IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

IA (IB) No. 140/CB/2022
&
IVN. (IB) No.1/CB/ 2022
in
CP (IB) No. 249/CB/2020

In the Matter of:

Interlocutory Application No.140 of 2022 is filed under the caption section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 by Mr. Pratim Bayal, Resolution professional for an order of liquidation against the corporate debtor

-And-

In the Matter of:

Intervention petition No. 1 of 2022 is filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 by Punjab National Bank sole member COC of corporate debtor to implead in I.A.No.140 of 2022 as an intervener.

In the Matter of:

Hariom Rice Mills Pvt Ltd, having its registered office at- Village & Post: Darrighat, Masturi Road Bilaspur- 495551, Chhattisgarh

...Corporate debtor

In the Matter of:

Mr. Pratim Bayal, Resolution professional of corporate debtor **Hariom Rice Mills Pvt Ltd** having his office at CK-104, Sector-2, Salt Lake City, Kolkata-700091.

...Applicant

Appearances (through video conference):

For the Applicant/RP:	:	Mr. Sutapap Mitra, Advocate.
For intervenor:	:	Mr. Saroj Kumar Prusty Advocate

Order reserved on: 19.07.2022
Order pronounced on: 03 .08.2022

Coram:

Shri P. Mohan Raj	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

O R D E R

Per P. Mohan Raj, Member, (Judicial)

1. The Application **IA (IB) No. 140/CB/2022** has been filed by Mr. Pratim Bayal, Resolution professional of corporate debtor **Hariom Rice Mills Pvt Ltd.** The corporate insolvency Resolution process (CIRP) against the corporate debtor under section 10 IBC 2016 was admitted by this Adjudicating Authority on 25.06.2021 Mr. Pratim Bayal, was appointed as an interim resolution professional, subsequently, the applicant was appointed as Resolution professional in the first COC meeting held on 09.07.2021.

2. When the petition for liquidation filed by the R.P. is pending the sole member of COC Punjab National Bank filed the intervention petition and requested to permit to make their submission before passing an order in this petition. The intervenor being sole COC member having100% voting in COC any

order to be passed in this application have direct impact upon the interest of the intervener hence the intervenor side is allowed to make their submission, to that extent only intervening petition is allowed.

3. In pursuance of CIRP order the applicant made paper publication in English daily Central Cronicle, Bhilaspur Edition and in Hindi daily NavaBharat, Bhilaspur Edition on 24.08.2021 inviting Expression of interest (EOI)and last date for submitting EOI was fixed on 18.09.2021. In response to the said newspaper publications 9 (Nine) Expression of Interest were received, then only five resolution plans were received. The corporate debtor being MSME its erstwhile management also filed resolution plan. The plans were placed before 4th COC meeting held on16.11.2021. Detailed deliberations were held in 5th -10th COC meetings held between16.11.2021 and 25.04.2022. In the mean while I.A.No.144 of 2021 was filed and by order dated 11.03.2022 obtained 90 days' time extension for completion CIRP. After 10th COC meeting the resolution plan was put for electronic vote and the plan was rejected by the CC with 100% vote. The period of 270 days of CIRP expired on 07.03.2022 When there was no other resolution plan placed before the COC for consideration the corporate debtor is liable to be liquidated.

4. In the 11th COC meeting the applicant was authorised to file petition for liquidation, however COC proposed to appoint another person as liquidator. The applicant filed this petition along with his consent to act as liquidator.

5. In this scenario on the intervenor side submitted that in the 11th COC meeting held on 30.04.2022, the intervenor with 100% voting resolved to proceed for liquidation and replacement RP. In the minutes dated 02.05.202 circulated by the applicant/RP no resolution passed by COC found. The intervenor asked the applicant/RP to once again circulate the minutes of 11th COC. In the meanwhile, intervenor received e-mails from RP on 07.06.2022 informing petition under section 33(1)(a) of IBC 2016 has been filed for liquidation instead of under section 33(2) of IBC 2016. On the intervenor side requested to appoint Mr. Shikhar Chand Jain as liquidator and made request to admit the petition for liquidation under section 33(2) of IBC and not under section 30(1)(a) of IBC 2016.The Applicant at this juncture expressed that he has no obje4ction to appoint another person as Liquidator and withdraw his consent given to act as Liquidator.

6. The application is filed for liquidation of corporate debtor, on the intervenor side even though expressed that this petition was filed by the applicant surprise to them but intervenor side also requested to pass an order of liquidation of corporate debtor, of course on different provision of law.

7. This application is filed quoting section 33(1)(a) of IBC 2016 under this provision liquidation order shall be passed if no resolution plan is submitted within the time specified under section 12 or resolution plan has been rejected by the adjudicating Authority. In this case CIRP was ordered on 09.06.2021 the 180 days period expired on 07.12.2021, then 90 days CIRP period extended till 07.03.2021 under section 12 of IBC in I.A.No.144 of 2021 by order dated 11.03.2021 i.e. after

the expiry of 90 days extension order was passed this permissible under Rule 153 of NCLT Rule 2016. No resolution plan was submitted into this Authority till the extended period of CIRP 07.03.2022, this situation covers under section 33(1)(a) IBC 2016. Another situation is when the resolution professional before confirmation of the resolution plan intimates the Adjudicating Authority of the decision of COC with 66% voting to liquidate the corporate debtor the liquidation order to be passed.

8. Before the confirmation of the resolution plan means if any resolution plan already submitted for approval is pending before the Adjudicating Authority, then during the pendency of resolution plan for approval, if the COC with 66% voting desire to pass an order of Liquidation, instead of approval of pending plan the Adjudicating Authority shall go by the decision of COC and shall pass an order of liquidation. In this case admittedly no resolution plan has been filed before this Authority hence condition set out in section 33(2) IBC 2016 is not full filled hence section 33(2) of IBC 2016 is not applicable to this petition.

9. The petition filed under section 33(1)(a) of IBC 2016 is found correct. As already stated, the intervenor/sole COC member also wants to pass an order of liquidation, the maximum period of CIRP also expired, in this situation there is no other alternative except to pass an order of liquidation. Thus I.A.No.144 of 2022 is allowed.

In the result the **Hariom Rice Mills Pvt Ltd corporate** debtor is ordered to be liquidated.

10. The applicant, Mr. Pratim Bayal, Resolution professional of corporate debtor **Hariom Rice Mills Pvt Ltd** has withdrawn his consent to act as a Liquidator, Hence liquidator proposed by the sole COC member Punjab National Bank Mr. Shikhar Chand Jain with registration No. IBBI/IBA-001/IP-P00495/2017-18/10883, having office at – First Floor, Mahavir Gaushala Complex, K.K. Road, Moudhapara, Raipur – 492001(C.G) is appointed as liquidator of corporate debtor **Hariom Rice Mills Pvt Ltd.** The liquidator also filed his consent letter in this regard.

11. The Liquidator is directed to forthwith take into his custody all the assets, Properties, sophisticated equipment tools implement, machineries, effects and actionable claims of the corporate debtor and take necessary steps to ensure preservation, protection security and maintenance of those properties as provided under section 35(1)(b) & (d) of IBC 2016.

12. The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC,2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time. Public Notice as contemplated under section 33(1) of the Code shall be issued in one morning, English daily and in one morning regional language newspapers.

13. All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel, shall cease to exist in accordance with section34(2) of the Code. These powers shall henceforth vest in the Liquidator. The personnel

of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in the Liquidation process of the Corporate Debtor.

14. 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 a 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.

15. 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 work men of the Corporate Debtor, except to the extent of the business of the Corporate Debtor continued during the liquidation process by the liquidator.

16. In terms of Section 33(1) (b) (iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Chhattisgarh, Raipur, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, Odisha, Cuttack.

17. The fee of Liquidator to be determined as provided under Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation process) Regulation 2016.

18. As per Regulation 13 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation,2016, the liquidator shall submit s preliminary

report to the Adjudicating Authority within 75 days from the liquidation commencement date providing various details/information as mentioned in the said regulation.

19. 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,

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

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD Date: 2022.08.03 16:20:31 +05'30'

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN RAJ Date: 2022.08.03 17:14:56 +05'30'

Satya Ranjan Prasad
Member (Technical)

P. Mohan Raj.
Member (Judicial)

Signed on this 3rd day of August, 2022.

Supriya-p.s-