IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
SPECIAL BENCH, COURT No. II
*** *** ***

IA No. 675 of 2020
in
CP (IB) No. 1262/MB/MAH/2017

In the matter of Liquidation of Parekh Aluminex Ltd.
and
In the matter of Petition under Sec. 33 (2) of I & B Code 2016

Avil Menezes
Resolution Professional
for Parekh Aluminex Limited
403, Crescent Business Park,
Sakinaka Telephone Exchange Lane,
Sakinaka, Andheri East,
Mumbai - 400051 **… Applicant**

Date of Order: 07.10.2020

CORAM:

Hon'ble Janab Mohammed Ajmal, Member Judicial
Hon'ble Ravikumar Duraisamy, Member Technical

Appearance:
For Applicant … Mr. Rahul Sarda, Advocate

Per: ***Hon'ble Janab Mohammed Ajmal, Member Judicial***

ORDER

This is an Application by the Resolution Professional under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (the Code) seeking orders for liquidation of the Company/Corporate Debtor.

2. The NCLT, Mumbai vide order dated 23.11.2017 admitted the Petition (CP (IB) No. 1262/MB/MAH/2017) under Section 7 of the Code initiating Corporate Insolvency Resolution Process (CIRP) of the Company and appointed the present Applicant as the Interim Resolution Professional

(IRP). The IRP constituted the Committee of Creditors (CoC) and its 1st meeting was conducted on 10.01.2018. The CoC in its 1st meeting appointed the IRP as the Resolution Professional (RP) of the Corporate Debtor Company. The CoC in its 3rd meeting on 21.02.2018 approved the Expression of Interest ("EOI") including the Evaluation Matrix for inviting prospective resolution applicants. In response to the public announcement, four Prospective Resolution Applicants (PRAs) submitted their EOIs. The Applicant had received 2 bidding offers from PRAs, out of which one had withdrawn its offer. The CoC in its 5th meeting held on 11.05.2018 considered the plan submitted by Eight Finance Private Limited (Resolution Applicant) and also accorded the approval for extension of the Corporate Insolvency Resolution Process (CIRP) by further 90 days. The Tribunal vide its order dated 07.06.2018 in MA No. 447 of 2018 extended the period by 90 days. Subsequent meetings were held in June, July and August, 2018. In the meeting of the CoC held on 08.08.2018, the Resolution Plan of the Resolution Applicant was put for e-voting and the members of the CoC by 73.58% approved the Resolution Plan. On 29.03.2019, Resolution Applicant sent a letter to the Applicant intending to withdraw the Resolution Plan. The CoC in its 11th meeting held on 30.04.2019 deliberated on the issue of the withdrawal of the Resolution Plan and opposed the same.

3. On an Application for withdrawal of Resolution Plan (MA No. 1212 of 2019) filed by the Resolution Applicant, this Tribunal passed an order dated 28.11.2019 directing that if the Resolution Applicant was not willing to pursue with the revised Resolution Plan which had been approved by the CoC, the Earnest Money Deposit (EMD) deposited by the Resolution Applicant of Rs. 2 crores shall be forfeited. In accordance with the said Order, the Resolution Applicant filed an Affidavit dated 07.01.2020 for withdrawal of the Resolution Plan and this Tribunal vide order dated 07.01.2020 directed to forfeit the EMD deposited by the Resolution Applicant.

4. The CoC in its 12th meeting dated 23.01.2020 voted in favour of liquidation of the Company by a vote of 89.19% and resolved to seek liquidation of the Corporate Debtor. Subsequently in a Joint Lender Meeting (JLM) held on 18.02.2020, the majority of the lenders approved the appointment of Mr. Avil Menezes the RP as the Liquidator of the Corporate Debtor.
5. The directors of the Corporate Debtor have not filed any counter to the Application. We have heard the Applicant in the matter.
6. The Hon'ble Apex Court in **K. Sashidhar v. Indian Overseas Bank and Ors: (2019) 148 LA 497 (SC)** *inter alia* held that,

> "The Adjudicating Authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under section 33 (1) of I & B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors".

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 with 89.19% voting share in favour of the liquidation of the Company. This Authority has no reason before it to take a contrary view in terms of Section 33(1)(a) of the Code. Therefore, we have no option than to pass an order for liquidation of the Company in the manner laid down in Chapter-III of the Code. Hence ordered.

ORDER

The application be and the same is allowed with the following directions.

a) The Corporate Debtor i.e. Parekh Aluminex shall be liquidated in the manner as laid down in Chapter-III of the Code.

b) The Applicant Avil Menezes, presently RP of the Parekh Aluminex Limited, is appointed as the Liquidator.

c) He shall issue public announcement stating that 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 IBC 2016 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 would be required for managing its affairs.

i) The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.

j) 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.

k) Copy of the Order shall be furnished to the IBBI, to the Regional Director (Western Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Maharashtra, Mumbai, the Registered Office of the Corporate Debtor; and the Liquidator.

Sd/-	**Sd/-**
RAVIKUMAR DURAISAMY	**JANAB MOHAMMED AJMAL**
MEMBER TECHNICAL	**MEMBER JUDICIAL**