

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH,
CUTTACK

IA (IB) No. 337/CB/2020

IN

TP NO. 36/CTB/2019

(CP(CB)(IB)No.1292/KB/2019 on the file of NCLT- Kolkata Bench)

In the matter of

**Application Under Section 31(1) of the Insolvency and Bankruptcy Code, 2016
for approval of Resolution Plan.**

And

In the matter of:

Bank of India,

... Financial Creditor

Vs

Maa Durga Rice Product Pvt. Ltd.

... Corporate Debtor

And

In the matter of:

IA(IB) No. 337/CB/2020

Mr. Surya Kanta Satapathy, Resolution Professional, in respect of Maa Durga Rice Product Pvt Ltd, having his office at No.4, Lake Gardens, Near Yuvak Sangha, Kolkata – 700045.Bajrang kunj.

... Applicant

Coram:

Shri P. Mohan Raj
Shri Satya Ranjan Prasad

Member (Judicial)
Member (Technical)

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Appearances (through video conference):

For the Applicant : Mr. Surya Kanta Satapathy, RP

Order reserved on: 01.04.2022

Order pronounced on: 26.04.2022

ORDER

Per P. Mohan Raj, Member, (Judicial)

1. The present Application has been filed by Mr. Surya Kanta Satapathy, the Resolution Professional ('RP'), in the matter of M/s **Maa Durga Rice Product Pvt. Ltd.** undergoing Corporate Insolvency Resolution Process ('CIRP') for the approval of Resolution Plan under Section 30(6) of Insolvency & Bankruptcy Code, 2016 ('IBC' or 'the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 ('CIRP Regulations') by Adjudicating Authority as approved by Committee of Creditors ('CoC'). That the Corporate Insolvency Resolution Process of the corporate debtor commenced by an order of this Adjudicating Authority dated 04.09.2019 in Company Petition TP No.36/CTB/2019 and Mr. Surya Kanta Satapathy, was appointed as an interim Resolution Professional by this Tribunal.

2. The applicant Mr. Surya Kanta Satapathy was then confirmed as Resolution professional by committee of creditors (CoC) in their second meeting of CoC held on dated 07.11.2019 as per the provisions of the IBC, 2016. The Resolution Professional appointed 2 sets of valuers as required under Regulation 27 During the course of the insolvency resolution process, there were sixteen meetings of Committee of Creditors held.

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3. The Resolution Professional published the Form G on 05.03.2020 in *English* newspaper 'Business standard' and on Vernacular language news daily 'Pratidin' on 18.11.2010, and latest EOI advertised on 25.02.2020. Thereafter in pursuant of the said publication Resolution Professional received Expressions of Interest from Mrs. Lora Mitra Rath, who is the promoter of the corporate debtor. No other Resolution plan was received.

4. Mrs. Lora Mitra Rath submitted her original resolution plan on 16.09.2020 later she filed revised Resolution plans on the following dates 22.09.2020, 04.10.2020, 07.10.2020, 20.10.2020, 21.10.2020, 07.11.2020 and on 11.11.2020. The final resolution plan submitted on 11.11.2020 was placed before COC on 12.11.2020. The COC in its 16th meeting held on 17.11.2020 considered the plan and approved on 21.11.2020 with 76.01% vote.

5. The resolution applicant Mrs. Lora Mitra Rath was director of CD who submitted the resolution plan under section 240A of the Code as now CD falling under the MSME as per amended definition MSME as it submitted an affidavit under Section 29A confirming her eligibility to submit a resolution plan. The MSME certificate dated 15.10.2020 also produced.

6. This application for approval of resolution plan was filed on 11.12.2020 with eligibility affidavit of resolution Applicant under section 29A of IBC 2016. Before filed This application the Resolution Professional already filed an application I.A.No.276 of 2020 on 09.11.2020 against the Resolution Applicant herein and two other directors of corporate debtor under section 66 of IBC for indulged in fraudulent transactions. Further one of the members of COC SREI also

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filed an application on 05.02.2021 I.A.No.14 of 2021 opposing the approval of resolution plan and wants him to be impleaded in this application. All these three applications were heard in common.

7.This Adjudicating Authority found in I.A.No.276 of 2020 that this Resolution Applicant Mrs. Lora Mitra Rath, along with two other directors of corporate debtor indulged in fraudulent and undervalued transactions with sole aim to defraud creditors of the corporate debtor, accordingly order pronounced to-day.

8. As per section 29A(g) of IBC 2016 the person against whom the Adjudicating Authority passed an order holding that he/she as a promoter or in management control of a corporate debtor indulged in undervalued transaction and fraudulent transaction is not eligible to submit a resolution plan. Of course, on the date of submission of final resolution plan on 11.11.2020 there was no finding by the Adjudicating Authority in this regard, but before the approval of resolution plan it is found that the resolution applicant involved in undervalued and fraudulent transactions, so the proviso to section 29A(g) also does not rescue the resolution applicant from her ineligibility.

In these circumstances since the Resolution Applicant is not eligible for approval of Resolution Plan in view of bar provided under section 29A(g) of IBC 2016, the resolution plan is Rejected, in consequence as provided under section 33(b) (i) of 6IBC 2016, M/s Maa Durga Rice Product Pvt. Ltd. corporate debtor is ordered to be liquidated.

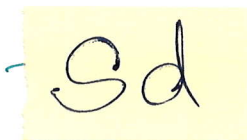
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9. The Resolution professional Mr. Surya Kanta Satapathy filed the application I.A.337 of 2020 for approval of resolution plan on 11.12.2020, before this petition was filed, he also filed an application on 09.11.2020 I.A.No.276 of 2020 against the resolution applicant and two others alleging that they involved in under value and fraudulent transactions. It is noticed that even after filed the I.A. No. 276 of 2020 against the resolution applicant and two others alleging that they had involved in under value and fraudulent transactions the Resolution professional recommended the plan for approval. The disturbing feature is the Resolution Professional conducted both the applications and participated in the proceedings simultaneously. As a matter of prudent and on ethics he ought to have relieved himself from the subsequent application. The Resolution professional had taken inconsistent stand by backing both the applications at a time, this is not proper. Further he had failed to think of an effect of Application for approval of resolution plan, in the event of IA.No.276 of 2020 is ordered. In the situation to avoid further embarrassment the resolution professional Mr. Surya Kanta Satapathy is discharged as provided in section 34(4)(a) of IBC 2016.

10. From the list of panels of Liquidator sent by IBBC for the NCLT, Odisha Mr. Alok Kumar Agrawal (Registration No. IBBI/IPA-001/IP-P012429/2021-2022/13867 having E-mail Id of IP alok.rgh@gmail.com and office at Chhattisgarh is appointed as Liquidator.

11. The Liquidator is directed to forthwith take into his custody all the assets, Properties, sophisticated equipment tools implement, machineries, effects and actionable claims of the corporate debtor and take necessary steps to ensure

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preservation, protection security and maintenance of those properties as provided under section 35(1)(b) & (d) of IBC 2016.

12. The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time. Public Notice as contemplated under section 33(1) of the Code shall be issued in one morning, English daily and in one morning regional language newspaper. All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel, shall cease to exist in accordance with section 34(2) of the Code. These powers shall henceforth vest in the Liquidator. The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in the Liquidation process of the Corporate Debtor. 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 a 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.

13. 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 work men of the Corporate Debtor, except to the extent of the business of the Corporate Debtor Continued during the liquidation process by the liquidator.

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14. In terms of Section 33(1) (b) (iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Odisha, Cuttack within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, Odisha, Cuttack.

15. As per Regulation 13 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, the liquidator shall submit a preliminary report to the Adjudicating Authority within 75 days from the liquidation commencement date providing various details/information as mentioned in the said regulation.

The liquidator shall take necessary steps to recover the amounts as ordered in I.A.No.276 of 2020 dated 26.04.20-22.

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.

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Satya Ranjan Prasad
Member (Technical)

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P. Mohan Raj
Member (Judicial)

Signed on this the 26th day of April 2022.

Supriya P.S