

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT - II)

Item No. 220

(IB)-425(ND)2019

IA/5560/2020 IA/2467/2020

IA/5053/2020 IA/5383/2020 IA-2813/2021

IN THE MATTER OF:

M/s. Italimpianti Orafi Spa

... **Applicant/Petitioner**

Versus

M/s. Green world International Pvt. Ltd.

... **Respondent**

Under Section: 9 of IBC, 2016

Order delivered on 28.02.2023

CORAM:

**SHRI. ASHOK KUMAR BHARDWAJ,
HON'BLE MEMBER (J)**

**SHRI. L. N. GUPTA,
HON'BLE MEMBER (T)**

PRESENT:

For the RP : Adv. K.K. Mishra, Adv. Kalpana Katiyar, Adv. Shubhangi

ORDER

IA-5560/2020: We have heard the counsel for the RP as also perused the record. The prayers made in the captioned IA read thus:

- a) *Pass an order u/s 33 of the code confirming the decision of the CoC of Green world International Pvt. Ltd. to commence liquidation and dissolve the CIRP and/or the CoC of Green world International Pvt Ltd,*
- b) *Pass an order confirming the decision of the CoC to appoint Mr. Sunil Kumar Gupta as Liquidator of Green world International Pvt Ltd at a remuneration of Rs 60,000 per month for the complete duration of the Liquidation period with a maximum cap of Rs. 10.00 Lakhs for the remuneration of Liquidator*
- c) *Pass an order directing the CoC to make the payment of remaining outstanding Insolvency Resolution Process Costs, in full, to the Applicant"*

Ld. Counsel for the Applicant could draw our attention to the Minutes of the SCC meeting dated 20.11.2020. As can be seen from the minutes of the meeting qua Item No, B5 in the 3rd Meeting of the CoC which was held on 15.10.2020, it was decided to liquidate the Corporate Debtor before the expiry of the Insolvency Resolution Process period. The relevant excerpts of the minutes read thus:

Isha



Item No. B5

To discuss the Estimated liquidation Cost Plan for the Corporate Debtor As per Regulation 39B of IBC. Meeting liquidation cost while deciding to liquidate the Corporate Debtor

The plant of corporate debtor is not in operation for the last two years. Moreover, as per informal discussion with suspended directors, the recovery of metal from plant is not optimum as per Estimated Liquidation Cost and Liquid Assets Plan in accordance with the Regulation 39B Regulation 39D of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) of CIRP regulations for the best estimate of Liquidation Cost.

“RESOLVED FURTHER THAT consent of the present Resolution Professional Mr. Sunil Kumar Gupta have been taken by the COC and Mr. Sunil Kumar Gupta to act as Liquidator of the Company post approval of Liquidation of Corporate Debtor by the Hon’ble NCLT”

“RESOLVED FURTHER THAT Mr. Sunil Kumar Gupta to act as Liquidator of the Company post approval of Liquidation of Corporate Debtor by the Hon’ble NCLT will get the Monthly Liquidator fees as INR 60,000/- Per Month”

Discussion:-

“The COC had suggested RP to reconsider his fees which is quoted as per the Liquidation Plan and had fixed for INR 60,000/- Per month for the period of Liquidation and also suggested the RP to put the CAP of maximum fees Charged by the Liquidator amounting to INR 10.00 Lakhs till the period of the Liquidation of the Corporate Debtor and suggested the RP to put under E Voting for approval to this item.

Result: The resolution was approved with 100% mandate in favour of the resolution

It is seen from the minutes of the meeting (ibid) that the aforementioned resolution for liquidation of the Corporate Debtor was passed with 100% voting share. It may be worth to take note of that the Union Bank of India is the only Financial Creditor in the matter. It is also relevant to note that even the maximum period prescribed for CIRP i.e., 180 days has also expired.

In view of the aforementioned, there is no other option but the Corporate Debtor is required to be liquidated and directed to be dealt with in accordance with the extent provisions of IBC, 2016 read with IBBI (Liquidation Process) Regulations 2016. Mr. Sunil Kumar Gupta is appointed as Liquidator.

Accordingly, **Sunil Kumar Gupta** with **Reg. No: [IBBI/IPA-001/IP-P00205/2017-2018/10394]** (e-mail ID: **green.cirp@gmail.com**) so appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions inter alia:

Isha



- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 (viz. Sections 35, 36, 37, 38, 39 and 41 thereof) and other relevant rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date enjoined upon him.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent/preferences and file suitable application(s) before this Adjudicating Authority.
- d) The Registry is directed to communicate this order to the Registrar of Companies, having jurisdiction over the Corporate Debtor and the Insolvency and Bankruptcy Board of India;
- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company applications during the process of liquidation.
- i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation, 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further reports as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

j) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary cooperation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

It goes without saying that fee of the Liquidator would be payable in terms of the provisions of Section 34 (7) of the IBC, 2016 read with Regulation 4 of IBBI (Liquidation Process) Regulation 2016.

IA stands disposed of.

IA-2467/2020: The prayer made in the IA reads thus:

“(a) Issue necessary directions under the provisions of section 19 of the IBC, 2015 to the Respondents to assist & co-operate with the applicant and comply with the instructions of the applicant by providing him all information and documents as and when required by him and had over the management of the corporate Debtor and/or air of its assets as required under the code”

In view of the averments made in the IA and the submissions put forth on behalf of RP, Respondents are directed to extend all required cooperation to the RP and adhere to the instructions given by him qua the affairs of the Corporate Debtor for effective completion of the CIRP. No cost.

With this, the present IA stands allowed.

IA-5053/2020: As prayed by the Applicant, **IA-5053/2020 is dismissed as withdrawn.**

IA-5383/2020: Ld. Counsel for the RP submitted that the IA has become infructuous and seeks to withdraw the same.

As prayed by the Ld. Counsel, **the IA is dismissed as withdrawn.**

IA-2813/2021: Ld. Counsel for the RP submitted that the IA has become infructuous and seeks to withdraw the same.

As prayed by the Ld. Counsel, **the IA is dismissed as withdrawn.**

-Sd-

**(L. N. GUPTA)
MEMBER (T)**

-Sd-

**(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**