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**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB)No.166/BB/2018

U/s. 9 of the IBC, 2016

And

I.A.No.568 of 2019

U/s. 54 of the IBC, 2019

In the matter of:

Ms. Manjula B.S

Representing Corporate Debtor

Benaka Sponge Iron Private Limited.,

No. 71, III Cross,

Residency Road

Bengaluru – 560 025.

- Applicant/IRP

Versus

M/s. Agrawal Coal Corporation

Private Limited.,

R.No. 22/4, 1st Floor,

W. No. 28, Shree Lakshmi Niwas

Complex, Beside St. Mary's Hospital,

Cantonment,

Bellary – 583 104.

- Petitioner/Operational Creditor

Date of Order: 26th November, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

2. Hon'ble Dr. Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant : Shri S. Vivekananda

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A. No. 568 of 2019 is filed by Ms. Manjula B.S, Representing Corporate Debtor, Benaka Sponge Iron Private Limited.,



(Applicant/IRP), U/s 54 of the IBC 2016, by inter-alia seeking to consider and approve the dissolution of M/s. Benaka Sponge Iron Private Limited (Corporate Debtor) on the ground that there are no assets to be liquidated and its liquidation value is zero.

2. Brief facts of the case, as mentioned in the instant Application, which are relevant to the issue in question, are as follows:

(1) C.P.(IB)No.166/BB/2019 is filed by M/s. Agarwal Coal Corporation Private Limited ("Petitioner/Operational Creditor"), U/s 9 of IBC, 2016, R/w Rule 6 of I&B (AAA) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Process in respect of M/s. Benaka Sponge Iron Pvt. Ltd. ("Respondent/Corporate Debtor") on the ground that it has committed a default for an amount of Rs.1,87,95,291.51/- (Rupees One Crore Eighty-Seven Lakhs Ninety-Five Thousand Two Hundred and Ninety One and Fifty Paise only), which includes Interest @ 18% p.a. Accordingly, the Petition was admitted by this Adjudicating Authority vide order dated 07.03.2019 by initiating CIRP, by inter alia appointing Ms. Manjula B.S as IRP with Registration No. IBBI/IPA-003/IP-N000111/2017-18/11213, imposing moratorium etc. In pursuant to the above order the Resolution Professional had given an affidavit dated 22.11.2019.

(2) In pursuant to the Section 15 of the Code R/w Rule 6 of IBBI (IRP for Corporate Persons) Regulations 2016, a public announcement dated 13.03.2018 (in Form A) was issued inviting claims from the parties against the Corporate Debtor. Accordingly, the following claims were received;



Sl. No.	Name of the Creditor	Address	Amount Claimed	Amount Admitted	As per books	Security Interest if	Nature of Debt
1.	Agarwal coal Corporation Pvt. Ltd.	No. - 16 B, 25 th Ward, Ramrjaneya Nagar, Bellary	18,795,291/-	18,795,291/-	10,235,753/-	Nil	Operational Creditors
2.	Sreesai Transport	Ashok Nagar, Havambhavi, Bellary	9,202,507/-	9,202,507/-	4,202,507/-	Nil	Operational Creditors
3.	Tulsiyan Smelters Pvt. Ltd	Apex Plaza, 1 st Floor, #3, Nungambalkam High Road, Chennai	6,091,760/-	6,091,760/-	2,956,222/-	Nil	Operational Creditors

(3) As per Section 18 of Code, one of the duties of IRP is to constitute Committee of Creditors. As per Section 21(1) of the Code, the IRP shall after collation of all claims received against the Corporate Debtor and determination of the financial position of the Corporate Debtor, constitute a Committee of Creditors within 30 days of this appointment as IRP. Since there were no Financial Creditors, the Committee of Creditors was constituted by the IRP with Operational Creditors pursuant to Regulation 16 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The First Meeting of Committee of Creditors held on 11th April 2019. As per Regulation 27 of the IBBI (CIRP) Regulations 2016, the IRP appointed two Registered Valuers dated 15th April 2019. Viz., Mr. Subhajit Guha, Registered Valuer having office at L 522, Ittina Soupernika, Sarjapur Main Road, Bengaluru - 560 035. Mr. Maaz Warsi, Registered Valuer having office at Warsi House, (83), 5th block Koramangala Industrial Layout, Bengaluru - 560 095.

(4) Subsequently, Six CoC meeting were held viz., 2nd CoC meeting was held on 19th April, 2019, 3rd CoC meeting was held on 23rd May, 2019, 4th CoC meeting was held on 29th May, 2019, 5th CoC meeting was held on 10th August, 2019, 6th CoC meeting was held on 17th August 2019.

(5) Pursuant to Section 29 of the Code read with Rule 36 of IBBI (CIRP) Regulations, 2016, the RP shall prepare an Information Memorandum for formulating a Resolution Plan.



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Pursuant to Rule 36A of IBBI (CIRP) Regulations, 2018, the RP shall issue an invitation for submission of Expression of Interest, including evaluation matrix, to the prospective Resolution Applicants in accordance with the provisions of the Section 25 of the Code, to submit the resolution plans at least 30 days before the last date of submission of resolution plans. The Information Memorandum on the Corporate Debtor and invitation for expression of Interest in Form G was prepared and made available to the CoC by the IRP. The Financial Statements of the Corporate Debtor, as on Corporate Insolvency Resolution Process commencement date 7th March 2019, the non-current assets including cash amount to Rs. 61,775 against liabilities (Current + Non -Current) of Rs.49,83,02,628.

Assets	Amount (Rs.)	Remarks	Liabilities	Amount (Rs.)
<u>Non-Current Assets</u> Investment	17,343.00	-	<u>Equality and Liabilities</u> Equity Share Capital Other Equity <u>Non-current liabilities</u> 1. Borrowings 2. Deferred Tax liabilities	5,00,00,000.00 (53,79,42,992.00) 40,000.00 3,02,75,163.00
<u>Current Assets</u> 1. Cash and Cash Equivalent 2. Other Current assets (Balances with Government authorities)	44,432.00 1,02,97,862.00	Not yet realized/received by the Corporate Debtor	<u>Current Liabilities</u> 1. Borrowings 2. Trade Payables 3. Provisions 4. Other current liabilities	10,50,000 40,60,77,235 1,14,365 6,07,45,865
Total	1,03,59,636.00			1,03,59,636.00



It is stated that the above stated scenario shows no possibility to receive any Resolution plan so as to revive the Corporate Debtor.

(6) It is stated that review of the Financials and other documents of the Corporate Debtor, the following facts were revealed:

- i. The Company banker's i.e., IDBI had classified the Company's Loan Account as NPA with effect from 31.10.2014.
 - ii. The Company had stopped its production from 17.12.2015 since the power supply to the factory was discontinued due to non-payment of electricity charges amounting to Rs. 19,62,486/- including interest.
 - iii. During the year 2016-17 the Company has made a reference to Hon'ble BIFR (Board for Industrial and Financial Reconstruction) in terms of Section 15(1) of SICA (The Sick Industrial Companies (Special Provisions) Act 1985 and the same was registered on 17.03.2016 vide case No. 42/2016.
 - iv. In view of the continuing default and no repayments forthcoming, the said assets were sold under SARFAESI Act by RBL on 03.09.2018 and the Account was closed thereafter. Accordingly, the valuation report submitted by two Registered Valuers, the Fair value and Liquidation Value of the Company is Nil.
3. Heard Shri S. Vivekananda representing Ms. Manjula B.S (Deemed RP). We have carefully perused the pleadings of the parties and the extant provisions of Code and the rules made thereunder.
4. The learned Counsel for the RP has inter-alia submitted that



there is nothing remained in the Company either to receive any Resolution Plan nor any property to liquidate under extant provisions of Code. He has further submitted that a sum of Rs.44,432/- (Rupees forty-four thousand four hundred and thirty two) is available in cash and a balance of Rs.1,02,97,862/-(Rupees One Crore two lakh ninety-seven thousand eight hundred and sixty-two only) is laying with various Government Authorities, which too have not been confirmed by the Auditors due to non-availability of the supporting documents. Therefore, he urged the Adjudicating Authority to dissolve the Company rather than to continue the Corporate Debtor under CIRP under Chapter II or under Liquidation process under Chapter III of Part II of Code, by exercise its inherent powers conferred on it under Rule 11 of NCLT Rules, 2016. And no party would be going to be affected by liquidation of the Company. He has also filed Memo dated 26.11.2019, by inter-alia furnishing the following details of expenses incurred for the Corporate Insolvency Resolution Process (CIRP) as under:

Sl. No.	Particulars	Amount
1	E-Voting	17,700
2	Conveyance of IRP & Assistant	2,600
3	Courier & Xerox charges	435
4	Expenses of CoC meeting	10,856
5	Conveyance of Deemed RP	340
6	Xerox & Binding Charges	340
7	Fees Paid to office assistant	10,000
8	CoC meeting expenses including E-voting charges	15,900



9	Charges for filing Liquidation documents and Valuer's fees	50,000
	Total	1,08,171

Therefore, cash balance of Rs.44,432/- will not even sufficient to meet expenses of Corporate Insolvency Resolution Process (CIRP) Hence, he urged the Adjudicating Authority to permit the IRP/deemed RP to appropriate the above amount for the expenses incurred for the CIRP, as full and final settlement of the expenses.

5. The above facts and circumstance of the case, has established that possible due process of CIRP, as per law, was followed by the IRP/deemed RP. Therefore, there would no purpose to continue the Corporate Debtor under CIRP under Chapter II or under Liquidation process, under Chapter III of Part II of Code, and thus it would be just and proper for the Adjudicating Authority to exercise its inherent powers conferred on it, under Rule 11 of NCLT Rules, 2016 to dissolve the Company. And no party would be going to be affected by dissolving of the Company. Consequently, the IRP/deemed RP to appropriate the remaining amount of Rs.44,432/- towards CIRP costs for full and final satisfaction of her claim and get close the Account of the Corporate Debtor.
6. In the result, I.A.No.568 of 2019 is hereby disposed of with the following directions:
 - (1) It is hereby dissolved the Corporate Person, M/s. Benaka Sponge Iron Private Limited with immediate effect;
 - (2) The IRP/deemed RP is permitted to appropriate the remaining amount of Rs.44,432/- towards CIRP costs for

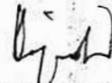



full and final satisfaction of her claim and get close the Account of the Corporate Debtor.

- (3) The Registry is directed to forward a copy of this Order to the Registrar of Companies, Karnataka, Bangalore, immediately ;
- (4) The Applicant is also directed to forward copies of this Order to all other statutory authorities connected with the affairs of the Company.
- (5) Consequently C.P.(IB)No.166/BB/2018, and I.A.No.419 of 2019 also stands disposed of.

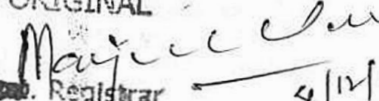


(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

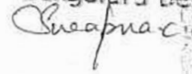


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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OF THE ORIGINAL

Deputy/  Registrar
National Company Law Tribunal
Bengaluru Bench

4/12/19





Shruthi