

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

C.A. - 976/C-II/(ND)/2019

C.A. - 977/C-II/(ND)/2019

C.A. - 12/C-VI/(ND)/2019

In C.P. No. IB-292/(ND)/2017

In the matter of:

ANG INDUSTRIES LTD.

101-106, Sharda Chamber - IV,
Plot No. 42,
3 Local Shopping Complex Kalkaji,
New Delhi - 110019.

...Corporate Debtor

AND

C.A. - 976/C-II/(ND)/2019

In the matter of:

Bank of Baroda,

International Business Branch,
Parliament Street,
First Floor, Bank of Baroda Building,
16, Sansad Marg,
New Delhi - 110001.

...Applicant

Versus

Insolvency and Bankruptcy Board of India,

7th Floor, Mayur Bhawan,
Shankar Market, Connaught Circus,
New Delhi.

...Respondent

C.A. - 977/C-II/(ND)/2019

In the matter of:

HDFC Bank Ltd.,

Plot No. 31,
Najafgarh Industrial Area,
Tower "A", 1st Floor,
Shivaji Marg, Moti Nagar,

ANG Industries Ltd.
I.B. 292/ND/2017



New Delhi – 110015.

...Applicant

C.A. – 12/C-VI/(ND)/2019

In the matter of:

Ilam Chand Kambhoj,
401 A, Arcadia Commercial Tower,
Unitech Arcadia, South City II,
Sector 49, Gurugram – 122018.

...Applicant

Versus

ANG Industries Ltd.,
101-106, Sharda Chamber – IV,
Plot No. 42,
3 Local Shopping Complex Kalkaji,
New Delhi – 110019.

...Respondent

Order Delivered on: .10.2019

CORAM:

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

DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)

PRESENT – Simran Sharma, Advocate for HDFC

Brijesh Kumar Tamber, Tanisha Sethia, Advocate for Bank of
Baroda

G. P. Madaan , Gaurav Malik, Advocate for erstwhile RP



ORDER

Per Dr. V. K. Subburaj (Member Technical)

1. This Tribunal vide order dated 31.08.2017 admitted the application filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) by ANG Industries Limited (“CD”) for initiating its own corporate insolvency resolution process (“CIRP”). Presently, three applications have been filed – two by the financial creditors of the CD seeking appointment of a liquidator with regard to the CD and one by the erstwhile resolution professional (“RP”), Mr. Ilam Chand Kamboj requesting the Tribunal to appoint him as the liquidator in relation to the CD.

2. A brief history of the present matter is as follows:
 - i. The Tribunal had appointed Ilam Chand Kamboj as the interim resolution professional vide order dated 31.08.2017, who was later confirmed as the RP by the committee of creditors (“CoC”) of the CD. Subsequently, before expiry of 180 days, an application was filed for extension of period and accordingly, the period was extended for 90 days vide order dated 15.02.2018. this extended period expired on 28.05.2018.
 - ii. The RP filed an application CA No. 625/C-II/ND/2018 on 29.05.2018 for approval of a resolution plan. Subsequently, the RP filed an additional affidavit on 08.10.2018 wherein it was stated that



the consortium of resolution applicants has withdrawn their resolution plan and another application numbered CA No. 858/C-II/ND/2018 was filed praying for liquidation of the CD.

- iii. The liquidation application was disposed of by the Tribunal vide order dated 04.02.2019, wherein the Tribunal approved the liquidation of the CD but rejected the appointment of the RP as the liquidator. The Tribunal referred the matter to the Insolvency and Bankruptcy Board of India ("IBBI") for recommendation of the name of a liquidator under Section 34(4) of the Code. The Tribunal had also passed certain other directions, which are not required to be discussed presently.
- iv. It is understood from the present applications that the liquidation process of the CD has been at a standstill as the IBBI has not suggested a liquidator to be appointed in the present matter, specifically. In pursuance to the Tribunal's directions vide orders dated 08.08.2019 and 26.08.2019, meetings of the CoC were held on 03.09.2019 and 04.09.2019, where the CoC has unanimously appointed one Mr. Ashok Kumar Dewan as the liquidator. The written consent of the proposed liquidator has been filed before this Tribunal on 09.09.2019.

3. There is no doubt that a liquidator has to be appointed in the present matter for facilitating the liquidation process of the CD, which has been



stagnant for a long time. However, neither the erstwhile RP, Mr. Ilam Chand Kamboj nor the liquidator proposed by the CoC, Mr. Ashok Kumar Dewan can be appointed as liquidators.

4. The appointment of Mr. Kamboj as liquidator was rejected by the Tribunal vide order dated 04.02.2019. The order was appealed against before the Hon'ble NCLAT but the Hon'ble NCLAT refrained from specifically interfering with the rejection as the matter was pending before the IBBI, although it did point out that the IBBI should not treat the Tribunal's observations as a final decision. Be that as it may, this Tribunal presently does not deem it appropriate to effectively overturn the order dated 04.02.2019 by appointing Mr. Kamboj as the liquidator, especially when the matter is still pending before the IBBI.
5. As far as the appointment of the liquidator proposed by the CoC is concerned, it is held that such appointment would be beyond the mandate of the Code. According to Section 34 of the Code the liquidator can be appointed by appointing the RP as the liquidator, and if for the reasons stated in Section 34(4), the RP cannot be appointed as the liquidator, the Tribunal can appoint a person recommended by the IBBI as the liquidator. Nowhere in the Code does the CoC has the power to propose the liquidator's name and rightly so, as the CoC has no role to play with regard to the CD once the liquidation process begins.



6. Hence, after referring to the list of resolution professionals recommended by the IBBI, this Tribunal appoints Mr. Ankit Kishore Sinha (e-mail: ~~ankitkishoresinha90@gmail.com~~, mobile number: 9990839925) as the liquidator in the present matter. The liquidator will abide by all the directions passed by this Tribunal in order dated 04.02.2019. Additionally, the following directions are passed in relation to the liquidation:

- i. The liquidator shall issue the public announcement that the CD is in liquidation and file his report to this Tribunal as mandated in terms of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017.
- ii. In relation to officers/employees and workmen of the CD, taking into consideration Section 33(7) of the Code, this order shall be deemed to be a notice of discharge.
- iii. The liquidator appointed shall investigate the financial affairs of the CD particularly, in relation to preferential transactions/undervalued transactions and such other like transactions.
- iv. The liquidator shall also submit a preliminary report to this Tribunal within 75 days from date of commencement of liquidation in accordance with the regulations.
- v. A copy of this order shall be communicated to the Registrar of Companies, NCT of Delhi and Haryana. The liquidator shall intimate



the Registrar of Companies, NCT of Delhi and Haryana forthwith about the liquidation process of the CD being set in the motion. 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 CD, the liquidator shall also duly intimate about the order of liquidation.

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(Dr. V.K. SUBBURAJ)

MEMBER (TECHNICAL)

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(DR. P.S.N. PRASAD)

MEMBER (JUDICIAL)

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