

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CP (IB) No.1370/KB/2018

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;
And

In the Matter of:

Bank of Baroda, Brabourne Road Branch, 4, Brabourne Road, Kolkata - 700
001

.....Financial Creditor

Vs.

Shri Badrinarain Alloys & Steels Ltd., Tulsiberia Road, Kulgachia, P.O.
Mahisrekha, Howrah - 711 303

..... Corporate Debtor

Order Delivered on 6th September 2019

Coram:

Madan B Gosavi, Member (J)

Virendra Jumar Gupta, Member (T)

For the Resolution Professional : 1. Ms. Swapna Choubey, Advocate
2. Mr. Dripto Majumdar, Advocate
3. Mr. Subodh Kumar Agarwal, R.P.

For the Employees : Mr. J. Patnaik, Advocate

For Damodar Valley Corporation
(DVC) : 1. Mr. S.N. Mookherjee, Advocate
2. Mr. Prasun Mukherjee, Advocate
3. Mr. Deepak Agarwal, Advocate

ORDER

Madan B. Gosavi, Hon'ble Member (Judicial)

Bank of Baroda (Financial Creditor) has filed this application under Sec.7

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of the Insolvency & Bankruptcy Code, 2016 against Shri Badrinarain Alloys & Steels Ltd. (Corporate Debtor) to start corporate insolvency resolution process (CIRP) of the corporate debtor as the corporate debtor committed default in paying financial debt of Rs.85,39,37,792/-.

2. This authority vide order dated 5/10/2018 admitted the corporate debtor in CIRP one Shri Subodh Kumar Agarwal having registration No.IBBI/IPA-001/IP-P00087/2017-18/10183 is appointed as the IRP.

3. On 6/12/2017 the IRP made public announcement of CIRP of the corporate debtor by publishing notice in Bengali Daily Newspaper "Bartaman" and in English Daily Newspaper "Times of India". He thereby called upon of the creditors of the corporate debtor to submit their claims with proof.

4. It is seen from the record that pursuant to the public announcement, IRP received claims from 8 (eight) financial creditors and claims from 58 (fifty eight) operational and other creditors including workmen and employees of the corporate debtor. IRP formed CoC consists of 7 financial creditors and allotted them percentage of voting based on their claim amount. It is as follows:-

1. Bank of Baroda	21.38%
2. Allahabad Bank	17.96%
3. Union Bank of India	13.68%
4. Oriental Bank of Commerce	9.26%
5. Central Bank of India	7.28%
6. Phoenix ARC	12.58%

(Assignee of debt from Andhra Bank and Indian Overseas Bank)

5. One of the financial creditor named Indian Financial Journals Pvt. Ltd. was kept out of CoC because it is a related party to the corporate debtor [Sec.21(2) of IBC]. CoC in its meeting held on 2/1/2019 confirmed the appointment of IRP as the RP and instructed him to proceed with the CIRP as

per Rules. The RP then collected information of assets of the corporate debtor. He prepared information memorandum. On 8/1/2019 the CoC directed him to publish notice calling upon expression of interest/resolution plan from prospective resolution applicants.

6. We note that it was expected from the CoC and RP to immediately make a public advertisement calling for resolution plan but material on record reveals that such notice was published for the first time on 6/6/2019 i.e. after the period of 182 days from the date of admission of corporate debtor in CIRP. Last date of submission of EOI (and not even the resolution plan) was 20/8/2018. In the mean time, this authority extended CIRP period for further 90 days as per request of the RP and the CoC.

7. It is further seen from the record that the RP received resolution plan from three applicants - (1) Orissa Metalics Pvt. Ltd., (2) RAIC Integrated Sponge & Power P. Ltd. (3) Sabrang Steels Pvt. Ltd. The CoC considered all three plans in its meeting dated 26/8/2019. Minutes of the meeting are produced before us for our perusal by the RP with his 11th Progres Report.

8. We have gone through the same very minutely. Item No.1 before the CoC meeting was about approval of resolution plan submitted by RAIC Integrated Sponge & Power P. Ltd. the CoC passed the following resolution:-

“Resolved that the Resolution Plan submitted by resolution applicant “M/s RAIC Integrated Sponge & Power P. Ltd.” is be and hereby approved by the members of the Committee of Creditors of Shri Badrinarain Alloys & Steels Ltd.”

However, we cannot gather anything from the Resolution Professional's Report, whether this plan was ever put for voting before the CoC? Whether it was approved by CoC more than 66% votes as required under the law?

R.P., Shri Subodh Kumar Agarwal did not make this fact clear in his

report. Moreover, that resolution plan is not submitted before us for our approval under Sec.30 (2) of the IBC. On perusal of record it further create confusion as Item No.3 before CoC was about selling the corporate debtor as a going concern and the CoC passed the following resolution:-

“Resolved that members of Committee of Creditors of Shri Badrinarain Alloys & Steels Ltd. hereby recommend to sale the Corporate Debtor as a going concern as per regulation 32(e) of IBBI (Liquidation Process) Regulations, 2016, as required under Regulation 39C(3) of CIRP Regulation and the entire assets and liabilities may be sold as one group.”

9. From above record, we draw inference that CoC did not approve any resolution plan submitted for the corporate debtor. The record produced before us is not clear on this particular aspect. But, since no resolution plan submitted for our approval and as CIRP 270 days period completed, we left with no option but to pass order of liquidation of the corporate debtor.

10. Having regard to overall circumstances of the case, we are of the view that in place of present RP, new person may be appointed as liquidator. Hence, we replace the RP by appointing Shri Shashi Agarwal, Practising Chartered Accountant the Resolution Professional having No.IBBI/IPA-001/IP-P00470/2017-18/10813 as the liquidator as per provision of Sec.33(4) of IBC. It appears from the record that the corporate debtor is a going concern hence, we direct the Liquidator to liquidate the corporate debtor as a going concern only. With this we proceed to pass the following order: -

ORDER

- i. The application filed by the Financial Creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate

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Insolvency Resolution Process against the Corporate Debtor, Shri Badrinarain Alloys & Steels Ltd. is hereby admitted in process of liquidation.

- ii. Shri Shashi Agarwal, Practising Chartered Accountant, having Registration No.IBBI/IPA-001/IP-P00470/2017-18/10813 is appointed as the liquidator in CP (IB) No. 1327/KB/2019.
- iii. Shri Shashi Agarwa is directed to issue public announcement stating that the Corporate Debtor is in liquidation, in one of the leading English newspaper as well as in one vernacular newspaper having wide circulation where the registered office of the corporate debtor is situated as per Section 33(1) (b) (ii) of the Code read with Reg. 12 (1) of IBBI (Liquidation Process) Regulations, 2016.
- iv. The Registry is directed to communicate this order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi.
- v. The Order of Moratorium passed under Section 14 of the I&B Code, 2016 shall cease to have effects and a fresh moratorium under Section 33 (5) shall commence.
- vi. This order is deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33 (7) of I&B Code, 2016.
- vii. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of the Insolvency and Bankruptcy Code, 2016.
- viii. Upon proceeding with the liquidation, the Liquidator shall file a preliminary report as per regulation 5 read with Reg.13 of the IBBI (Liquidation) Regulations, 2016 at the registry within 75 days from

the liquidation commencement date and continue to file progress reports as per Reg.15(1) within 15 days after the end of the quarter in which he is appointed.

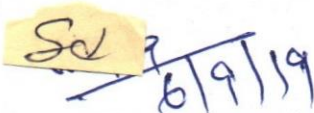
ix. The fee payable to the Liquidator shall form part of the liquidation cost as provided under Reg. 4(1) of the IBBI (Liquidation Process) Regulations, 2016.


11. The CP (IB) No.1370/KB/2018 is disposed of accordingly.

12. Copy of this order is to be sent to the Liquidator, RP, Financial Creditor and the Corporate Debtor by Speed Post as well as by email for information and for taking necessary steps.

13. List the matter on 21/11/2019 for submission of report by the Liquidator.

14. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


(Virendra Kumar Gupta)
Member (T)


(Madan B. Gosavi)
Member (J)

Signed on 6th September 2019