

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, Delhi-III**

CA/962/C-III/ND/2019, CA/452/C-III/ND/2019 in CP/IB/1251/ND/2018
filed under Section 33(2) of the
Insolvency and Bankruptcy Code, 2016

CA-962/C-III/ND/2019

Oriental Bank Of Commerce and Ors.

. . . Applicant

Vs

Anil Kumar (Resolution Professional)

. . . Respondent

With

CA-452/C-III/ND/2019

M/s Dynamic Star Security & Allied Services

. . . Operational Creditor

Vs

M/s Newgen Specialty Plastics Limited

. . . Corporate Debtor

In CA-962/C-III/ND/2019

For Applicant-

For RP-

Mr. Vaibhav Mahajan

Mr. Rajendra Beniwal, Mr. Shriram

Mr. Vishal Thakur (Advocates)

In CA-452/C-III/ND/2019

For Applicant-

For RP-

Mr. Anil Kumar

Mr. Rajendra Beniwal, Mr. Shriram

Mr. Vishal Thakur (Advocates)

Order delivered on 6th January, 2020

CORAM :

SHRI. CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
SHRI. K.K.VOHRA, MEMBER (TECHNICAL)

ORDER

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

CA-962/C-III/ND/2019 & CA-452/C-III/ND/19

Counsel for the CoC is present. Counsel for the RP is present. The counsel for the CoC has submitted that CoC had no idea about the procedure to be followed for conducting the CoC and the Resolution that came to be passed by the CoC on 19.06.2019 is based on the misrepresentation.

The Resolution Professional has submitted that the Agenda which was placed before the 5th CoC is clear. There was no ambiguity and the maximum time period for CIRP was already utilized. The resolution was passed by the CoC for liquidation of the Corporate Debtor viz. M/s. Newgen Specialty Plastics Ltd. with 100 per cent voting share as recorded in the minutes under Annexure-A to the present application.



During the course of hearing a specific query has been put to the counsel for the CoC that as to how it comes that the CoC was not conversant with the procedure to be followed under the provisions of the IBC and the regulations made thereunder. The Counsel for the CoC failed to show any of the contents of the application i.e. C.A-962 which may point out anything about the lack of the knowledge on the part of the COC.

It is worthwhile to mention that the Hon'ble Supreme Court in K. Sashidhar vs Indian Overseas Bank & Ors., reported in 2019 SCC Online SC 257 has observed that COC is mainly responsible for taking commercial decisions. Therefore, it cannot be argued that the COC was ignorant about procedure and law. Otherwise also, the ignorance of law is no excuse, the arguments submitted by the counsel for the COC seem to be far fetched and afterthought as the COC has taken decision to liquidate the Corporate Debtor



on 19.6.2019 with 100% voting right. Therefore, CA No. 962 stands dismissed in limine.

It is worthwhile to mention that CA No. 452 was heard by my predecessor with present Technical Member but it was not possible to find out any final order passed for liquidation of the CD. Consequently, we proceed to pass the order afresh to liquidate, the CD as follows:

1. This relates to CA-452/C-III/ND/2019 filed in IB/1251/ND/2018 by Mr. Anil Kumar (hereinafter referred to as 'Resolution Professional') under Section 33(2) of the Insolvency and Bankruptcy Code (IBC), 2016. The prayer made in the Application is to pass an order of liquidation pertaining the Corporate Debtor (CD) viz., M/s. Newgen Specialty Plastics Limited.

2. Originally IB/1251/ND/2018 filed under Section 9 of the I&B Code, 2016 by the Operational Creditor (OC) was admitted by this Authority vide Order dated 19.11.2018, the

CIR Process was initiated against the CD and Mr. Rajesh Parakh was appointed as Interim Resolution Professional (IRP).

3. It is averred that pursuant to the Order of this Authority dated 19.11.2018 the IRP had taken over the management of the CD and had issued the Newspaper Publication in two edition one in English and another in vernacular as per Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016, inviting the claims from the creditors. After verification of the claims received, the IRP constituted the Committee of Creditors (CoC). In the 1st CoC Meeting held on 19.12.2018, the Applicant viz., Mr. Anil Kumar was appointed as Resolution Professional. The RP on 5.2.2019 issued quotes for appointment of registered valuers and thereafter two valuers i.e. Mr. Abhay Kumar and Mr. Sanjay Chopra were appointed.

4. In the 2nd COC meeting held on 20.02.2019, after deciding the eligibility criteria for prospective resolution applicants in terms of Section 25(2) (h) of the IBC, it was agreed that Form-G in the instant matter should be published in all India edition of a widely circulated newspaper, keeping in mind the pan-India nature of clientele of CD. It was further noted that in view of non-availability of working capital to run the CD, the RP put the proposal to raise Interim Finance before the COC, but it did not get approved. The RP received two Expression of Interest (EOI), i.e. one from Mr. V.K. Singh and Mr. S.K. Singh (directors of CD) & M/s Air Touch Technologies Private Limited and after this no further EoI(s) were received by the applicant.

5. In 3rd meeting of the COC, held on 16.4.2019, the sole resolution applicant i.e. consortium of directors of CD and M/s Air Touch Technologies Pvt. Ltd. sought extension for submitting their resolution plans.

6. In 4th meeting of the COC held on 13.05.2019, again the sole consortium sought extension of time for submitting their resolution plan. The minutes of COC clearly indicate the non- cooperation on the part of the suspended board of directors.

7. On 25.05.2019, Mr. S.K. Singh (director) the proposed Resolution applicant of the CD sent email to RP requesting to further extend the time period for submitting a resolution plan.

8. In 5th meeting of the COC held on 19.06.2019, the chairman shared the complete background giving trails of events as to how the directors of the company have been accommodated by the COC to submit a resolution plan. Directors who were eligible and allowed to submit a Resolution Plan by 25.5.2019, were given an extension till 6.6.2019 for submission of resolution plan as requested. But no resolution plan has been submitted by the directors even after the extended period of time. Thus, Oriental Bank

of Commerce, the key lender having 67% of the voting share declined to approve further extension of time to the prospective resolution applicants. Lastly, the COC members resolved to allow the directors to submit a resolution plan in respect of CD to the RP latest by 21.6.2019. As no resolution plan was received by the last stipulated date, the COC members requested the RP to proceed as per agenda to liquidate the company and put the resolution for e-voting.

9. Since no resolution plan was submitted till the extended period of time, the resolution for liquidation was passed unanimously through e-voting with 100% voting rights by the COC, which is extracted below-

“Resolved that the appropriate application under Section 33(1) (a) of the IBC,2016 for initiation of Liquidation of Newgen speciality Plastics Limited, CD undergoing corporate insolvency resolution process be filed before the Hon’ble National Company Law Tribunal and its Resolution Professional, CA Anil Kumar having IBBI registration number

IBBI Registration Number IBBI/IPA-001/IP-P00144/2017-2018/10308 be appointed as the liquidator for the company the Liquidator's fee as prescribed in the fee table under Regulation 4(3) of the IBBI (liquidation process) Regulations, 2016 be and is hereby ratified."

9. Since no Resolution Plan is received by this Authority under Sub-section (6) of Section 30 of the I&B Code, 2016, before the expiry of the maximum period of the Corporate Insolvency Resolution Process, the CD has to be ordered for Liquidation.

ORDER

9. In view of the facts and circumstances recorded by Resolution Professional in CA/452/C-III/ND/2019 filed in CP/IB/251/ND/2018 and in exercise of powers conferred under Sub-Clauses (i) (ii) and (iii) of Clause (a) of Sub-Section (1) of Section 33 of the I&B Code, 2016, this Authority proceeds to pass Liquidation Order as follows:-

- I. This Authority hereby orders for liquidation of the Corporate Debtor viz., M/s. Newgen Specialty Plastics Limited which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016.
- II. This Authority hereby appoints Mr. Anil Kumar as Company Liquidator who shall issue a public announcement stating therein that the Corporate Debtor is in liquidation.
- III. The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of liquidation.
- IV. Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the

Corporate Debtor, with the prior approval of this Authority.

- V. This Authority makes it clear that Para (IV) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
- VI. This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
- VII. All the 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 Company Liquidator viz., Mr. Anil Kumar In

addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

VIII. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

IX. The Company Liquidator shall be entitled to charge such fees for the conduct of the liquidation proceedings and in such a proportion to the value of the liquidation estate assets as specified under Regulation 4 (2) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

X. The Registry is directed to communicate this order with immediate effect to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Company Liquidator viz. Mr. Anil Kumar, for information and compliance.

10. In terms of the above, CA/452/C-III/ND/2019 filed in CP/IB/251/ND/2018 by the Resolution Professional under Section 33(2) of the I&B Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor viz., M/s. Newgen Specialty Plastics Limited is **allowed**.



(K.K.VOHRA)
MEMBER (TECHNICAL)

U.D. Mehta/D



(CH. MOHD SHARIEF TARIQ)
MEMBER (JUDICIAL)