

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

IA No.1365/KB/2020
in
CP (IB) No. 891/KB/2018

Under section 33(2) of Insolvency & Bankruptcy Code, 2016

In the matter of:

Punjab National Bank

... Financial Creditor

Versus

Divine Vidyut Limited
(CIN: U40102WB2007PLC118068)

...Corporate Debtor

And

Rajesh Kumar Agrawal
RP of Divine Vidyut Limited

... Applicant

Order reserved on: 19/02/2021
Order pronounced on: 26/02/2021

Coram:

Shri Rajasekhar V.K. : Member (Judicial)
Shri Harish Chander Suri : Member (Technical)

Appearances (through video conferencing):

For the Applicant : Mr. Rishav Banerjee, Advocate
Mr. Rahul Auddy, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. The court convened *via* video conference.
2. This is an application filed by the Resolution Professional seeking liquidation of the Corporate Debtor, *viz.*, Divine Vidyut Limited [CIN: U40102WB2007PLC118068], on the ground that no Resolution Plan has been

received by him, and that the Committee of Creditors (CoC) by 100% voting share has approved the liquidation of the Corporate Debtor.

3. This Adjudicating Authority *vide* its order dated 19/09/2019 on a Petition filed by Punjab National Bank (*Financial Creditor*) under section 7 of the Insolvency and Bankruptcy Code, 2016 (*the Code*) directed initiation of the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and appointed the Applicant herein as the Interim Resolution Professional (IRP).
4. In terms of section 15 of the Code, public announcement in Form 'A' was made on 22.09.2019 in Jharkhand Edition of *The Times of India* (English) and *Prabhat Khabar* (Hindi) and the Kolkata Edition of *The Telegraph* (English) and *Ananda Bazar Patrika* (Bengali).
5. The CoC was duly constituted on 10/10/2019 and the Report certifying the constitution of the CoC was filed with the Adjudicating Authority.
6. The first meeting of CoC was held on 17/10/2019, wherein the IRP was appointed as the RP and the same was duly taken note of by this Adjudicating Authority in order dated 21/10/2019.
7. Invitation for EoI was published in Form 'G' thrice with the approval of the CoC on -
 - (i) 18/11/2019 in All India Edition of *The Economic Times* (English), Kolkata Edition of *Bartaman* (Bengali) and Jharkhand Edition of *Prabhat Khabar* (Hindi);
 - (ii) 13/12/2019 in All India Edition of *The Economic Times* (English), Kolkata Edition of *Bartaman* (Bengali) and Jharkhand Edition of *Prabhat Khabar* (Hindi); and

- (iii) 07/01/2020 in *The Financial Express* (English), *Aajkaal* (Bengali) Kolkata Edition and Jharkhand Edition of *Sanmarg & Morning India* (Hindi) and the last date for receipt of EoI was 21/01/2020.
8. The Applicant received three EoIs from the prospective Resolution Applicants, *i.e.*, Sargam Vision Pvt. Ltd., Quick Scope Dealers Pvt. Ltd. and CFM Assets Reconstruction Co. Pvt. Ltd. The Request for Resolution Plan (RFRP) was issued to the prospective Resolution Applicants and the last date for submission of Resolution Plan was 25/02/2020, which was extended from time to time, with the approval of the CoC, to 12/03/2020, 27/04/2020, 19/10/2020, 05/11/2020, 18/11/2020 and finally to 01/12/2020.
9. In the meantime, the CoC, at its 6th meeting held on 29/02/2020 had unanimously approved to file an application for extension of the CIRP period by 90 days as the CIRP period was coming to an end on 16/03/2020. Accordingly, an application being IA(IB) No. 433/KB/2020 was filed and, *vide* order dated 17/03/2020 passed by this Adjudicating Authority, the CIRP period was extended by 90 days. Also, due to outbreak of COVID-19 pandemic, lockdown was declared w.e.f. 25/03/2020 and partial lockdown was continued till 31/10/2020. An application was made for exclusion of the lockdown period and the same was heard and reserved for orders on 19/02/2021.
10. Out of the three prospective Resolution Applicants, none submitted Resolution Plan in spite of extending last date of submissions of Resolution Plan from time to time as stated in para 8 above. Therefore, at the 15th CoC meeting held on 02/12/2020, the CoC with 100% voting share has recommended liquidation of the Corporate Debtor as a going concern. A copy of the 15th CoC meeting is annexed as **Annexure “G”** to the application.
11. The Resolution Professional has submitted Form AA, consenting to act as a Liquidator of the Corporate Debtor.
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12. We have considered the submission made by the Ld. Counsel appearing for the Applicant and perused the records.
13. This is a case where no Resolution Plan was received in spite of several extensions. There is no other plan under consideration by the CoC. The extended period of CIRP has expired on 14.06.2020. Therefore, there is no alternative but to order the liquidation of the Corporate Debtor.
14. This Bench, therefore, hereby orders as follows: -
 - a. IA No. 1365/KB/2020 filed by Mr Rajesh Kumar Agrawal, RP of Divine Vidyut Limited (the Corporate Debtor), is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;
 - b. Mr. Rajesh Kumar Agrawal [Reg. No. IBBI/IPA-001/IP-P01023/2017-2018/11722], is hereby appointed as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019;
 - c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
 - d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, *i.e., in Jharkhand Edition of The Times of India (English) and Prabhat Khabar (Hindi) and the Kolkata Edition of The Telegraph (English) and Ananda Bazar Patrika (Bengali)* stating that the Corporate Debtor is in liquidation.

- e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
 - f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
 - g. 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 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.
 - h. 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 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. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.
15. The application bearing **IA (IB) No. 1365/KB/2020** shall stand disposed of in accordance with the above directions.
16. **CP (IB) No. 891/KB/201** to come up for filing of periodical report on **08/06/2021**.
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17. A copy of this order be also sent to the IBBI for information.
18. 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.
19. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Signed on this, the 26th day of February, 2021.

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