

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT - I, MUMBAI BENCH

I.A. No. 713 of 2020
in
C.P. (IB) No. 619/MB/2018

In the matter of an application under Section 33(1) of IBC, 2016

Devang Sampat,
Resolution Professional for Nicomet Industries Limited
Bungalow No. 4, Shiv Pooja, Plot No. 100, Sector-29,
Vashi, Navi Mumbai – 400 703

... Applicant

In the matter of:

Nico Extrusion Limited

... Operational Creditor

Versus

Nicomet Industries Limited

... Corporate Debtor

Date of Order: 16.12.2020

CORAM:

Hon'ble Janab Mohammed Ajmal, Member Judicial

Hon'ble Shri V. Nallasenapathy, Member Technical

Appearance:

For the Applicant : Mr Amir Arsiwala with Ms Radhika Motiani,
Advocates

ORDER

Per: V. Nallasenapathy, Member (Technical)

1. This is an Application filed by the Resolution Professional seeking following reliefs:
 - a) *To order liquidation of the Corporate Debtor and appointment of a liquidator;*
 - b) *To pass appropriate orders for meeting liquidation cost;*
 - c) *To determine whether the expenses during stay period needs to be considered as CIRP expenses;*
 - d) *To determine whether the PF dues of the employees / workmen amounting to Rs. 41,11,645/- during stay period should be considered as a part of CIRP cost and be accorded priority in payment;*
 - e) *To order the payment of CIRP cost at the earliest by the CoC, excluding the fees & cost incurred by the Resolution Professional by the sale of any identifiable assets by the liquidator;*
 - f) *To order the payment of fees and the cost of the Resolution Professional and other professionals amounting to Rs. 11.30 Lakhs up to 20.02.2020 and estimated cost of Rs. 4.75 Lakhs per month subject to actuals thereafter by the CoC immediately;*

- g) To order the payment of fees and cost incurred by the Resolution Professional for charges security and caretaker services up to 31.01.2020 amounting to Rs. 18,17,189/- and estimated cost of Rs. 4.25 lacs/month (wrongly mentioned as Rs.4.25/month, as submitted by the Ld. Counsel during the hearing of the Application) subject to actuals as and when actual amounts are crystallized thereafter, by the CoC immediately.*
2. This Bench by an order dated 14.12.2018 admitted the Petition (C.P. (IB) 619/MB/2018) under Section 9 of the Insolvency & Bankruptcy Code, 2016 (the Code) initiating Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor and appointed the Applicant as the Interim Resolution Professional (IRP). The IRP constituted the Committee of Creditors (CoC) on 05.01.2019 and the CoC in its meeting held on 02.05.2019 appointed Applicant herein as Resolution Professional (RP) of the Corporate Debtor.
 3. The Applicant submits that the ex-promoters challenged the admission Order before Hon'ble NCLAT vide Company Appeal No. 803 of 2018. NCLAT by order dated 21.12.2018 directed IRP to continue CIRP of the Corporate Debtor. The said order of NCLAT was challenged before Hon'ble Supreme Court. Hon'ble Supreme Court by order dated 08.01.2019 in Civil Appeal No. 114 of 2019 stayed the insolvency proceedings and allowed the parties to settle the matter and directed NCLAT to hear the Appeal and dispose of

the same on merits. NCLAT by order dated 23.04.2019 dismissed the said Appeal and directed CIRP to continue as per the Code.

4. The CoC then resolved to seek exclusion of 105 days, the period during which the stay continued. Accordingly, M.A. No. 2031 of 2019 was filed and the same was allowed vide order dated 07.06.2019 by this Tribunal excluding the period of 105 days from the CIRP period.
5. The Applicant further submits that the CIRP period of 180 days was due to expire on 25.09.2019. Therefore, the RP filed M.A. No. 3167 of 2019 for extension of CIRP period by 90 days and same was allowed vide order dated 24.09.2019. Consequently, the CIRP period of 270 days expired on 23.12.2019.
6. It is submitted that, in response to the Expression of Interest (EOI) issued in Form-G, 3 (three) Prospective Resolution Applicants (PRAs) submitted the Resolution Plan. The CoC in its 12th meeting held on 11.12.2019 considered those three plans and rejected them. Further, the CoC passed a Resolution to liquidate the Corporate Debtor with a voting share of 96.12% and recommended the appointment of Mr. Divyesh N. Desai as the Liquidator of the Corporate Debtor, who has given his consent to act as a Liquidator. Hence this Application.
7. The Applicant has submitted that he has not given his consent to act as the liquidator. We have also noticed that there is no proper

coordination between the RP and the CoC. In view of this the Applicant may not have any grievance on appointment of Mr. Divyesh N. Desai as the Liquidator by the CoC.

8. The RP has also sought for directions regarding CIRP costs, etc. and the same cannot be decided without hearing the CoC and in view of this the RP may take out separate applications after making CoC as a party.
9. Thus, upon hearing the Applicant and going through the pleadings this Bench is inclined to order liquidation of the Corporate Debtor under section 33 of the Code.

ORDER

The application be and the same is allowed. The Corporate Debtor, Nicomet Industries Limited, shall be liquidated in the manner as laid down in Chapter-III of the Code with the following consequential directions:

- a) Mr Divyesh Desai having Registration No. IBBI/IPA-001/IP-P00169/2017-18/10338 is appointed as the Liquidator.
- b) The Liquidator shall issue public announcement stating that the Corporate Debtor is in liquidation.
- c) The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34(8) of the Code and Regulations framed thereunder.

- d) The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate.
- e) Subject to section 52 of the Code no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- f) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- g) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.
- h) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- i) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

- j) The Liquidator is directed to send a copy of this Order to concerned Registrar of Companies and Insolvency and Bankruptcy Board of India, New Delhi.

Sd/-
V. Nallasenapathy
(Member Technical)

Sd/-
Janab Mohammed Ajmal
(Member Judicial)

**NATIONAL COMPANY LAW TRIBUNAL
COURT No. – I, MUMBAI BENCH**

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**IA No. 713/2020
&
IA No. 1470/2020
in
CP (IB) No. 619/MB/2018**

**Nico Extrusion Ltd.
V/s
Nicomet Industries Ltd.**

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Dated 16th December, 2020

ORDER

The matter is taken up on VC.Counsel for the Applicant is present. Order pronounced. IA No.713 of 2020 partly allowed, vide separate order. In view of the order passed in IA No.713 of 2020, no order is required to be passed in IA No.1470 of 2020. Accordingly, IA No.1470 of 2020 is closed.

Sd/-

**V. NALLASENAPATHY
Member (Technical)**

Sd/-

**MOHAMMED AJMAL
Member (Judicial)**