



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-V)
IA-873/ND/2022
IN
Company Petition No. (IB)-112 (ND)2021

IN THE MATTER OF:

Fidus Finance Private Limited

...Operational Creditor

Versus

IIC Limited

...Corporate Debtor

IN THE MATTER OF:

Pramod Kumar Gupta
Resolution Professional
For IIC Limited
90/A-207, Khasra No. 412,
Ground Floor, Mahipalpur Extension.
New Delhi – 110037

...Applicant/Resolution Professional

Order Delivered on: 08.09.2022

Under Section: 33(2) of the IBC, 2016.

CORAM:

SH. P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Abhishek Anand and Mr.
Prateek Kushwaha, Advs.

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ORDER

PER SHRI RAHUL BHATNAGAR, MEMBER (T)

This IA has been filed by Mr. Pramod Kumar Gupta, the Resolution Professional of IIC Limited (**“the Applicant”**) under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, seeking the following main reliefs:

- a) Allow the present applicant,
- b) Pass an order under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 to liquidate the Corporate Debtor.
- c) Consequentially, pass an order for appointment of Applicant i.e., Mr. Pramod Kumar Gupta having Registration Number IBBI/IPA-001/IP-P013629/2018-19/12075 as the Liquidator of the Corporate Debtor for conducting the Liquidation of the Corporate Debtor.
- d) Pass such other or further order/order(s) as may deemed fit and proper in the facts and circumstances of the instant case.

2. Facts of the case in brief are that the Operational Creditor, M/s Fidus Finance Pvt. Ltd. had filed an Application bearing No. (IB)-112/(ND)/2021 under Section 9 of the IBC, 2016 for initiating the Corporate Insolvency Resolution Process (CIRP) against M/s IIC Limited. The said Application was admitted by this Tribunal vide Order dated 20.09.2021 and Mr. Pramod Kumar Gupta was appointed as the 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 the Form-A on 26.09.2021, the last date for submission of claim was 03.10.2021. The said public announcement was also uploaded on the website of the Insolvency and Bankruptcy Board of India (IBBI).

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4. It is stated by the Applicant that in terms of Section 18 and 25 on 27.09.2021 he visited the registered office of the corporate debtor to take custody and ownership of Assets. Further On 27.09.2021 also intimated the ROC and Suspended Board of Directors of the Corporate Debtor through email and Speed Post about initiation of CIRP.

5. The applicant stated that claims had been received from the Financial Creditors in Form- C as stipulated in Regulation 8 of the CIRP Regulations, 2016. Thereafter the Applicant constituted the Committee of Creditors (CoC) in terms of Section 21 of the Code comprising of two Financial Creditor i.e., Ceres Infrastructure Development Private Limited and Fidus Finance Limited. It is was further stated by him that no other claims were received by the Applicant.

6. Thereafter, in compliance of Regulation 17(1) of CIRP Regulations, 2016, on 11.10.2021, the Applicant filed a report bearing I.A. No. 4954 of 2021 before this Hon'ble Adjudicating Authority – certifying the constitution of CoC. That vide order dated 01.11.2021, the said report was taken on record.

7. The Applicant further stated that in compliance of Section 22(1) of the code read with Regulation 17(2) of the CIRP Regulation, 2016 the Applicant conducted the First Meeting of CoC on 18.10.2021. During the said meeting, the CoC with 100% voting share resolved to appoint the Interim Resolution Professional (IRP) as Resolution Professional. Further the Applicant apprised the COC that the Corporate Debtor is paying rent for the Registered office and there are no ongoing operations in the said office. Hence to save the CIRP costs, the applicant proposed to change/shift the Registered office at some smaller place in Delhi. After discussion and deliberations, with a view to save rental cost of the Corporate Debtor, the CoC approved the agenda with 100% voting share as follows:

“RESOLVED THAT pursuant to Section 28(1)(g) of the



IBC, 2016 change of registered office of IIC Limited at any other place in Delhi to save the cost is to and be hereby approved by the CoC members.”

In the aforesaid terms, the Registered office of the Corporate Debtor was shifted from 432-E, F/F, Devli Village, North West Delhi, DL- 110052 to 854-A, Gali No.51, Block, Molarband Extn. Badarpur, New Delhi, DL – 110044 w.e.f. 27.10.2021. The copy of the minutes of the COC meeting convened on 18.01.2022 is annexed.

8. It is submitted that in compliance to Regulation 27(1) of CIRP Regulation, 2016, the applicant with 100% voting share of COC appointed two registered valuers i.e. Mr. Ankit Goel and Ms. Ashlesha for determining fair value and liquidation value of the Corporate Debtor.
9. The Second COC meeting was conducted on 22.11.2021. The Applicant apprised the CoC regarding the claim received from Voltas Limited, one of the Operational Creditor of the IIC Limited and sated that there are certain discrepancies in Form B. Thereafter, on 19.11.2021 emailed Voltas Limited to amend and resubmit the Form B. the fresh Form B was submitted by Voltas on 22.11.2021. The applicant also apprised the CoC regarding the change in registered office w.e.f. 27.10.2021 at a monthly rent of Rs. 3500/-, the same was approved by COC by 100% voting share.
10. Further, during the second CoC meeting, the Applicant with the approval of CoC appointed the following professionals.
- TVSJ & Co. as the Statutory Auditor for a fee of Rs. 50,000/- for the entire CIRP period.
 - Mr. Vikas Verma & Associates as the Company Secretary for Rs. 20,000/- plus GST (for all related compliance prior to the CIRP date during CIRP.)
11. It is submitted by the Applicant that after discussion and deliberation, the CoC with 100% voting share approved the draft for

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Invitation for EOI, Form G, RFRP and Evaluation Matrix as placed before the CoC. The CoC resolved as follows:

“RESOLVED THAT pursuant to Regulation 36A, 36B and 39(3)(a) of CIRP Regulations, draft of invitation for Expression of Interest, Form G, Request for Resolution Plan and Evaluation Matrix (Plan Documents) as placed before the members of committee, be and are hereby approved.

Resolved further that Resolution Professional be and is hereby authorised to do all such acts, deeds and things as may be required necessary or incidental thereto.”

Accordingly, in terms of Regulation 36A(1) of the CIRP Regulations, 2016, the Resolution Professional published the Invitation for EOI (FORM-G) in Pioneer (Hindi & English) in Delhi NCR on 24.11.2021. The said Form - G prescribed the last date for submission of EOI as 09.12.2021. Further the Resolution Professional also prepared the Information Memorandum, Request for Resolution Plan (RFRP), and Evaluation matrix. Copy of the aforesaid documents have been placed on record and annexed.

12. It is added that pursuant to the publication of Form G, the Applicant received two Expression of Interest, which were duly scrutinized. Further after all due diligence and in compliance with Regulation 36A(10) of CIRP Regulation, 2016 the Applicant prepared a provisional list of PRAs, which is as follows:

- a) One City Infrastructure Private Limited
- b) Kundan Care Products Limited.

13. It is further submitted that on 21.12.2021, the Applicant shared a copy of information memorandum, RFRP and Evaluation Matrix with the PRAs. Also prepared the final list of PRAs (Prospective Resolution Applicant), comprising of the two PRAs being One City Infrastructure Private Limited and Kundan Care Products Limited. The final list was shared with the CoC members and with PRAs on 28.12.2021.

14. It is added that the applicant had filed an application under Section 22(3) IBC before the adjudicating authority having no.

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IA/5711/2021 with a prayer to confirm Mr. Pramod Kumar IRP as RP. The said application was allowed vide order dated 10.01.2022.

15. The Third CoC meeting was convened on 08.02.2022, wherein the Applicant informed the members of CoC about the status of claims received from Operational Creditor. Also apprised the CoC that in spite of receiving Expression of Interest from two PRAs, no resolution plan was received for revival of Corporate Debtor. Thereafter the applicant proposed to re publish the fresh Form-G to explore more possibilities for revival of Corporate Debtor. The said proposal was denied by the CoC and they expressed their opinion to proceed with Liquidation upon realizing the impossibility of resolution of the Corporate Debtor and decided to move this Authority an Application under Section 33(2) of IBC 2016.

16. It is averred by the Applicant that subsequently, in the Third meeting of the CoC held on 08.02.2022, the following resolution was put to vote before the CoC:

A. Liquidation of IIC Limited - As per Item No. D of Part 2

After deliberations on this Agenda Item the following Resolution was passed with 100% voting share:

"RESOLVED THAT pursuant to Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 the decision of Committee of Creditors to go for Liquidation of IIC Limited is be and hereby approved.

RESOLVED FURTHER THAT Resolution Professional be and is hereby authorized to file applications for liquidation before Hon'ble NCLT and to initiate/ take all necessary steps/ actions in this regard."

B. Consent of RP, Pramod Kumar Gupta to Act as Liquidator *After deliberations on Item No. E the said item was approved with 100% voting share and the following Resolution was passed:*

"RESOLVED THAT approval of the members of the committee of creditors is hereby accorded for appointment of Mr. Pramod Kumar Gupta, an Insolvency Professional (Registration No.

IBBI/IPA001/IP-P01329/2018-2019/12075) as the Liquidator in the matter of IIC Limited.

RESOLVED FURTHER THAT Resolution Professional be and is hereby authorized to file applications for liquidation before Hon'ble NCLT and to initiate/take all necessary steps/actions in this regard"

C. Liquidation cost and contribution of creditors for meeting the liquidation cost (Reg. 39B)

After deliberations on Item No. F, the said item was approved with 100% voting share and the following Resolution was passed:

RESOLVED THAT in terms of Regulation 39B (1) of Insolvency and Bankruptcy Board of India Insolvency Resolution Process for Corporate Persons) Regulations, 2016, following cost items Identified so far may be included in the anticipated liquidation costs:

| Anticipated Liquidation cost for first six months | | |
|---|--|------------------|
| Sr.No | Items to be included in the liquidation cost | Rs. |
| 1 | Unpaid CIRP costs | 606,506 |
| 2 | Public Announcement | 7,392 |
| 3 | Liquidator's fees (50,000*6) | 300,000 |
| 4 | Public announcement to stakeholders u/reg. 31(2) | 6,000 |
| 5 | Public announcement for auction (expected twice) | 11,800 |
| 6 | Secretarial Compliances | 100,000 |
| 7 | Auditor for preparation and audit of Balance Sheet | 100,000 |
| 8 | ITR for assessment years | 50,000 |
| 9 | Legal opinions & consultations (50,000 6) | 300,000 |
| 10 | Two Registered Valuers | 200,000 |
| 11 | Auction | 15,000 |
| | Miscellaneous | 100,000 |
| | Total | 1,796,698 |

RESOLVED FURTHER THAT all Financial Creditors shall contribute towards liquidation costs as and when the need

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arises in proportion to their respective voting shares/amount of claims admitted under liquidation.

RESOLVED FURTHER THAT Resolution Professional be and is hereby authorized to file applications for liquidation before Hon'ble NCLT and to initiate/take all necessary steps/actions in this regard"

D. Sale of Corporate Debtor as Going Concern (Reg. 39C)

After deliberations on Item No G, the said item was approved with 100% voting share and the following Resolution was passed:

"RESOLVED THAT, pursuant to Section 39C (1) of IBC, 2016, approval of the members of the committee of creditors is hereby accorded for not selling IIC Limited as going concern.

RESOLVED FURTHER THAT Resolution Professional be and is hereby authorized to file applications for liquidation before Hon'ble NCLT and to initiate/take all necessary steps/actions in this regard."

E. Fee of Liquidator (Reg. 39D)

After deliberations on Item No. H the said item was approved with 100% voting share and the following Resolution was passed:

"RESOLVED THAT pursuant to Regulation 39D of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the fees payable to proposed liquidator of IIC Limited shall be Rs. 50,000 per month is be and hereby approved."

17. It is further averred by the Applicant that the aforesaid Resolution for Liquidation along with all of the above resolutions were passed by 100% voting share of the CoC as recorded in the minutes of the 3rd CoC meeting. The members of CoC have decided in their commercial wisdom to liquidate the Corporate Debtor as the Corporate Debtor Company is not having much worth and has no business operations, as on date also that calling of EoI (Expression of Interest) shall attract cost which shall increase the CIR process cost. Accordingly, the RP was authorized to file

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appropriate Application seeking approval of NCLT for commencement of Liquidation process.

18. That the RP has also filed his 'written communication' / consent to act as Liquidator of the Corporate Debtor as required under Section 34(1) of the IBC, 2016. The consent form to act as the Liquidator in Form AA along with IBBI certificate is placed on record.

19. In the circumstances, this Bench is inclined to accept the Resolution of the COC and hereby order Liquidation of the Corporate Debtor.

20. In sequel to the above, **the IA is allowed, ordering Liquidation of the Corporate Debtor, IIC Limited** in the manner as 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. Pramod Kumar Gupta, having IBBI Registration No. IBBI registration Number (IBBI/IPA001/IP-P01329/2018-2019/12075, 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 clearly stating that the Corporate Debtor is under 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;

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- 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 (75) 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 this Order by email to the Operational Creditor, the Corporate Debtor and Liquidator Mr. Pramod Kumar Gupta at the earliest but not later than seven days from today.**
- h) A copy of this Order be sent by the Registry and Liquidator to the Registrar of Companies (RoC), NCT of Delhi & Haryana for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT within a period of 30 days;
- i) The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board (IBBI) of India for their record.

21. IA-873/ND/2022 filed in IB-112(ND)/2021 is allowed in the aforesaid terms.

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