

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

M.A. 1909 OF 2019

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

State Bank of India

...Applicant

In the matter of

C.P.(IB) No. 1161/MB/2017

Parte Casters Private Limited

...Corporate Applicant

Order delivered on: 02.01.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances

For the Applicant : Mr. Vivek S. Sawant, Advocate

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This Miscellaneous Application MA 1909/2019 is filed by M/s State Bank of India, the sole secured financial creditor of M/s Parte

Casters Pvt. Ltd. (“Corporate Debtor”) in C.P. (IB) 1161/2017 in view of failure in implementation of the Resolution Plan by the Successful Resolution Applicant i.e. Mr. Pritviraj Patil and Mr. Amol Jagdale (“SRA”). The Applicant has prayed the following reliefs :

- a. in view of the failure of the Resolution Plan, the liquidation process be initiated against the Corporate Debtor under section 33 of the Insolvency and Bankruptcy Code, 2016;
 - b. Mr. Mr Girish Juneja, be appointed as the Liquidator for the purpose of liquidation of the Corporate Debtor;
 - c. sanctions be issued under section 74(3) of the Insolvency and Bankruptcy Code, 2016 against the Resolution Applicants;
2. The Applicant submits that the Applicant is the sole Financial Creditor in the above matter. Therefore, the Applicant is also the only member of the Committee of Creditors constituted in the instant Company Petition.

2.1. The Committee of Creditors had approved the Resolution Plan proposed by SRA. This Tribunal, thereafter, approved the Resolution Plan without any modification by Order dated 22nd October 2018 in M.A. No. 454 of 2018 in the instant Company Petition.

2.2. The Resolution Plan was for Rs. 4.79 Crores as against the liquidation value of Rs. 1.30 Crores as ascertained by the Resolution Professional. The Resolution Plan, as recorded in the Order dated 22 October 2018, provides that the Secured Financial Creditor, i.e., the Applicant, shall be paid Rs. 1.79

Crores inclusive of CIRP costs of which Rs. 0.79 Crores was to be paid within 30 days from the Effective Date and Rs. 1 Crore within 90 days from the Effective Date. The Effective date as per the Resolution Plan "*shall mean the date on which various approvals mandatorily required for implementation of the Proposed Plan are provided by the concerned authority*". In the instant case, the Resolution Plan was approved by this Tribunal on 22nd October 2018 and hence, the Effective Date is 22nd October 2018.

2.3. The Clause 9.11 deals with "***Failure of Resolution Plan***" and the same reads as:

"Upon non achievement of following, the financial creditors and/ or the Resolution Applicants shall have option to declare resolution plan as a failure consequent to which the Company shall go into liquidation:

- a. Non-payment of CIRP cost within 30 days from the effective date;*
- b. Non-payment of Rs. 0.79 Cr. (inclusive of CIRP cost) within 30 days of effective date;*
- c. Non-payment of a total of Rs. 1.79 Cr. by 90 days of effective date;*
- d. Failure to release security by the CoC within the prescribed time limit*

e. *Litigations/ appeals filed against the resolution plan by any stakeholder if upheld by the relevant adjudicating authority.*

2.4. The 30 days from the Effective Date expired on 21 November 2018 and the 90 days from the Effective Date expired on 20 January 2019. It is submitted by the Applicant that neither the resolution Applicants have paid Rs. 0.79 Crores (inclusive of CIRP cost) on or before 21 November 2018 nor have they paid the total of Rs. 1.79 Crores on or before 20 January 2019. Hence, the Plan has failed as on 20 January 2019 in terms of Clause 9.11 of the Resolution Plan. Instead the SRA paid Rs. 18,60,000/- (Rupees Eighteen Lakh Sixty Thousand Only) towards the Resolution Plan, of which Rs. 17,00,000/- (Rupees Seventeen Lakh Only) were withdrawn by the Resolution Professional against his fees.

2.5. The Applicant has submitted that the Resolution Applicants failed to implement the said Resolution Plan as per the terms provided therein, as elaborated hereinbelow. Hence, the Applicant has filed instant Application under Regulation 39(9) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking directions of liquidating the Corporate Debtor in view of the failure to implement the Resolution Plan.

2.6. The Applicant has further submitted that as provided in the Clause 9.11, in case of failure of the Resolution Plan, the Corporate Debtor shall go into liquidation and as per the

Clause 7.08 of the Resolution Plan the Resolution Professional so appointed by the Tribunal stood released of his duties and responsibilities from the Effective Date. In view thereof, the Applicant prays that the Corporate Debtor be liquidated and for the purpose name of Mr Girish Juneja, being an insolvency professional is suggested to be appointed as Liquidator.

- 2.7. The Applicant has further submitted that the Resolution Applicants are bound by the Resolution Plan and have wilfully/ knowingly contravened the terms of Resolution Plan and hence, are liable to penalized as per the provisions of Sections 74(3).
3. We have heard the Learned Counsel and perused the material available on record.
- 3.1. On perusal of the records, we find that the SRA has failed to implement the Resolution Plan approved by this Tribunal vide Order dated 22nd October, 2018. Section 33(3) of the Insolvency & Bankruptcy Code, 2016 (“Code”) provides that *“Where the resolution plan approved by the Adjudicating Authority under section 31 or under sub-section (1) of section 54L, is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)”*. In the present case, the present application has been filed by CoC sole member, whose interest has been prejudicially affected due to failure of SRA to pay the Resolution Money for implementation of Plan.

3.2. Section 33(4) of the Code further provides that “*On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)*”. Accordingly, this Bench, after being satisfied that the Resolution Plan has been contravened by the SRA, proceeds to pass an Order requiring the corporate debtor to be liquidated in the manner as laid down in Chapter III of the Code:

- a. This Bench appoints Mr. Girish Siriram Juneja, having Registration No. IBBI/IPA-001/IP-P00999/2017-2018/11646, Email: junejagirish31@gmail.com 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.
- i. The liquidator shall be at liberty to pursue pending the Interlocutory Application pertaining to avoidance transactions, if any.

With the above directions, the M.A. No.1909/2019 filed by the State Bank of India (Applicant) is hereby allowed and disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)