IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

IA (IB) No. 1282/KB/2020

in

CP (IB) No. 207/KB/2019

Under section 33 of Insolvency & Bankruptcy Code, 2016

In the matter of

Punjab National Bank (Former- United Bank of India)

… Financial Creditor

Versus

Sarnamoy Plastic Sack Manufacturing Private Limited

… Corporate Debtor

Sanjeev Jhunjhunwala, Resolution Professional of Sarnamoy Plastic Sack Manufacturing Private Limited

… Applicant

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearances (through video conferencing):

For the Applicant

1. Mr. Shaunak Mitra, Advocate

2. Mr. Rahul Parasranpuria, Pr. C.S

Resolution Professional

Mr. Sanjeev Jhunjhunwala

Order reserved on: 21.06.2021

Order pronounced on: 28.06.2021

ORDER

Per Harish Chander Suri, Member (Technical)

1. This court convened *via* video conferencing.
2. This is an application filed by the Resolution Professional upon the instructions of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, *viz.*, Sarnamoy Plastic Sack Manufacturing Private Limited [CIN: U74900WB2013PTC190025], on the ground that the Resolution Plan was rejected by the CoC.
3. This Adjudicating Authority *vide* its order dated 23.07.2020 on a Petition filed by the 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 Mr. Sanjeev Jhunjhunwala as the Interim Resolution Professional (IRP).
4. The Applicant submits that in terms of section 15 of the Code, public announcement was made on 25.07.2019, in Financial Express (English) and Ek Din (Bengali) Kolkata edition newspapers, fixing 05.08.2019 as the last date for submitting the claim.
5. The Committee of Creditors (CoC) was duly constituted with one Financial Creditor on 12.08.2019, and the Report certifying the constitution of the CoC was filed with the Adjudicating Authority.
6. The first meeting of the CoC was held on 20.08.2019 wherein resolution was passed to appoint the Applicant as the Resolution Professional (RP). The Applicant states that the publication for invitation of EOIs in Form G was done thrice i.e. on 04.10.2019,

18.12.2019 and 01.02.2020 in Financial Express (English) and Ek Din (Bengali) Kolkata edition newspapers. Three EoI's were received but till the last date of receipt of Resolution Plan i.e. 22.03.2020 only one Resolution Plan was received from Precission Polyplast Private Limited.

7. The Resolution Plan was not discussed with the CoC due to the Covid-19 pandemic and was ultimately opened on 30.09.2020 and was formally placed before the CoC on 05.10.2020 for consideration. Thereafter, in the 15th meeting held 16.10.2020, the Resolution Plan was taken into consideration and was rejected on 05.11.2020 as communicated to the Applicant. The CoC rejected the Resolution Plan as the amount offered in the Resolution Plan was below the liquidation value of the Company.
8. That the CoC has passed resolution by 100% voting shares that the Corporate Debtor be liquidated under the provisions of section 33(2) of the Code.
9. The Applicant/Resolution Professional, Mr. Sanjeev Jhunjhunwala [Reg. No. IBBI/IPA-001/IP-P00325/2017-18/10595], has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator, in terms of section 34(1) of the Code[1].
10. We have considered the submission made by the Applicant/RP in person and perused the record.
11. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 100% voting share to liquidate the Corporate Debtor[2].
12. Further, it is pertinent to note that certain reliefs sought by the Applicant does not pertain to the present petition but the Applicant has clubbed the reliefs along with the

[1] Annexure II of the I.A.

[2] Page 19 of the I.A.

prayer for liquidation which cannot be allowed. The prayers sought by the Applicant are as follows:

"a. To allow the present application u/s 33(2) of the Insolvency and Bankruptcy Code, 2016 and initiate the Liquidation Process of the Corporate Debtor.

b. Allow the sale of the Corporate Debtor as a going Concern as per regulation 32(e) & 32(f);

c. Allow sale as per regulation 32(a) to 32 (d) if the mode of sale as mentioned in point no b above fails.

d. Appoint Resolution Professional Mr Sanjeev Jhunjhunwala as the Liquidator.

e. Liquidation application of LTS Plastics India Pvt Ltd CP no. 1360/KB/2018 be heard together and accordingly liquidation order for both be passed together so that both process might move together for value maximization."

13. This Bench, therefore, hereby orders as follows: -

a. Prayers a, b and d as sought for in IA No. 1282/KB/2020 filed by Mr. Sanjeev Jhunjhunwala, RP of Sarnamoy Plastic Sack Manufacturing Private 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. Prayers c and e as sought for in IA No. 1282/KB/2020 filed by Mr. Sanjeev Jhunjhunwala, RP of Sarnamoy Plastic Sack Manufacturing Private Limited, is not allowed at this stage.

c. **Mr. Sanjeev Jhunjhunwala [Reg. No. IBBI/IPA-001/IP-P00325/2017-18/ 10595],** 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.

d. 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.

e. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, *i.e.*, *Financial Express* (English) and *Ek Din* (Bengali) of Kolkata Edition, stating that the Corporate Debtor is in liquidation.

f. 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.

g. 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.

h. 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.

i. 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.

j. 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.

14. The application bearing **IA (IB) No. 1282/KB/2020** shall stand disposed of in accordance with the above directions.

15. 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.

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

17. List the main **CP (IB) No. 207/KB/2019** for reporting progress on **19.10.2021.**

Rajasekhar VK

Authenticated through Leegality.com (9VJ9bwg) Rajasekhar VK
Date: Mon Jun 28 10:25:55 IST 2021

[Harish Chander Suri] **[Rajasekhar V.K.]**

Member [Technical] **Member [Judicial]**

28.06.2021

GGRB[LRA]