

NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
SPECIAL BENCH, COURT-II

C.A. 1320/C-II/ND/2019

IN

Company Petition No. (IB)-43(ND)/2019

IN THE MATTER OF:

M/s. TDT Copper Limited

...Operational Creditor

Versus

M/s Ujala Pumps Private Limited

...Corporate Debtor

AND IN THE MATTER OF:

Dinesh Sood

M/s. Ujala Pumps Private Limited

Media Society Plot No. 18-A, Sector 7, Dwarka

New Delhi – 110024

...Resolution Professional/Applicant

Versus

1. Mr. V.P. Gupta

Suspended Director of M/s. Ujala Pumps Private Limited

C-127 Preet Vihar, Delhi-110092

...Respondent No.1

2. Mr. Dinesh Gupta

Suspended Director of M/s Ujala Pumps Private Limited

C-127, Preet Vihar Delhi-110092

...Respondent No.2

Order Delivered on: 02.01.2020

Section: 33(1)(a) and 33(2) of the IBC, 2016.

CORAM:

CHD. MOHD SHARIEF TARIQ, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. I.P.S Oberoi & Mr. T.P. Singh Advocates
For the Respondent : None

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

This is an application filed by Sh. Dinesh Sood, the Resolution Professional of M/s Ujala Pumps Private Limited under Sections 33(1)(a) and 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for seeking the following main reliefs :

- "(i) Allow the present application for liquidation of the Corporate Debtor and pass orders for its liquidation under Section 33(1)(a) and 33(2) of Insolvency and Bankruptcy Code, 2016.*
- "(ii) Relieve the Applicant Dinesh Sood from the present assignment as Resolution Professional of the CD on passing the liquidation order.*
- "(iii) Appoint the applicant Dinesh Sood, an Insolvency Professional, IBBI Registration No. IBBI/IPA-002/IP-N00046/2016-17/10091 as the Liquidator."*

2. Facts of the case in brief are that the Operational Creditor, TDT Copper Limited filed an application bearing No. IB-43/(ND)/2018 under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s. Ujala Pumps Private



Limited. The said application was admitted by this Tribunal vide Order dated 10.10.2018 and Mr. Ashish Kumar Batta was appointed as Interim Resolution Professional (IRP).

3. In terms of the Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a Public Announcement in Form-A on 15.11.2018. The Public Announcement was also uploaded on the website of Insolvency and Bankruptcy Board of India (IBBI).

4. The Interim Resolution Professional constituted a Committee of Creditors (CoC), which comprised of two Banks namely, Union Bank of India and Corporation Bank, having voting shares of 79.51% and 20.49% respectively. The first meeting of the CoC was held on 14.12.2018 wherein Union Bank of India, one of the CoC Members proposed the name of Sh. Dinesh Sood having Registration No. IBBI/IPA-002/IP-N0046/2016-17/10091 as Resolution Professional (RP), which was approved by the CoC with 100% votes.

5. That on an application filed by the CoC, this Tribunal vide its Order dated 30.01.2019 had confirmed the appointment of Sh. Dinesh Sood as RP.



6. It is submitted by the Ld. RP that:

“22. Consequent upon publishing of Form-G in Indian Express and Jansatta (Hindi) Delhi editions newspapers on 17.04.2019, three prospective Resolution Applicants (PRAs) namely M/s. Kusumesh Steel Private Limited, M/s. Technopack Industries and M/s Prudent ARC Limited submitted their Expressions of Interest. Provisional list of PRAs was shared with all three PRAs. Copies of the RFRP, Information Memorandum (IM) and Evaluation Matrix were provided to all the three prospective RAs.....”

“23 Only two Resolution plans were received, one from M/s. Kusumesh Steel Private Limited and the other from M/s. Technopack Industries by the last date of receipt of resolution plans being 11.06.2019. However, both the Resolution Applicants had failed to provide EMD and some salient details were also missing in their plans. Accordingly, in the 5th CoC meeting held on 03.07.2019. The Applicant/RP informed the committee about the receipt of two resolution plans as above and stated certain details were lacking in the plans and the same have been called for from the RAs.”

“31. The 9th meeting of the COC was held on 07.09.2019 in which the applicant/RP informed that both the resolution plan as received were not compliant with the terms and conditions mentioned in the RFRP. The shortcomings and discrepancies had been communicated to both the RAs and despite reminders they had not complied with the terms and conditions of the RFRP, notably non deposit of earnest money deposit of Rs. 1,50,00,000/-. Therefore, the plans are not being placed before the committee. Consequently,



Page 4 of 8

the committee was of the view that as no resolution plan is being placed before it, liquidation of the Corporate Debtor is the only available option for which another meeting may be held tentatively around 20.09.2019.”

7. It is further submitted by the RP that he had informed both the Resolution Applicants (RAs) that their resolution plans were not in compliance with the terms of the RFRP and he had given another opportunity to both the RAs to provide EMD and revise their Resolution Plans.

8. It is stated by the Resolution Professional that out of the two Resolution Applicants, while M/s. Kusumesh Steels Pvt. Ltd. submitted the revised Resolution Plan, the other Resolution Applicant failed to submit the same.

9. It is submitted by the RP that he had placed the Resolution Plan submitted by M/s. Kusumesh Steel Pvt. Ltd. before the CoC in its 11th Meeting held on 25.09.2019 for approval. However, the said Resolution Plan was not approved by the CoC and its minutes recorded the following :

“RESOLVED THAT the approval of the committee be and is hereby accorded for the approval of the Resolution Plan submitted by M/s. Kusumesh Steel Pvt. Ltd.



RP informed the Committee that in case the aforesaid Resolution Plan submitted by M/s. Kusumesh Steel Pvt. Ltd., the resolution applicant, is not approved in e-voting with requisite majority of 66%, then the CD shall be required to be liquidated in terms of Section 33(2) of IBC 2016. RP being eligible offered his services to be appointed as liquidator in the present case of Ujala Pumps Pvt. Ltd., if the company is to be liquidated as above.”

10. That the RP has also filed his written consent to act as Liquidator as required under Section 34(1) of IBC 2016.

11. In the circumstances, there being no resolution plan approved by the CoC to manage the affairs of the company or their being no other alternative, this Bench is inclined to order Liquidation of the Corporate Debtor.

12. In sequel to the above, the Application is allowed, ordering Liquidation of the Corporate Debtor, M/s. Ujala Pumps Private Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant Rules and Regulations along with the following directions:

- a. Mr. Dinesh Sood, IBBI Registration No. IBBI/IPA-002/IP-N00046/2016-17/10091, is appointed as Liquidator, who



has given his written consent to act as Liquidator in terms of Section 34 (1) of IBC 2016

- 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 Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- d. This order shall be 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;
- e. Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued and preferential transactions etc., if any.
- f. 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.
- g. The Registry is directed to communicate a copy of the Order to the Operational Creditor, the Corporate Debtor



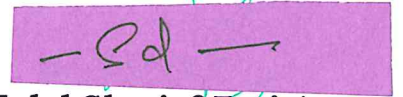
and Liquidator at the earliest but not later than seven days from today. A copy of this Order be also sent to the ROC for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT.

- h. 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;

13. C.A.-1320/C-II/ND/2019 filed in IB-43(ND)/2018 is disposed-off in the aforesaid terms.



(L. N. Gupta)
Member (T)



(Chd. Mohd Sharief Tariq)
Member (J)