated 24.11.2017 and the aforesaid IA No. 323 of 2017 was disposed of by this Adjudicating Authority vide its order dated 15.01.2018.
5. It is stated by the IRP that since the CIRP period was about to expire on 30.01.2018, the Applicant filed IA No. 23 of 2018 before this Tribunal for seeking extension of time by 90 days as it was not possible to complete the CIRP within 180 days. This Tribunal vice its order dated 24.01.2018 allowed the IA No. 23 of 2018 and extended the time period by 90 days for completion of the CIRP.



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6. It is stated in the Application that in the 2nd CoC meeting held on 22.01.2018, the incumbent IRP was confirmed as Resolution Professional (hereinafter referred as "RP").
7. It is stated in the Application that pursuant to the Expression of Interest (hereinafter referred as "EoI") published in the newspaper, the Applicant received an EoI from Asset Reconstruction Company (India) Limited vide email dated 09.03.2018 and the same was appraised to the members of CoC by holding the Fourth CoC meeting on 06.04.2018.
8. It is further stated in the Application that in the 5th CoC meeting held on 24.04.2018, CoC was of the view to file an application before this Tribunal for condoning the period of 118 days as this period was non functional due to pendency of the winding up petition before the Hon'ble Gujarat High Court. Accordingly, the RP filed IA No. 184 of 2018 for condonation of delay in completion of CIRP. This Adjudicating Authority vide its order dated 27.07.2018 excluded 164 days of CIRP inclusive of the instant application.
9. It is stated by the Applicant that during the period 20.08.2018 to 24.08.2018 the Applicant received 5 EoI from the following, viz.:
 - i. M/s NR Oils
 - ii. M/s Steelstrong Valves (I) Pvt. Ltd.
 - iii. M/s Shree Ambey Metal Industries
 - iv. M/s Jay Narayan Steel
 - v. M/s Jainsons Engineering Pvt. Ltd.

RP further submitted that there were substantial receivables outstanding since long to be recovered by the Corporate Debtor Company. Notices were issued to the debtors of the

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Corporate Debtor Company to whom loans and advances were given. However, the payment was received from only three debtors. It is also submitted by the RP that applicant received letter dated 08.10.2018 from Hindustan Petroleum Corporation Limited (hereinafter referred as "HPCL") in respect of recovery of Rs. 4,24,09,142.90/-. HPCL in his submission has stated that funds of HPCL were frozen under the directions of Enforcement Directorate which is investigating a matter of PMLA wherein the Corporate Debtor Company and its group Companies along with the Promoter Mr. Virendra Trehan have been accused of money laundering. It is stated that in reply to aforesaid letter of HPCL, RP vide its letter dated 12.11.2018 informed HPCL that according to Section 53 of the IB Code, the amount received from the proceeds of sale of liquidation assets, will be first distributed to the Secured Creditors for the payment of their debt due and thereafter the payment which the Enforcement Directorate has frozen, will be made being the unsecured Creditors and therefore, the Enforcement Directorate will have to submit its claim separately to the RP. However, no claim was received from HPCL/Enforcement Directorate, it is stated by the RP in the Application.

10. The Applicant RP has also stated in the Application that suspended management was very much non-cooperative during the CIRP proceedings. Further, it also came to the knowledge of RP that the suspended management was carrying out manipulations in the financials of the Corporate Debtor Company. Also, there have been instances wherein it can be seen from the Forensic Report that wrongful and fraudulent transactions have been carried out by the Corporate Debtor Company during the CIRP period and two years prior to the commencement of CIRP. It is submitted that



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though the RP along with the CoC members tried their best to handle non-cooperation by the suspended management in a smooth way but the suspended management took it for granted and never mend their ways. Thereafter, RP was compelled to take action against the suspended management and filed an Interlocutory Application dated 20.11.2018 before this Adjudicating Authority under Section 19(2) read with Section 23(2), 44, 45, 48, 49, 50, 66, 67, 70 & 71 of the Code along with Section 424 of the Companies Act, 2013 for issuing summon and seeking necessary directions against the suspended management.

11. It is submitted by the RP that M/s Shree Ambey Metal Industries Limited submitted their resolution plan on 16.11.2018 and revised resolution plan on 21.11.2018 in response to EoI published on 23.08.2018. However, M/s Shree Ambey Metal Industries Limited were not found eligible as per Section 29A of the IB Code because of indirect relationship between the Resolution Applicant M/s Shree Ambey Metal Industries limited and the Corporate Debtor.
12. It is further submitted by the RP that on 25.11.2018, RP received an EoI from M/s Jay Narayan Steel in response to the EoI published on 13.08.2018 and fortunately M/s Jay Narayan Steel was found eligible to submit resolution plan as per Section 29A of the IB Code
13. It is stated that in the 9th CoC meeting held on 30.11.2018, RP apprised the CoC members about the two Resolution Plans and also invited Mr. Rakesh Gupta, Director of M/s Shree Ambey Metal Industries Limited and Mr. Harshadbhai C. Shah, Proprietor of M/s Jay Narayan Steel to discuss their respective Resolution Plans with the CoC members. It is stated



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that CoC was also of the view that there is no direct connection between M/s Shree Ambey Metal Industries Limited and does violate Section 29A of the IB Code. However, both the Resolution Applicants were asked to review the amount being offered by them and submit a detailed business plan of operating the Corporate Debtor Company.

14. It is submitted that revised Resolution Plans submitted was submitted by M/s Shree Ambey Metal Industries Limited on 01.12.2018 and M/s Jay Narayan steel on 04.12.2018 were placed before the CoC in its 10th meeting held on 07.12.2018. However, the CoC members were of the view that the revised plan submitted by M/s Shree Ambey Metal Industries Limited was only enhanced by 25 Lakhs which was far below the expectation and was rejected.
15. The other Resolution Plan submitted by M/s Jay Narayan Steel was discussed at length and thereafter, CoC invited the representatives of M/s Jay Narayan Steel to discuss, present and negotiate the plan. After the discussions, CoC felt that the said plan needs further revision. On 08.12.2018, the Resolution Applicant sent an addendum, wherein, he offered Rs. 12.60 crores to revive the unit and mentioned the same as "Final and non- negotiable". The revised plan was then summarised by the RP and sent to CoC on 12.12.2018.
16. It is stated that subsequently, one more addendum dated 15.12.2018 was received from M/s Jay Narayan Steel to override the revised plan dated 04.12.2018. In the 11th CoC meeting, the Resolution Plan dated 26.11.2018 along with its addendum dated 08.12.2018 and 15.12.2018 were discussed and CoC pointed out that very smartly Resolution Applicant ignored the issue of Personal Guarantee and Loans and waived



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off the right of the CoC to initiate any action against Personal Guarantors or any other person. CoC, further, was of the view that since the receivables of the Corporate Debtor Company were very high, the Resolution Applicant should have considered the same and have submitted a better plan.

17. It is submitted by the RP that it came as an utter shock to the RP when the representative of the Resolution Applicant, Mr. Harshadbhai Shah vide letter dated 21.12.2018 stated that Resolution Applicant was not given a chance to present, negotiate and discuss the Resolution Plan with CoC members in 11th CoC meeting.
18. As per the directions given by the CoC in the 11th CoC meeting, E-Voting was conducted for approval of Resolution Plan dated 26.11.2018 along with Addendums dated 08.12.2018, 15.12.2018 and Liquidation, in case the Resolution Plan is not approved. The voting lines were kept open from 03:00 pm on 26.12.2018 to 03:00 pm on 27.12.2018 and result was received in favour of liquidation disapproving the Resolution Plan by 100% votes. Accordingly, CoC concluded to recommend liquidation of the Corporate Debtor Company to this Adjudicating Authority and further resolved to appoint the Applicant to continue as liquidator.
19. In view of the order of the Hon'ble Supreme Court in a case of **Allahabad Bank vs. ARC Holding Ltd.** {[2000] 28 SCL 394 (SC) (para 19)}, we pass the following orders:

- a) The Liquidator shall, as far as possible, try to dispose of the Corporate Debtor Company as a going concern after publication of notice in newspaper with the reserve price

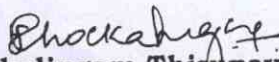


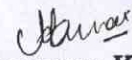
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which shall be equal to the total debt amount including interest, and in the absence of good offer, the Liquidator shall try maximum to recover over and above the liquidation value and allow maximum period applicable for sale of the Corporate Debtor as a going concern, which will be applicable for three months from the date of the order. If the process of sale as a going concern is failed during this period, then process of sale of the assets of the Corporate Debtor Company will be according to the provisions contained in Chapter VI of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. In case it is not concluded within this period, the order of this Tribunal directing the sale of the Corporate Debtor Company as a going concern shall stand set aside and Corporate Debtor Company to be liquidated in the manner as laid down in chapter III of the Liquidation Process as provided in IB Code.

- b) The Liquidator is further directed to issue public announcement stating that the Corporate Debtor Company is in liquidation.
- c) It is also ordered that copy of the order be sent to the Registrar of Companies with which the Corporate Debtor Company is registered.
20. Accordingly, the instant IA stands disposed of with the above observations.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

