

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I

IA No. 875 of 2021
in
C.P. (IB) No. 1945/MB/2019

Application under Section 33 of the Insolvency and Bankruptcy Code, 2016

Mr. Ravindra Chaturvedi

Resolution Professional for Belgium Aluminum &
Glass Industries Private Limited

...Applicant

In the matter of

Corporation Bank

...Financial Creditor

V/s

Belgium Aluminum & glass Industries Private Limited

...Corporate Debtor

Date of Order: 24.12.2021

CORAM:

Shri. Bhaskara Pantula Mohan, Hon'ble Member (Judicial)

Shri. Narender Kumar Bhola, Hon'ble Member (Technical)

Sd/-

Appearance:

For the Applicant: _____

Per: Shri. Bhaskara Pantula Mohan, Hon'ble Member (Judicial)

ORDER

1. This is an application filed by the Resolution Professional Mr. Ravindra Chaturvedi under Section 33 of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating Liquidation Process against the Belgium Aluminum & Glass Industries Private Limited (Corporate Debtor).
2. The facts leading to the Application are as under.
 - a. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Tribunal vide order dated 27.08.2019 upon admission of a Petition under Section 7 of the Code and Applicant was appointed as the Interim Resolution Professional.
 - b. The IRP made a public announcement for inviting claims from the creditors of the Corporate Debtor on 14.09.2019. After receipt of the claims, the IRP constituted the Committee of Creditors (CoC) of the Corporate Debtor and in 1st CoC meeting held on 10.10.2019 the IRP was confirmed as Resolution Professional (RP) for the Corporate Debtor.
 - c. In the meantime, 2nd CoC meeting was held on 14.11.2019, wherein Mr. Modilal Pamecha and Mr. S. P. Das was appointed as registered valuers and M/s Atham Legal was appointed as Legal Advisor for advising Resolution Profession. Further the Applicant filed an application for non-cooperation from the Suspended Board of Directors.
 - d. The Applicant had issued Form-G on 22.11.2019, inviting expression of interest (EOI) from prospective resolution applicants (PRAs). Thereupon Applicant received only two EOIs from PRAs namely, Prudent ARC Limited and Birla Precision Technologies Limited. Further Applicant required certain information from Birla Precision

Technologies Limited, however the same were not received. The last date for submission of Resolution plan was 25.01.2020, however Prudent ARC who was the PRA in the final list did not show any inclination for submitting the Resolution Plan by the last date.

- e. The Applicant put two major agendas before the CoC members in its 3rd meeting held on 03.02.2020. First Resolution for extension of CIRP Period by 90 days as the 180 days of the CIRP will ended on 09.03.2020 and second for liquidation of the CD if the first resolution comes in negative, however both the resolutions were not approved with 66% voting shares of the CoC members.
- f. In the 4th CoC meeting held on 29.02.2020, the Applicant recommended to the CoC only one main Agenda i.e., Extension of CIRP, however resolution was not approved by the CoC with 100% voting. Therefore, as per section 33(1)(a) read with Regulation 39C of the IBBI(CIRP) Regulations 2016, the Corporate Debtor will required to be liquidated.
- g. The resolution for liquidation was approved by the CoC in its 4th meeting with 100% voting share and the said resolutions are as below:

"RESOLVED THAT the CoC recommends Liquidation under Section 33 of IBC 2016 r.w. Regulation 39C of IBBI (CIRP) Regulations 2016 as amended on 25.07.2019 for sale of Corporate debtor as going Concern and thus authorise RP for submission of application to NCLT be and is hereby Approved"

Resolved that Mr. Ravindra Chaturvedi, Resolution Professional be and is hereby appointed to act as Liquidator of the Company for a Consideration at 50% of the fees as per Regulation 4(2)(b) of the IBBI (Liquidation Process)(Amendments) Regulations 2016 (amended on

25.7.19) subject to *minimum* fee structure as RP in CIRP period is not approved.

3. Hence the Applicant came up with present application.

4. Section 33 of the Code reads as below:

"33. Initiation of Liquidation

(1) Where the Adjudicating Authority,

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors I [approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other

than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the Liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) shall 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.

(7) The order for liquidation under this section 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."

5. The members of CoC in its 4th meeting resolved to sale the Corporate Debtor as Going Concern as under Regulation 39C of the Regulations. The Regulation 39C is as under:

39C Assessment of sale as a going concern:

(1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the

corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.

(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(3) The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be."

6. It is noted that in the same CoC meeting members resolved not to consider the RP as Liquidator, therefore this bench appoints Mr. Kamal Kishor Gurnani, Registration No. IBBI/IPA-001//IP-P01227/2018-2019/12338, email id: kamalgurnaniip@gmail.com as liquidator for Corporate Debtor.

7. From the above, it would appear that despite all possible steps as required under the Code taken during the CIRP, the CoC did not receive any viable resolution plan/proposal for revival of the Company. The CoC in its wisdom has resolved in favour of the liquidation of the Corporate Debtor. This Authority has no reason before it to take a contrary view in terms of Section 33 of the Code. Therefore, it has no option than to pass an order for liquidation of the Corporate Debtor to sale as going concern in the manner laid down in Chapter III of the Code. Hence ordered.

ORDER

The Application be and the same is allowed. The Corporate Debtor, Belgium Aluminum & Glass Industries Private Limited, shall be liquidated in the manner as laid down in Chapter-III of the Code with the following directions:

- a) Mr. Kamal Kishor Gurnani, Registration No. IBBI/IPA-001//IP-P01227/2018-2019/12338, email id: kamalgurnaniip@gmail.com is appointed as Liquidator. He shall be entitled to fees payable during the Liquidation period under regulation 39D.
- b) The Liquidator shall endeavour to sale the Company as a going concern during the liquidation in terms of Regulation 39C of the Liquidation Process Regulations. In case he is not able to do so within a period of 90 days from this date, he shall proceed in accordance with clauses (a) to (d) of Regulation 32 of the Liquidation Process Regulations.
- c) The Liquidator shall issue public announcement stating that the Corporate Debtor is in liquidation.
- d) The Moratorium declared under section 14 of the Code shall cease to operate here from.
- 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 the Liquidation Process Regulations.

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- 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 Registrar of Companies concerned and Insolvency and Bankruptcy Board of India, New Delhi.

Sd/-

Narender Kumar Bhola
Member (Technical)

Sd/-

Bhaskara Pantula Mohan
Member (Judicial)