

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – II

IA 1078/2020
IN
CP(IB)No.2826/(MB)/C-II/2018

Under section 33(2) of the IB Code, 2016
In the matter of

Rajendra K Bhuta
... Applicant

Welspun Steel Limited
Reg. Off. :- S N 650, Village Varsamedital
Anjar, District Kutch. Gujarat :- 370110

... Financial Creditor
V/s

Kalisma Steel Private Limited
Reg. Off.: 406, Sri Krishna, New Link Road
Opp Laxmi Industrial Estate, Andheri West,
Mumbai – 400053.

... Corporate Debtor

Order dated:- 09.03.2021

Coram :

Hon'ble Member (Judicial) : Mr. H.P. Chaturvedi
Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

Appearances :

For the Applicant : Mr. Darryl Pereira, Advocate
For Suspended Directors : Mr. Kersi Dastoor, Advocate

ORDER

Per: Ravikumar Duraisamy, Member

1. This is an application filed by the Resolution professional upon the instructions of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, viz., Kalisma Steel Private Limited, on the ground that there is no possibility for resolution of the Corporate Debtor.

2. This Adjudicating Authority, *vide* its order dated 22.07.2019 on a Petition filed by Welspun Steel Limited (*Financial Creditor*) under section 7 of the Insolvency and Bankruptcy Code, 2016 (*the Code*), directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed Mr Atul Jain as the Interim Resolution Professional (IRP) of the Corporate Debtor.
3. Public announcement was made on 19.08.2019, in “*Business Standard*” (English) and “*Navshakti*” (Marathi), fixing 29.08.2019 as the last date for submitting the claim. The newspaper inserts are placed on record as Annexure II at pp.25 and 26 of the IA.
4. The Committee of Creditors (CoC) was duly constituted on 06.09.2019 and later was re-constituted on 17.09.2019 with Central Bank of India, Punjab National Bank, Welspun Steel Limited and HDFC Bank Limited as the members of the CoC. The first meeting of the CoC was held on 26.12.2018. At the first CoC meeting held on 09.09.2019, no decision was taken about the appointment of a Resolution Professional (RP) to conduct the CIRP of the Corporate Debtor.
5. On the recommendations of the CoC, this Adjudicating Authority, *vide* order dated 14.10.2019 in IA No.3265/2019, approved the appointment of Mr. Rajendra K. Bhuta, the Applicant herein as RP of the Corporate Debtor.

6. The CoC, at its 5th meeting held on 13.11.03.2019, *inter alia* discussed and finalized matters pertaining to publishing of invitation of Expression of Interest (EOI) the Eligibility Criteria, approval of Evaluation Matrix for calling for Resolution Plans.
7. The 1st cycle of invitation of EOI was published in 2 newspapers namely “*The Free Press Journal*” (English) and “*Navshakti*” (Marathi) on 15.11.2019 and the last date of the receipt of the EOI was fixed on 30.11.2019.
8. The CoC in its 6th meeting held on 16.12.2019 the RP discussed to publish 2nd cycle of invitation of EOI as no EOI was received pursuant to 1st invitation of EOI. The CoC members were of the opinion that the Information memorandum did not contain the nature of business of the Corporate Debtor and other details and hence asked the suspended Directors to provide the requisite documents/information to be incorporated in the information memorandum and place before the CoC in the next CoC meeting.
9. The RP informed that he had made all possible efforts to get the documents/information from the suspended Directors pertaining to the rental premises of the Corporate Debtor however, the RP did not receive any documents/information from the suspended Directors. Thereafter, the RP to filed an application IA No. 79 of 2020 before the NCLT under section 19 of the Code against the erstwhile management of the Corporate Debtor to extend co-operation to the RP.

10. The CoC in its 6th meeting authorized the RP to file an application before the NCLT for exclusion of 25 days and for extending a further period of 90 days up-to 11th May, 2020. The CoC in its 7th meeting held on 17.01.2020, RP placed the quotations received from investment advisor service providers. The RP received one EOI from M/s Eight Capital. However, it could not satisfy the eligibility criteria mentioned in the 2nd cycle of invitation of EOI. Since only one EOI was received, the CoC decided to invite one more invitation and extended the 2nd cycle of invitation of EOI up-to 05.02.2020.
11. The CoC in its 8th meeting held on 17.02.2020, the RP informed that even after extending the date for invitation of EOI, the RP did not receive any EOI. The CoC at its 9th meeting held on 04.05.2020 via video conferencing due to the Covid-19 pandemic, noted that there was no positive response from agencies to invest in the Corporate Debtor and no EOI was received in response to the advertisements.
12. At the 10th CoC meeting held on 13.05.2020 and later held on 15.05.2020, the CoC members with a majority of 99.76% e-voting decided to liquidate the Corporate Debtor as there was no possibility of any resolution.
13. In its Written Submissions dated 14.09.2020, the Suspended Directors have set up the following defence: -
 - a. The suspended management had not been allowed to participate in the 10th CoC Meeting held on 13th May 2020

and the minutes of the said meeting have not been shared/
communicated to the suspended directors.

- b. The Suspended Management have a right to participate in all resolutions passed by the CoC members at the meetings and also have locus/ right to participate in the matter. The purported resolution passed by the CoC members (without participation of the suspended management) in relation to liquidation of the Corporate Debtor at the 10th CoC meeting held on 13th May 2020, is vitiated and is bad in law.
- c. The copy of the present IA 1078/2020 had also not been served upon the Suspended Directors and that they had no knowledge with respect to the liquidation.
- d. One of the he Suspended Directors Mr. Rahul Suri received an email from the Resolution Professional, regarding holding of the 10th Meeting of the CoC scheduled on 12th May 2020 at 3:00 pm through video conferencing facility. Later it was further communicated that 10th CoC Meeting was re-scheduled to 13th May 2020 at 3:00 pm. Mr. Rahul Suri joined the meeting by video conferencing. However, before the critical issue with respect to filing of an application for liquidation was discussed Mr. Rahul Suri was logged out by the Resolution Professional and the Suspended Directors thus had no knowledge of the

discussion at the said meeting. Mr. Rahul Suri was not allowed to participate in the said meeting.

14. We have gone through the contents of the present IA filed by the RP proposing Liquidation. We also examined the contentions made by the suspended management in their written submission.
15. Having heard the learned Counsel for the Applicant/RP as well as objector suspended management. This bench pass following orders:
 - a. Upon perusal of the documents, records made available and submissions of the Ld. Counsel for the RP and Counsel for Suspended Directors, it is noted that in the 8th CoC meeting held on 17.02.2020, the RP informed the Members that no Expression of Interest was received even after extending the due date. The CoC has also authorized the RP to invite quotations, collection from the Merchant Bankers and the investment bankers and other agencies. Further, it was also recorded that one of the parties namely “JC Flower Asset Reconstruction Private Limited” who had submitted Expression of Interest had subsequently expressed to withdraw its interest for submission of the Resolution Plan. In the 9th CoC meeting held on 04.05.2020 the RP informed the CoC members that he had contacted other agencies but did not receive prospective response from the agencies.

- b. In the 10th CoC meeting held on 13.05.2020/15.05.2020 the CoC with majority of 99.76% approved to Liquidate the Corporate Debtor and directed the RP to file an application under section 33 (2) of the IBC for liquidation of the Corporate Debtor and further the majority of 99.76% of CoC members agreed to appoint Mr. Rajendra Bhutta as Liquidator.
- c. In view of the decision of the CoC, we are inclined to admit the IA 1078/2020 in CP 2826/2018 to initiate liquidation process against the Corporate Debtor. Accordingly, the Adjudicating Authority Orders that the Corporate Debtor shall under go for Liquidation u/s 33 of the Insolvency and Bankruptcy Code.
- d. It is further noted that the period stipulated under the Code to complete the CIRP is very sacrosanct. The CIRP has to be completed in a time bound manner so as to prevent further loss of and or deterioration of the value of the assets of the Corporate Debtor and so that the Corporate Debtor can be sold as a going concern during the process of Liquidation. While such is the theme and object of the Insolvency and Bankruptcy Code then, if the CoC is directed to reconvene its meeting by inviting suspended management and to revisit its recommendation for the Liquidation of the Corporate Debtor, after deliberating upon this issue with the suspended management and to explore the possibility of a potential Resolution Plan, it would not serve real purpose of Code, because as per record there was no Resolution Plan even put forth by any Resolution Applicant

before the CoC nor it is the case of the suspended management that he is confident enough and capable of motivate some potential Resolution Applicant within given time frame if the time be extended, so we should also keep in mind that in the present matter the prescribed period of CIRP is already over and under no stretch of imagination it can be extended beyond 330 days until unless it is warranted so as keeping paramount interest of the Corporate Debtor. Therefore, we are of the view that non-participation of the suspended management in the CoC during the passing the resolution of the liquidation may amount only to some technical glitch. Hence no one's right can be said to be prejudiced affected. Therefore, this does not necessarily vitiate the process of CIRP. It is also pertinent to mention here also the legal position in the Code, when there is no Resolution Plan approved by CoC within prescribed period of the CIRP the Liquidation Corporate Debtor is automatic/natural consequence and the Adjudicating Authority is legally expected to declare the commencement of the liquidation process of the Corporate Debtor. For coming to this conclusion, we find support from the observation made by the Hon'ble Supreme Court in the case of *Arcelormittal India Ltd. V.Satish kumar Gupta*, Hon'ble Supreme Court has pleased to observe and held that "the only reasonable construction of the Code is the balance to be maintained between timely completion of the corporate insolvency

resolution process, and the Corporate Debtor otherwise being put into liquidation. We must not forget that the Corporate Debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the corporate insolvency resolution process. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible. ” Therefore, the objection raised by the suspended management is not substantial and having no adequate force and is liable to be rejected and thus the Corporate Debtor is ordered to under go for Liquidation.

- e. However, with regard to the recommendation of the CoC members to appoint Mr. Rajendra Bhuta as the Liquidator, considering the assignments in his hands, age factor (Senior citizen approx. 69 years) and the uncertain pandemic situation (lockdown, unlock) etc. we are not inclined to appoint Mr. Rajendra Bhuta as the Liquidator. By taking the practical view the Bench hereby appoints Mr. Jagdish Ratanlal Ahuja as liquidator. [Reg. No.IBBI/IPA-002/IP-N00401/2017-2018/11175], having his office at Ug-329, Dreams Mall, Lbs Road, Bhandup West, Mumbai City, Maharashtra, 400078 [Email: pcsjrahuja@gmail.com; mobile: 9323144390], as Liquidator in terms of section 34(1) of the Code from the panel of names made available by the Insolvency and Bankruptcy Board of India (IBBI);

- f. The Fees payable to the Liquidator shall be in compliance with Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.
- g. The Applicant/RP shall forthwith hand over possession of the Corporate Debtor, its assets and all documents in his possession, to the newly appointed Liquidator;
- h. The Liquidator shall initiate the liquidation process as envisaged under Chapter-III of the Code and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- i. Whenever the Liquidator issues any publication in the newspapers, the said shall be published in widely circulated newspapers in the State in which the Registered office of the Company is incorporated.
- j. Public Notice shall be issued in two newspapers, *viz.*, in *Business Standard* (English) and *Navshakti* (Marathi), stating that the Corporate Debtor is in liquidation, as required in terms of section 33(1) of the Code;
- k. All the powers of the Board of Directors and key managerial persons of the Corporate Debtor shall cease to exist. All these powers shall henceforth vest in the Liquidator;
- l. 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;

- m. 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 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;
- n. This liquidation order shall be deemed to be a 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;
- o. The Court Officer shall forward a copy of this Order to – (i) the Applicant/ RP, (ii) the Liquidator named in para 13(d) above, and (iii) the Registrar of Companies, Maharashtra, Mumbai, immediately upon pronouncement of this Order; and
- p. A copy of this order shall additionally be served by the Applicant/ RP on the Registrar of Companies, Maharashtra, Mumbai, within whose jurisdiction the Corporate Debtor has been registered, for updating the Master Data of the Corporate Debtor.

Sd/-
Ravikumar Duraisamy
Member Technical
09.03.2021

Sd/-
H. P. Chaturvedi
Member Judicial