

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

I.A. 1325/2020

in

C.P. 2925/I&B/MB/2018

Under Section 33 read with Section
60 of the Insolvency & Bankruptcy
Code, 2016

In the matter of

JSK Corporation Private Limited

... Financial Creditor

vs.

Enestee Engineering Limited

... Corporate Debtor

I.A. No. 1325/2020

Mr. Atul Rajwadkar, Resolution
Professional

... Applicant

Order delivered on: 16.09.2020

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

For the Applicant: Adv. Sandeep Bajaj, Adv. Aakanksha Nehra, Adv.

Anuj Jhaveri, Adv. Shrivalli Kajaria

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor by an order dated 17.09.2019, on a Section 9 Petition filed by the Financial Creditor, wherein Mr. Atul Rajwadkar, was appointed as an Interim Resolution Professional (IRP).

2. The Applicant then made the public announcement in Form A on 30.09.2019 for intimating commencement of CIRP and inviting claims from the creditors of the Corporate Debtor.

3. The Applicant submits that the claims from 139 Operational Creditors were admitted to the extent of a cumulative amount of INR 43,17,19,096.55/- and claims from 80 workmen and employees were admitted to the extent of a cumulative amount of INR 58,11,044/-. During the currency of the CIRP, the Applicant kept receiving claims and accordingly the List of Creditors was updated on 18.10.2019, 20.11.2019, 23.12.2019, 30.01.2020, 16.03.2020, 30.06.2020 and 26.08.2020.

4. The first meeting of Committee of Creditors (CoC) was held on 25.10.2019, wherein the Applicant was confirmed as the Resolution Professional (RP) for the Corporate Debtor. The same was intimated to this Tribunal on 04.11.2019.

5. The second meeting of Committee of Creditors (CoC) was held on 21.11.2019, wherein the following resolutions were approved:

- a. Appointment of certain professionals, and
- b. Eligibility criteria of the Resolution Applicants

6. The Applicant then published the invitation for Expression of Interests in Form G.

7. The third meeting of Committee of Creditors (CoC) was held on 30.11.2019, wherein approvals were given for actions of the Applicant to keep the Corporate Debtor as a going concern.

8. The fourth meeting of Committee of Creditors (CoC) was held on 16.12.2019, wherein revised Form G was approved.

9. The fifth meeting of Committee of Creditors (CoC) was held on 09.01.2020, wherein the Resolution Plan and Evaluation Matrix were approved by CoC.

10. Further, the qualified provisional list of Resolution Applicants, comprising of eight entities, was published on the website of the Corporate Debtor on 12.01.2020 and on 17.01.2020, Information Memorandum, request for Resolution Plan and Evaluation Matrix were issued to the Prospective Resolution Applicants. The final list of Prospective Resolution Applicants, comprising of eight entities, was published on the website of the Corporate Debtor on 27.01.2020.

11. The sixth meeting of Committee of Creditors (CoC) was held on 15.02.2020, wherein the following resolutions were approved:

- a. Extension of time for submission of Resolution Plan by a period of 30 days, and
- b. Extension of the period for CIRP by a further period of 90 days.

12. No Resolution Plan was received in the extended period. Thereafter, in March 2020, lockdown and numerous guidelines were imposed by the Government of India.

13. The seventh meeting of Committee of Creditors (CoC) was held on 23.03.2020, wherein further extension of timeline for submission of Resolution Plan by 15 days was approved.

14. The Applicant then submits that the last date to submit Resolution Plan, as per the above mentioned extension, expired on 07.04.2020. However, a further extension upto 20.04.2020 was given for the submission of the Resolution Plan and then it was further extended up to 18.05.2020.

15. The eighth meeting of Committee of Creditors (CoC) was held on 15.06.2020, wherein another extension for submission of Resolution Plan up to 27.06.2020 was approved. This was the last date for submission of the Resolution Plan. However, no Resolution Plan was submitted till last date.

16. The ninth meeting of Committee of Creditors (CoC) was held on 21.07.2020, wherein the provisions for liquidation were discussed as no Resolution Plan was received even after many extensions.

17. The tenth meeting of Committee of Creditors (CoC) was held on 11.08.2020, wherein the process for liquidation and liquidator's fee were discussed and approved by CoC through E-Voting.

18. Since the CoC did not foresee any chance of any sort of Resolution Plan in the present scenario, the CoC decided to liquidate the Company and hence, this application is filed for the liquidation of the Corporate Debtor under Section 33 read with Section 60 of the Code.

19. The Applicant/ Resolution Professional, Mr. Atul Rajwadkar, herein has given his consent to act as a Liquidator of the Corporate Debtor.

20. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, for the IRP has complied with the procedure laid under the Code read with Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, on verification, we are of the view that this is a fit case to pass liquidation order under sub-section 2 of Section 33 of the Code as the CoC decided to liquidate the Corporate Debtor and accordingly this Bench orders:

- a. that the Corporate Debtor be liquidated in the manner as laid down in the Chapter III of the Code by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- b. that Mr. Atul Rajwadkar, Resolution Professional herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
- c. that all the powers of the Board of Directors, key

managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.

- d. that the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- e. that the Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.
- f. that on having liquidation process initiated, 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.
- g. that this liquidation order shall be a deemed to be 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.

21. Accordingly, this Application is hereby allowed directing the Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

SD/-

Chandra Bhan Singh
Member (Technical)

SD/-

Suchitra Kanuparthi
Member (Judicial)