

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT II**

**MA. No. 3799/2019**

**In  
CP(IB)No. 166/MB/C-II/2018**

*Application filed under section 33 (1) of Insolvency and  
Bankruptcy Code, 2016.*

**Mr. Dilipkumar Natvarlal Jagad, RP of  
Akshata Mercantile Pvt Ltd.**

**...Applicant**

*In the matter of*

**Sikkim Ferro Alloys Ltd..**

**...Operational Creditor**

**V/s**

**Akshata Mercantile Pvt. Ltd.**

**...Corporate Debtor**

**Order Pronounced on :- 10.01.2024**

***Coram:***

**Anil Raj Chellan : Kuldip Kumar Kareer**

**Member Technical : Member Judicial**

***Appearances :-***

**For the Applicant :- Adv. Mr. Shyam Kapadia**

**ORDER**

*Per :- Coram*

1. It is an application filed u/s 33 (1) of the Insolvency and Bankruptcy Code, 2016 by Mr. Dilipkumar Natvarlal Jagad, Resolution Professional (RP) of Akshata Mercantile Pvt. Ltd. seeking liquidation order based on the resolution passed by the CoC in its 14<sup>th</sup> meeting held on 07.11.2019.
2. On perusal of this application, it appears that CP No. (IB)-166 (MB)/2018 was admitted by this Tribunal on 23.07.2018 and accordingly Mr. Neelesh Gupta was appointed as Interim Resolution Professional (IRP). The Applicant issued a public announcement inviting the claims from the creditors in two newspapers namely Financial Express (English) and Lakshdeep (Marathi) on 27.07.2018.
3. Pursuant to the public announcement, the IRP received claims from the creditors and the IRP constituted Committee of Creditors (CoC). The 1<sup>st</sup> CoC meeting was convened on 21.08.2018 and in the said meeting it was decided to replace the IRP by Mr. Dilipkumar Natwarlal Jagad as Resolution Professional (RP). Accordingly an application for change in IRP was filed with the Tribunal and order for replacement of IRP was passed on 26.10.2018.

4. In the 3<sup>rd</sup> CoC meeting held on 24.12.2018, the CoC discussed and deliberated various issues such as to current state of business operations of the Corporate Debtor, Analysis of Audited Financial Statements as on 31.03.2018, additional claims of creditors post 2<sup>nd</sup> CoC meeting etc. As the 180 days period of Corporate Insolvency Resolution Process (CIRP) was going to end, it was decided to either file an application for extension of the CIRP period or exclusion of 93 days of period from 25.08.2018 (date of completion of IRP's term of 30 days) to 26.11.2018 (date of receipt of certified copy of the RP replacement order).
5. An application for extension of 90 days of the CIRP period was filed with the Tribunal and vide Order dated 17.01.2019 the CIRP period was extended till 19.04.2019.
6. The Applicant published Form-G in two newspapers namely Business Standard (English) and Lakshdeep (Marathi) on 23.02.2019 for inviting Expression of Interest (EoI). As 270 days of CIRP were expiring on 19.04.2019, an Application for extension of CIRP was filed. The period of CIRP was then extended till 22.04.2019.
7. The RP had received EoI from one Sun-Power Trading Pvt. Ltd. the said potential Resolution Applicant had requested extension of time for

submission of the Resolution Plan and extension of time only upto 09.04.2019 was granted.

8. In the 7<sup>th</sup> CoC meeting, the members of the CoC informed that the Resolution Plan received does not meet the mandatory contents as prescribed under Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016. The members of the CoC advised the potential Resolution Applicant to revise and modify the Resolution Plan.
9. Further, the members of the CoC were informed that the Operational Creditor herein had filed an Appeal before the Hon'ble National Company Law Appellate Tribunal against the NCLT order dated 27.03.2019 on the ground of not permitting exclusion of time period stating that Resolution is preferable over liquidation. Further, another EoI was received from Invest Assets Securitization & Reconstructions Pvt. Ltd. on 19.04.2019 i.e. much beyond the last date for submission of EoI. Further, the members of the CoC decided to give an opportunity to Invest Assets Securitization & Reconstructions Pvt. Ltd. till 03.05.2019 to submit a feasible and viable Resolution Plan.
10. In the 10<sup>th</sup> CoC meeting held on 24.05.2019, the members of the CoC were updated that Hon'ble NCLAT vide its order dated 10.05.2019 was

pleased to exclude 89 days from the CIRP period and the time for CIRP was extended till 12.08.2019. Further, the members of the CoC discussed the EoI received from Invest Assets Securitization & Reconstruction Pvt. Ltd and requested the members of CoC to grant two weeks time to submit Resolution Plan however, there was no concrete proposal. The members of the CoC then deliberated on two alternatives either to wait for the new offer from Invest Securitization & Reconstruction Pvt. Ltd. or to invite new applicants.

11. In the 12<sup>th</sup> CoC meeting it was noted that Invest Securitization & Reconstruction Pvt. Ltd were not serious to submit any Resolution Plan. In the 13<sup>th</sup> CoC meeting held on 09.08.2019, it was noted by the members of the CoC that since there are no business activities of the Corporate Debtor, no feasible and viable Resolution Plan had been received and as the liabilities of the Corporate Debtor exceeds the assets available of the Corporate Debtor, hence it is not possible for the Resolution of the Corporate Debtor. Hence, the members of the CoC authorized the RP to file liquidation application.

12. Meanwhile, the Applicant received an EoI from Omkara Asset Reconstruction Pvt. Ltd. for submission of the Resolution Plan. In view of the same, the members of the CoC directed the Applicant to file an

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application for extension of the CIRP. This Tribunal vide its order dated 18.10.2019 extended the CIRP period till 14.11.2019.

13. Thereafter, in 14<sup>th</sup> CoC meeting held on 02.11.2019 various matters were deliberated as to development relating to EoI received from Omakra Asset Reconstruction Pvt. Ltd., updating the list of CIRP cost etc. Further, the 14<sup>th</sup> CoC meeting was decided to adjourn and to be held on 07.11.2019. That in the adjourned 14<sup>th</sup> CoC meeting held on 07.11.2019, the members of the CoC noted that the liabilities of the Corporate Debtor were substantially higher than the valuation of the assets of the Corporate Debtor. Further, as the Applicant was not in receipt of a feasible and viable Resolution Plan, the members of the CoC decided to liquidate the Corporate Debtor and following Resolutions were passed :-

“RESOLVED THAT as there is no business activity of the Corporate Debtor for last two years and despite publication of Expression of Interest, no feasible and viable Resolution Plan has been received and the Liabilities of the Corporate Debtor far exceeds the assets available, it is not possible to move ahead in any manner for the Resolution of the Corporate Debtor.”

“RESOLVED FURTHER THAT CoC hereby decides to approach the Hon’ble National Company Law Tribunal with the recommendation for liquidation of the Corporate Debtor.”

“RESOLVED FURTHER THAT Mr. Dilipkumar Natvarlal Jagad, Resolution Professional be and is hereby authorized to file

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application with the Hon'ble NCLT for Liquidation of the Corporate Debtor namely Akshata Mercantile Private Limited under section 33 of the Insolvency and Bankruptcy Code, 2016 and regulations made thereunder.

14. Further, the members of the CoC also resolved to appoint Mr. Dilipkumar Natvarlal Jagad as the Liquidator of the Corporate Debtor. The said Resolution was passed with 87.07% majority of the CoC members.

15. Looking at the application and averments made therein, we are of the considered opinion that this is a fit case for liquidation. Therefore, we hereby order for the liquidation of the company with the following:

- a. The **Mr. Dilipkumar Natvarlal Jagad**, holding Registration No. **IBBI/IPA-001/IP-P00233/2017-2018/10462**, is appointed as the Liquidator in terms of Section 34 of the Code;
- b. Registry is directed to communicate this Order to the Registrar of Companies, Mumbai and to the Insolvency and Bankruptcy Board of India;
- c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

- d. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- e. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- f. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- g. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor if any as per law.
- h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

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- i. Copy of this order be sent to the financial creditors, corporate debtor, the Liquidator for taking necessary steps.

16. The **IA-3799/2019** filed by the RP for Liquidation of the Corporate Debtor stands **allowed accordingly in aforesaid terms.**

**Sd/-**

**ANIL RAJ CHELLAN**

**(MEMBER TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER**

**(MEMBER JUDICIAL)**