

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, DELHI
BENCH III**

CA- 140/ND/2019
In
IB – 446/ND/2017

In the matter of IAP Company Private Ltd.

Mr. Dharmendra Kumar,

Resolution Professional

... Applicant

Order delivered on 28th September, 2020

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

SHRI.NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

Parties / Counsels present

For Resolution Professional : Rohit Rathi (Advocate)

Per, Shri NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

ORDER

1. This relates to CA–140/ND/2019 filed in IB– 446/ND/2017 by Mr. Dharmendra Kumar (hereinafter referred to as ‘Resolution Professional’) under the relevant provisions of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016). The prayer made in the Application is to pass an appropriate

order in terms of relevant provisions of law after perusal of facts and circumstances in the abovementioned application.

2. Originally IB- 446/ND/2017 under Section 9 of the Insolvency & Bankruptcy Code, 2016 filed by Takkshill Enterprises (hereinafter referred to as "Operational Creditor") was admitted by this Authority vide Order dated 28.02.2018, the Corporate Insolvency Resolution Process (CIRP) was initiated against the IAP Company Pvt. Ltd. (hereinafter referred to as "Corporate Debtor") and the applicant was appointed as Interim Resolution Professional (IRP), who was confirmed as the Resolution Professional vide the second meeting of Committee of Creditors (CoC) dated, 16.07.2018.
3. It is submitted by the applicant that all the measures as are mandated by the law (IBC, 2016 and the corresponding regulations) were duly undertaken by the Resolution Professional during the moratorium and the ensuing Corporate Insolvency Resolution Process (CIRP).
4. The applicant further averred that the series of CoC meetings were conducted as per the law. In 11th CoC meeting held on 1st February, 2019- the Resolution Plan was

put for discussion before the Committee members under item no.5. The voting for the resolution plan was held in terms of the prescribed regulations and as per the final voting results – 68.58% of the members constituents of the CoC voted against the Resolution Plan, 25.88% of the member constituents abstained from voting, whereas 5.54% of the members' constituents voted in favour of the Resolution Plan.

5. The applicant quoted the judgement of the Hon'ble Supreme Court where it was held that every possible effort must be made to resolve the insolvency of the Corporate Debtor and liquidation must be the last resort. The Hon'ble Apex Court has settled the above principle in the matter of **Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta and ors., Civil Appeal No. 9402-9405 of 2018**. In the light of above principle subsequent meetings i.e., the 12th and 13th meetings of CoC were called by the Resolution Professional to discuss, inter-alia, voting results and reasons for dissent vote along with recommendations for liquidation as per the relevant provisions of the code and regulations. Vide the said meetings, the CoC passed specific recommendations to

revisit the going concern status of the Corporate Debtor and continue the going concern with a restructured business and recover portfolio. The CoC also advised the RP to take certain measures to reduce fixed costs and maintain the Corporate Debtor as a going concern during the intervening period between 15.02.2019 (270th day of CIRP) and the date of commencement of liquidation as and when the order is passed by the adjudicating authority. Moreover, it is also recommended that the Resolution Professional should be appointed as the Liquidator.

6. The applicant placed the reliance on the judgement of Hon'ble Supreme Court. In the matter of **K. Sashidhar v. Union of India (Civil Appeal 10673 of 2018)**, vide paragraph 33, the Hon'ble Apex court held that upon the receipt of a rejected plan, the Adjudicating Authority is not expected to do anything more; but is obligated to initiate liquidation process under section 33(1) of IBC, 2016. The legislature has not endowed the Adjudicating Authority with the jurisdiction or authority to analyze or evaluate the commercial decisions of the CoC. It was further held that legislature, consciously, has not provided any ground to

challenge the “commercial wisdom” of the individual financial creditors or their decision making to the adjudicating authority.

7. The applicant also relied on the judgement passed by the Hon'ble NCLAT in the matter of **Y. Shivram Prasad v. S. Dhanpal and ors. Company Appeal (AT) (Insolvency) No.224 of 2018**. It was held in that matter that during the liquidation process, step required to be taken for revival and continuance of Corporate Debtor by protecting the Corporate Debtor from its management and from its death by liquidation. Thus, the steps which are required to be taken are as follows: (i) by compromise or arrangement with the creditors or members or class of members in terms of section of 230 of the Companies Act, 2013 and (ii) on failure, the liquidator is required to take step to sell the business of the Corporate Debtor as a going concern in its totality along with the employees. It was further held that the last stage would be the death of the Corporate Debtor by liquidation which should be avoided.

8. The Committee Members took the decisions as follows:

- (i) Resolved that the Corporate Debtor IAP Company Pvt. Ltd., be liquidated and Mr. Dharmendra Kumar be appointed as the Liquidator of the Corporate Debtor.
- (ii) Mr. Dharmendra Kumar, Resolution Professional be and is hereby authorised to file an application with the Adjudicating Authority in this regard.

9. Since no Resolution Plan is received by this Authority under Sub-section (6) of Section 30 of the I&B Code, 2016, before the expiry of the Corporate Insolvency Resolution Process period of 270 days (expired on 15.02.2019), the Corporate Debtor has to be ordered for liquidation.

ORDER

10. In view of the facts and circumstances recorded by Resolution Professional in CA-140/ND/2019 filed in IB-446/ND/2017 and in exercise of powers conferred under Sub-Clauses (i) (ii) and (iii) of Clause (a) of Sub-Section (1) of Section 33 of the I&B Code, 2016, this Authority proceeds to pass Liquidation Order as follows: -

- I. This Authority hereby orders for liquidation of the Corporate Debtor (CD) viz., M/s. IAP Company Pvt. Ltd. which

shall be conducted in the manner as laid down in Chapter III of part II of the Insolvency & Bankruptcy Code, 2016;

II. This Authority hereby appoints Mr. Dharmendra Kumar as Company Liquidator who shall issue a public announcement stating therein that the Corporate Debtor is in liquidation;

III. The moratorium declared under Section 14 of the Insolvency & Bankruptcy Code, 2016, shall cease to have effect from the date of the order of liquidation;

IV. Subject to Section 52 of the Insolvency & Bankruptcy Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.

V. This Authority makes it clear that Para (IV) hereinabove shall not apply to any legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

- VI. 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.
- VII. All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the Liquidator viz., Mr. Dharmendra Kumar, in addition to it, the Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the Insolvency & Bankruptcy Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- VIII. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- IX. The Company Liquidator shall be entitled to charge such fees for the conduct of the liquidation proceedings and in such a proportion to the value of the liquidation estate assets as

specified under Regulation 4 (2) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

X. The Registry is directed to communicate this order with immediate effect to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Liquidator viz., Mr. Dharmendra Kumar, for information and compliance.

11. In terms of the above, CA-140/ND/2019 filed in IB-446/ND/2017 by the Resolution Professional under the relevant provision of the Insolvency & Bankruptcy Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor viz., IAP Company Pvt. Ltd. is **allowed**.



(NARENDER KUMAR BHOLA)

) MEMBER (TECHNICAL)



(CH. MOHD SHARIEF TARIQ)

MEMBER (JUDICIAL)