NATIONAL COMPANY LAW TRIBUNAL

COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 40

MA 2987/2019
MA 3202/2019
MA 3299/2019
In
C.P.(IB)1669(MB)/2018

CORAM:

SH. PRABHAT KUMAR — **JUSTICE VIRENDRASINGH BISHT (Retd.)**
HON'BLE MEMBER (TECHNICAL) — **HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF THE HEARING ON **23.11.2023**

NAME OF THE PARTIES: TRIMURTI SERVICE
V/s
VIPUL-S PLASTOCRAFTS PVT LTD

Section 60(5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

1. Ms. Nupur Shah i/b Mr. Amir Arsiwala, Ld. Counsel for the Applicant present. Mr. Rohit Gupta, Ld. Counsel in IA 2987/2019. Mr. Kunal Kanungo, Ld. Counsel for CoC present and seeks time to file Vakalatnama on record.

MA 3299/2019

1. The above application I.A. No. 3299/2019 is filed by Ms. Jovita Reema Mathias, seeking liquidation of Vipul S-Plastocrafts Private Limited (hereinafter referred to as the "Corporate Debtor") under Section 33 (1) of the Insolvency and Code, 2016 (hereinafter called as "the Code").

2. The brief facts of the application are as follows:

   i. The Applicant mentions that this Tribunal vide its order dated 11.03.2019 in Company Petition No. 1669/IBC/MB/2018 admitted the petition under Section 9 of the Code, filed by Trimurti Services (hereinafter referred to as the "Operational Creditor") and Corporate Insolvency Resolution Process (hereinafter referred to as the "CIRP") was initiated against the Corporate Debtor. Ms. Jovita Reema Mathias, was appointed as the Interim Resolution Professional of the Corporate Debtor by this Tribunal.

   ii. Ld. Counsel for the Applicant submits that pursuant to the publication on 15.03.2019, the Applicant informed the CoC that she had received Expression of Interest (EOIs) from the prospective resolution applicants. It was also informed the members of the CoC that prima-facie, both resolution applicants are compliant with the provisions of Section 29A of the Code. However, neither of them appear to be complying with the eligibility criteria set by the CoC under Section 25(2)(h)n of the IBC.

   iii. The Applicant in the 4th CoC meeting held on 04.09.2019, informed the members of CoC that the CIRP period as specified u/s 12 of the Code was set to expire on 06.09.2019 Therefore, the Applicant urged the members of the COC to resolve to make an application for the extension of the CIRP period under section 12 of the IBC by 90 days so that the resolution plan which was received would be considered. However, this resolution for extension of the CIRP period by a further period of 90 days could only gather 62.60% of the voting share of the COC as against the 66% required.

iv. Since, the COC neither approve a resolution plan within the CIRP period specified in section 12 of the IBC, nor could resolve to extend the initial CIRP period of 180 days, the Corporate Debtor is liable to be liquidated under the provisions of section 33 (1) (a) of the IBC.

v. The Applicant has been running the affairs of the Corporate Debtor as a going concern. Throughout the CIRP period, the Applicant has kept the business of the Corporate Debtor operational. In fact, during this period, the Corporate Debtor has even made a modest profit. Therefore, it would be in the best interests of the Corporate Debtor to be liquidated as a going concern.

vi. The Applicant further submits that she is not in a position to continue as the liquidator of the Corporate Debtor, due to other pre-existing assignments. Accordingly, the Applicant is not giving her consent to act as the liquidator of the Corporate Debtor. Therefore, the Applicant humbly prays that this Hon'ble Tribunal be pleased to appoint a liquidator in accordance with section 34 (4) of the IBC.

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, this bench is of the opinion that the Corporate Debtor is required to be liquidated in the manner as laid down in the IBC 2016.

ORDER

1. The above I.A. No. 3299/2019 is allowed and the Corporate Debtor "**Vipul S-Plastrocrafts Private Limited"** is ordered to be liquidated as a going concern for the first attempt and if it fails, then sale by other methods should be tried.

    a. This Bench appoints Mr. Rakesh Kumar Tulsyan, having Registration No. IBBI/IPA-001/IP-P01144/20I9-2020/12481, email-tulsyanrk@gmail.com is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.

    b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.

    c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

    d. The Liquidator appointed under section 34(1) of the Code. All 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.

    e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.

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

    g. That on having liquidation process initiated, 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.

h. This liquidation order u/s 33(7) 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. The liquidator shall be at liberty to pursue pending the Interlocutory Application pertaining to avoidance transactions, if any.

With the above directions, the I.A. No.3299/2019 filed u/s 33 (1) by the applicant is hereby allowed and disposed of.

MA 2987/2019
MA 3202/2019

With the mutual consent of both the sides, list this matter on 07.12.2023.

Sd/-	**Sd/-**
PRABHAT KUMAR **MEMBER (TECHNICAL)**	**JUSTICE VIRENDRASINGH BISHT** **MEMBER (JUDICIAL)**

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