IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH,
KOLKATA

IA No. 1167/KB/2020
in
CP (IB) No.836/KB/2018

Under section 33 of Insolvency & Bankruptcy Code, 2016

In the matter of:

Vaishno Engineer System Associates, having its registered office at EM-29, Deendayal Nagar, Airport Road, Gwalior.

…. Operational Creditor

Versus

Maa Tara Ferrotech Pvt. Ltd., Lal Baba Complex Foundry Road, Burmamines, Jamshedpur, Purba Singhbhum, JH 831007.

… Corporate Debtor

Mr. Anish Agarwal, Resolution Professional of Maa Tara Ferrotech Pvt. Ltd.

… Applicant

Order reserved on: 18/01/2021

Order pronounced on: /01/2021

Coram: Shri Rajasekhar V.K. : Member (Judicial)
Shri Harish Chander Suri : Member (Technical)

Appearances (through video conferencing):

1. **Mr. Rajashree Bhowmick, Advocate] For the RP**
2. **Mr. Siddhanth Makkar, Advocate]**

1. **Mr. Avishek Guha, Advocate] For the CoC**
2. **Ms. Kasturi Dasgupta, Advocate]**

ORDER

Per Harish Chander Suri, Member (T):

1. This court convened *via* video conferencing.

2. This is an application under section 33(2) of the Insolvency and Bankruptcy Code, 2016, filed by the Resolution professional upon the instructions of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, *viz.,* Maa Tara Ferrotech Pvt. Ltd. [CIN: U27205JH2012PTC000812], on the ground that since the Corporate Debtor herein shares its boundaries with a sister concern namely Maa Tara Ispat Industries Pvt. Ltd. which is already in Liquidation, the Corporate Debtor herein Maa Tara Ferrotech Pvt. Ltd. having common boundaries shall also be taken into Liquidation for the purposes of convenience and effective recovery to the CoC.

3. This Adjudicating Authority *vide* its order dated **13.03.2020** on a Petition filed by Vaishno Engineer System Associates *(operational creditor)* under section 9 of the Insolvency and Bankruptcy Code, 2016 directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed **Mr. Sandip Kumar Kejriwal** as Interim Resolution Professional.

4. Pursuant to the CIRP order public announcement was made on 19.03.2020 by the IRP in terms of section 15 of the Code, in The Avenue Mail (English) of Jamshedpur Edition and Sanmarg (Hindi) of Ranchi Edition of the said newspapers.

5. The Committee of Creditors (CoC) was duly constituted on 18.06.2020 on the basis of the claims received from all the creditors with a total admitted claim of Rs.14,50,00,000/- (Rupees Fourteen Crore Fifty Lakh Only) and the Report certifying the constitution of the CoC was filed with the Adjudicating Authority.

6. The first meeting of the CoC was held on 24.06.2020 through video conferencing, when the IRP apprised the CoC that pursuant to the publication of public announcement made on 19.03.2020, the IRP has received only 1 claim i.e. from a Financial Creditor namely Bank of Baroda. Further in the same meeting the CoC proposed to change the IRP with Mr. Anish Agarwal. Thereafter, on the basis of an application filed under section 22(3)(b) this Adjudicating Authority passed an order dated 31.08.2020 to effect the appointment of Mr. Anish Agarwal, having registration no. IBBI/IPA-001/IP-P01497/2018-2019/12256 as the Resolution Professional in the matter of Maa Tara Ferrotech Pvt. Ltd.

7. The applicant RP herein Mr. Anish Agarwal called for the second CoC meeting to be held on 15.09.2020 via video conferencing and in the said meeting apprised the members of CoC that pursuant to his appointment he has taken various actions as prescribed under the IBC for fulfilling his duties as RP and intimation letters to all the Ex-Directors of the Corporate Debtor, banks having accounts in the name of the Corporate Debtor to freeze the debit transactions, to replace the authorized signatory and to statutory authorities such as Tax department, Registrar of Companies, Labour department, Provident Fund Department etc. for submitting their claims.

8. Since his appointment, the applicant RP has received another claim from an Operational Creditor namely Assistant Commissioner – CGST & CE Division – II, Jamshedpur and the said claim has been admitted by the RP. The RP further apprised the CoC that efforts have been made by the team of the RP to call for quotations of valuers and transaction auditors and other professionals to make appointments as required under the Code. After discussions, the Valuers were also appointed. Further, an agenda for publication of Form G – Invitation for expression of interest was also proposed in the said meeting. It was noted that the Corporate Debtor herein

shares boundaries with a sister concern namely Maa Tara Ispat Industries Private Limited which is already in Liquidation and the applicant RP is the appointed Liquidator of the sister concern. The RP further apprised the CoC that he was also appointed as the RP in the matter of Maa Tara Ispat Industries Pvt. Ltd. wherein no resolution plan was received and hence it was taken into Liquidation. CoC members were of the view that chances of getting a resolution plan herein was also bleak and proposed for Liquidation The decision to publish Form G was rejected with100% votes.

9. RP informed the CoC that Forensic audit is required to be conducted for identifying the transactions under section 43, 45, 49 and 50 of the IBC, since there is a possibility of avoidable transaction and it is the duty of the RP to identify the same. The CoC decided that since there are no transactions in the accounts it will not be a good idea to go for forensic audit and also no documents and records of books of accounts are available except for that of prior to 2017. Thus, CoC with 100% votes rejected the decision to go for transaction audit. The RP also informed the CoC of the key expenses that will form part of CIRP cost and the CoC took note of it.

10. The members of the CoC after due deliberation concluded that the Liquidation process of the Corporate Debtor should be initiated due to bleak chances of revival of the Corporate Debtor. Further, a sister concern having common boundaries is already under liquidation, it will be effective to sell the assets together that too under the same Liquidator. In the said meeting Mr. Anish Agarwal is appointed as the Liquidator in the matter of Liquidation Process of the Corporate Debtor Maa Tara Ferrotech Private Limited and his remuneration is fixed as per Regulation 4 of IBBI (Liquidation Process) Regulations 2016 and that out of pocket expenses shall be payable on actuals to be recovered from liquidation estate. The said resolution has approved by the CoC in e-voting with 100% votes.

11. The Applicant/Resolution Professional, **CA Anish Agrawal** [Reg. No.IBBI/IPA-001/IP-P01497/2018-19/12256], has agreed to act as liquidator to carry on the process of liquidation and given his consent dated 29th October, 2020, in the prescribed Form AA, in terms of section 34(1) of the Code.

12. We have considered the submissions made by the Applicant/RP in person and perused the record.

13. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating authority of the decision of the CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 100% voting share to liquidate the Corporate Debtor, and this application has been made pursuant thereto.

14. This Bench, therefore, hereby orders as follows: -

a. **IA No.1167/KB/2020** filed by Mr Anish Agarwal, RP of **Maa Tara Ferrotech Pvt. Ltd.,** the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;

b. **Mr. Anish Agrawal,** [Reg. No. IBBI/ IPA-001/ IP-P01497/ 2018-19/12256/2017-18/10183], of 605A, R.S. Tower, Circular Road, Lalpur, Ranchi 834001, Email Id: ip.cispl@gmail.com, the Applicant/RP herein, is hereby appointed as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.

c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, stating that the Corporate Debtor is in liquidation.

e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.

f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

g. On initiation of the liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.

h. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.

15. The application bearing **IA (IB) No. 1167/KB/2020** shall stand disposed of in accordance with the above direction.

16. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

17. Certified Copy of this order be issued, if applied for, upon compliance of all requisite formalities.

18. List the main **CP (IB) No. 836/KB/2018** for periodical Report on **27/04/2021.**

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Order signed on January, 2021.

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