

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 16

IA 5555/2023

In

C.P. (IB)/1802(MB)2019

CORAM:

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

ORDER SHEET OF THE HEARING ON **06.12.2023**

NAME OF THE PARTIES: STATE BANK OF INDIA

VS

AURO GOLD JEWELLERY PRIVATE LTD.

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

ORDER

IA 5555/2023

1. The Registry is directed to issue notice to the Respondent to file reply within four weeks after duly serving the copy to the other side.
2. Ld. Counsel appearing for the Applicant is directed to supply the copy of this Order to the respective authorities.
3. List this matter on **10.01.2024**.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

I.A. 4991 OF 2023

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

Mr. Avil Menezes

Resolution Professional

...Applicant

In the matter of

C.P.(IB) No. 1802/MB/2019

State Bank of India

Financial Creditor

Vs.

Auro Gold Jewellery Private Limited

Corporate Debtor

Order delivered on: 06/12/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant/RP

: Mr. Rakesh Gupta, Advocate

ORDER

1. The above application I.A. No. 4991/2023 is filed by Mr. Avil Menezes, seeking liquidation of Auto Gold Jewellery 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 18.11.2022 in Company Petition No. 1802/IBC/MB/2019 admitted the petition under Section 7 of the Code, filed by State Bank of India Limited (hereinafter referred to as the “Financial Creditor”) and Corporate Insolvency Resolution Process (hereinafter referred to as the “CIRP”) was initiated against the Corporate Debtor. Mr. Avil Menezes, 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 of FORM-G on 17.01.2023, the Applicant informed the CoC that several enquiries have been received out of which 5 Expression of Interest (EOIs) was received.
- iii. In the Fifth CoC Meeting held on 12.04.2023, the Applicant informed CoC that last date of submission of Resolution Plan was 02.04.2023, wherein on PRA i.e. Fact Personal Private Limited sent an email on

06.04.2023 seeking condonation of delay in submitting resolution plan and sent password protected Resolution Plan on 08.04.2023.

- iv. The Applicant further informed the COC members on the condition precedent provided in clause 10.14 (iv) of the resolution plan and informed that the plan is conditional to the removal of attachment to which the representative of State Bank of India stated that this would make plan conditional and cannot be accepted and informed that Hon'ble High Court Bombay has passed an order for removal of attachment by the Enforcement Directorate from all the properties of corporate debtor on 31.03.2023 and in light of order he shall request the PRA to remove this condition.
- v. The Applicant informed the CoC that the PRA is not interested in taking over the corporate debtor as going concern to which PRA clarified that there are no plant and machinery, no factory in operation, last available financial information is for FY 2015-16 and the corporate debtor is not in operation for last 5-6 years, given the status of company and no clarity on the business of the corporate debtor they are only

interested in acquiring the assets for the purpose of rental business and further informed that they have provided for takeover of 4 properties through SPV and clarified that since one of the property is situated at Special Economic Zone at Surat, which can only be acquired by applicants who are in the business of gold & jewellery and hence they have not provided for takeover of same in the resolution plan and further informed that if there is clarity on the attachment and possession of property, they shall infuse the funds within 60-90 days and requested the Chairman to provide update on possession of the properties of the Corporate Debtor.

- vi. That 7th meeting of the CoC of the Corporate Debtor was convened on 16.05.2023, the Applicant apprised the CoC about the revised proposal submitted by the PRA to which the COC members opined that the revised plan value of INR 17.50 Crores is less than the average liquidation value arrived by the valuers and opined that for comparison purpose higher of the fair value and liquidation value should be considered and further enquired whether there is any scope for negotiation on the revised plan offer to which the PRA

stated that they shall submit their revised plan as their final offer. The PRAs submitted the revised plan with a better value to Rs.19.50 Crores and submit that it should be treated as a final offer.

vii. Further on 14.08.2023, the Form-G was again published and last date for submission of claim resolution plan was 4th October, 2023. The Applicants had received requested for extending the timeline of the plans from the PRAs. The Applicant appraised the members, since the last date of completion of CIRP is 16.10.2023, hence requested to decide to open the resolution plan submitted by DM Metalloys Private Limited and evaluate the resolution plan and to decide to provide additional time to the other two PRAs.

viii. The Members of CoC studied the plan in detail and rejected the plan stating that a proper liquidation process with individual sale of assets may derive a better value since the assets are in the nature of gold, residential/commercial units. Further, multiple opportunities were already given by way of issuing Form-G twice and granting extension and extensions to the PRAs. However, no commercially satisfactory

resolution plan as received with the motive for value of maximisation to stakeholders.

- ix. The Applicant briefed the CoC that upon the CIRP timelines of the Corporate Debtor and apprised that a last date of CIRP is of 16.10.2023 since the Resolution Professional has not received a code compliant or any financially viable resolution plan within the extended period provided by the Hon'ble NCLT. The Corporate Debtor automatically goes into liquidation subject to the order by the Hon'ble Tribunal u/s 33(1) of the Code.
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.
4. It is further noticed that the CoC has approved the appointment of Resolution Professional as the Liquidator. When the Counsel's attention was drawn to the IBBI guidelines in this relation requiring appointment of another IRP as liquidator, it was submitted before us the CoC has taken conscious decision and

CoC wants to proceed with it. Accordingly, we confirm the appointment of Resolution Professional as liquidator.

ORDER

5. The above I.A. No. 4991/2023 is allowed and the Corporate Debtor “**Auro Gold Jewellery 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. Avil Menezes, having Registration No. IBBI/IPA-001/IP-P00017/2016-2017/10041, 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.

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- 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.4991/2023 filed u/s 33 (1) by the applicant is hereby allowed and disposed of.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V.G. Bisht
Member (Judicial)