IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

I.A. No. 5965/(ND)/2021
Connected with IB-1125/(ND)/2019

Section: Under Section 33(2) of the Insolvency and Bankruptcy Code 2016, Read with IBBI (Liquidation Process) Regulations, 2016.

In the matter of:

M/s SANTOSH ASSOCIATES

...Operational Creditor

versus

PARAMEX TRANSFORMERS LIMITED

...Corporate Debtor

In the matter of:

SH. SUMIT SHUKLA
(Resolution Professional for M/s Paramex Transformers Limited)
Office at: B-4/702, Krishna Apra Gardens,
Plot No.7, Vaibhav Khand, Indirapuram,
Ghaziabad

...**Applicant/RP**

versus

PARAMEX TRANSFORMERS LIMITED
(Through Mr. Santosh Aggarwal, Mr. Hemant Aggarwal and Smt. Shweta Aggarwal, Directors)
Office at: G-10, Ground Floor, Eldeco Green Meadows,
Sector- PAI Greater Noida,
District Gautambudh Nagar,
Uttar Pradesh

... Respondent

-sd-

-sd-

Coram:
SH. P.S.N. PRASAD, Hon'ble Member (Judicial)
SH. RAHUL BHATNAGAR, Hon'ble Member (Technical)

For Applicant: Ms. Divya Jagga, Advocate

ORDER

Per P.S.N. PRASAD, MEMBER (JUDICIAL)

Date: 11.02.2022

1. This is an application filed by Mr. Sumit Shukla, the Resolution Professional of the Corporate Debtor 'M/s Paramex Transformers Limited', seeking to consider the present application under section 33(2) of the Insolvency and Bankruptcy Code, 2016 for Liquidation of the Corporate Debtor and to appoint the Resolution Professional as Liquidator of the Corporate Debtor under section 34(1) of the Code.
2. The details of transactions leading to the filing of this application as averred by the applicant is that:
   i. The application under section 9 of the IBC, 2016 was filed by the Operational Creditor 'M/s Santosh Associates' against the Corporate Debtor 'M/s Paramex Transformers Limited'

-Sd- -Sd-

and the same was admitted by this Tribunal vide order dated 26.11.2019 and Ms. Pooja Berry was appointed as the IRP vide above mentioned order. Further, on 17.06.2019 this Tribunal replaced the previously appointed IRP and appointed Mr. Rajeev Lochan as the Interim Resolution Professional

ii. The Applicant has submitted that the IRP made a public announcement in Form A as required under regulation 6 of IBBI (CIRP) 2016 on 23.06.2020 in Financial Express (English) and Jansatta (Hindi) for intimation and for calling the creditors to submit their claims. That the IRP on account of non-receipt of any claims by 05.07.2020, which was the last date of the receipt of claims could not constitute COC within the stipulated timeline. The erstwhile IRP further submitted that a claim was received from the sole secured Financial Creditor on 31.07.2020 and therefore, the IRP filed his report on the constitution of COC on 06.08.2020 before the Tribunal.

Sd/- Sd/-

iii. The Applicant submitted that the 1st COC meeting was held on 18.08.2020 wherein sole COC member (Punjab National Bank) passed a resolution with 100% vote share to appoint Applicant i.e., Mr. Sumit Shukla as the Resolution Professional (RP) and accordingly application bearing IA No. 3644/2020 was filed by the sole COC member and this Tribunal vide its order dated 21.10.2020 appointed the Applicant herein as the RP. It was further stated by the Applicant that except for public announcement and constitution of COC none of the CIRP steps had been taken by the IRP. The applicant further submitted that the handover was given by the erstwhile IRP to the Applicant/RP on 10.11.2020 i.e., on the 142nd day of CIRP.

iv. The Applicant/RP submitted that the Directors of the Suspended Board of the Corporate Debtor had deliberately for four consecutive years filed illegible and unclear copies of the audited financial statements with the ROC which were also verified by the Company Secretary.

-sd/ -sd/

v. The Applicant has submitted that none of the suspended Directors of the Corporate Debtor attended any of the COC meetings conducted by the RP in the entire CIRP except once i.e., the 7th COC meeting held on 04.09.2021, wherein one of the Directors of the suspended board Mr. Hemant Agarwal joined the COC meeting through WhatsApp for a few minutes in respect of the One Time Settlement (OTS) proposal.

vi. The Applicant further submitted that counsel Sh. Manish Raghav (who has been representing the suspended directors in the COC meetings) informed the COC that the suspended directors were willing to settle the matter under the provisions of section 12A of the code and further sought time till 15.06.2021 to submit the same. He further assured the COC that the suspended management would revert back with the details as well as whereabouts of the records of the Corporate Debtor by 15.06.2021.

vii. Therefore, the COC based upon the submissions made by the representative of the Suspended Directors in the 5th COC meeting, by way of 100% vote share approved the above said

Sd/-

Sd

submissions made by counsel of suspended Directors Sh. Manish Raghav on 29.05.2021.

viii. The applicant has stated that the suspended management of the Corporate Debtor has also filed an Appeal bearing Company Appeal (AT) (Insolvency) No. 622/2021 against the order of this Tribunal dated 16.04.2021 passed in IA No.1180/2021. The above-mentioned appeal by the suspended management of Corporate Debtor was contrary to the assurances made to the COC and the RP in the 5th COC meeting. The above-mentioned appeal was listed on 23.08.2021 wherein the Hon'ble Appellate Tribunal directed the suspended directors of the Corporate Debtor to handover the assets and records of the Corporate Debtor to the RP which the suspended directors disregarded and did not comply with the said directions of the Hon'ble Appellate Authority.

ix. The applicant submitted that the 6th COC meeting was held on 21.06.2021 and the suspended management of the Corporate Debtor neither turned up with the proposal to

-Sd- -Sd-

settle the matter under section I2A of the code nor provided details\records of the Corporate Debtor as assured by them in the 5th COC meeting. Further, the COC also noted that even during the 6th COC meeting the representative of the suspended management provided nothing to the Applicant \RP which could support the CIR Process in any manner and therefore the COC approved the resolution for Liquidation of the Corporate Debtor. The extract of the 6th COC meeting is reproduced below:

"RP informed the COC member that despite repeated follow up the ex-management did not turn up as assured by Adv Sh. Manish Raghav in the 5th COC meeting. COC member expressed their dissatisfaction over the conduct of the ex-management and asked that based upon Adv Sh. Manish Raghav's assurance one-month exclusion was approved by them to grant the opportunity to the ex-management to demonstrate their conduct and cooperate In the CIR Process in the interest of the Corporate Debtor. They further added that even during the 6th meeting Adv. Sh. Manish Raghav has nothing to provide which could support the CIR Process in any manner.

Sh. Manish Raghav mentioned that the ex-management is in the process of preparing their submissions including on reply which they had to submit on the application u/s 19(2) filed by the RP. Adv Sh. Manish Raghav further added that the ex-management is arranging the copies of the orders of the DRT for the CD's land and building at Greater Noida. In response the RP clarified that what Adv Sh. Manish Raghav is submitting on behalf of the ex-management is belated and ex-management should have cooperated on all the matters as sought by the IRP/RP repeatedly in last several months.

Accordingly, the RP sought the views from the COC regarding the CD and highlighted that the last date of the CIRP is 29th June 2021 and in response the COC asked the RP to put the agenda for voting for the Liquidation/Dissolution of the Corporate Debtor which is defunct for last seven years and thus could not achieve the successful resolution during the CIRP Process. They further added that non-cooperation during CIRP as well as conduct prior to the commencement of the CIRP on ex-management's part are reasons due to which the Corporate Debtor will slip into Liquidation. COC further added that the COC has exhausted (duly approved by Hon'ble NCLT as well) attempts to keep the CD as a going concern by way of extension and various exclusions which include specific exclusion as sought by Adv Manish Raghav in the 5th COC

-Sd-

-Sd-

meeting however the ex-management did not make any formal submissions and choose to abstain from the 6th COC meeting which clearly reflects that the ex-management has consistently acted against the interest oj the CD as well as has not taken any steps which could avoid the CD going into the Liquidation".

"RESOLVED THAT pursuant to the discussions held in the 6th COC meeting of the COC members on 21.06.2021, the COC hereby approve to file an application before the Hon'ble NCLT to pass orders for the Liquidation/Dissolution of the Corporate Debtor which is defunct (as appearing from the MCA records) since 2014 onwards".

x. The Applicant submitted that the Ld. Counsel for the Suspended Management of the Corporate Debtor, after the closure of CIR Process timeline and after the filing of the appeal on 21.08.2021, through email sent an OTS proposal on Corporate Debtor's Letterhead without any signature and stamp to the COC. The COC in its 7th COC meeting held on 04.09.2021 informed advocate Manish Raghav who was attending the COC meeting on behalf of the Suspended Board of Directors that the OTS is not acceptable to them and granted a week's time to the Suspended directors to submit a viable and defect free OTS.

xi. Further, based upon the discussions that took place in the 7th COC meeting, the Applicant\RP conducted the 8th COC meeting on 15.09.2021 wherein the sole COC informed the Applicant/RP that the OTS possibility has failed. Also, the

-Sd/ -Sd/

COC decided to proceed with the liquidation and accordingly, the Applicant\RP put the agenda for the voting process to Liquidate the Corporate Debtor.

xii. The applicant further submitted that on account of the perpetual non-cooperation from the directors of the Corporate debtor, the Applicant\RP could not to perform all his duties as contemplated in the code, 2016 such as preparation of Information memorandum, appointment of valuers, publication of Form G inviting the prospective resolution applicants to submit the resolution plan, verification of transactions, records and books/accounts under regulation 35A of the CIRP Regulations, ROC compliances, GST registration/other compliances, opening of CIRP account with bank etc. It was further submitted that since the Statutory filing had not been done since 2014 and while the previous filings were done through illegible copies and since the physical records of the Corporate Debtor were still lying with the directors of the suspended board, these reasons had been considered by the COC while deciding to

-Sd/-

-Sd/-

liquidate the Corporate Debtor and after realizing that the suspend directors were only making submissions for OTS in order to gain time and delay the CIR Process. The Applicant also stated that the CIRP timeline had ended on 29.06.2021. Inspite of that, relying on the submissions of the Suspended Board through their advocate the COC had granted excessive time to the suspended directors with an intent to keep the Corporate Debtor as a going concern.

3. The Tribunal directed the Applicant to serve a copy of this application to the Respondent to file his response if any. However, no response till date was received from the Respondent.

4. We have gone through the documents filed and heard the arguments advanced by the Applicant. The submission by the applicant that the Statutory filing had not been done since 2014 and that the previous filings had been done using illegible copies and that the physical records of the Corporate Debtor were still lying with the Directors of the suspended Board which they are not providing after repeated directions were the reasons why the COC had decided to liquidate the Corporate Debtor as well the

-sd- -sd-

realization by the COC that the suspended directors were only making submissions for OTS to gain time and delay the CIR Process are sufficient grounds for commencing liquidation proceedings against the Corporate Debtor.

5. This application has been filed as per the provisions of section 33(2) of IBC, 2016 of which the sub-sections are reproduced hereunder;

> *"33. (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."*

-sd- -sd-

(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 [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).

6. The sub-section (2) of section 33 of the Insolvency Bankruptcy Code, 2016 is clear in that the COC is fully empowered to decide on liquidation at any stage of CIRP, (however before the confirmation of the Resolution Plan), therefore in the present case the COC which consisted of a sole COC member, in its 6th COC meeting held on 21.06.2021 with 100% vote share approved the liquidation of the Corporate Debtor after having explored all the possibilities of reviving the Corporate Debtor.
7. This Tribunal under the circumstances, taking into consideration the provisions of law and since the Insolvency Resolution Process Period has expired, passes an order for liquidation of the corporate debtor 'M/s Paramex Transformers Limited', and the incidence of liquidation will

-Sd/-

-Sd/-

follow from the date of this order in terms of the provisions of the IBC, 2016 and more particularly as given in Chapter – III of IBC, 2016 and also in terms of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 along with the following directions:

a. As per section 34 of IBC, 2016 the Resolution Professional Mr. Sumit Shukla, Insolvency Professional holding registration No. IBBI/IPA-003/IP-N00064/2017-2018/10550, having email id: sumit_shukla@rediffmail.com is appointed Liquidator for the Corporate Debtor. He has submitted his written consent to act as the Liquidator.

b. The Liquidator is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

c. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;

-Sd/-

-Sd/-

d. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. Similarly in relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation

e. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

f. This order is deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

g. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.

-sd-

-sd-

h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

8. Copy of this order be sent to the Corporate Applicant/Corporate Debtor and the Liquidator for taking necessary steps.

9. That the IA/5965/(ND)/2021 filed in connection with IB-1125/ND/2019 is disposed of in the aforesaid terms.

-Sd/-

(SH. RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-Sd/-

(SH. P.S.N. PRASAD)
MEMBER (JUDICIAL)

(RDS)

Pronounced today under Rule 151 of NCLT Rules, 2016 as Hon'ble Member (T) Sh. Rahul Bhatnagar, is not holding the Court today.

Court Officer
11.02.2022