

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1



ITEM No.3
IA/218(MP)2021
in
TP 229 of 2019 [CP(IB) 29 of 2018]

Proceedings under Section 33 of IBC, 2016

IN THE MATTER OF:

Ravi Kapoor RP of Arya Filaments Pvt Ltd

.....Applicant

Order delivered on 02/11/2023

Coram:

P. Mohan Raj, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

IA/218(MP)2021

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

A. Bhadauria

-SD-

P. MOHAN RAJ
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

I.A. No.218 of 2021 In TP 229 OF 2019
C.P. (I.B.) No. 29 OF 2018

[Application u/s. 33(3) of the Insolvency and Bankruptcy Code, 2016]

Mr. Ravi Kapoor,

Resolution Professional of:

M/s. Arya Filaments Private Limited

402, Shaival Plaza, Near Gujarat College

Ellisbridge, Ahmedabad-380 006

..... Applicant/ Resolution Professional

Order delivered on: 02.11.2023

Coram: P. Mohan Raj, Member (Judicial)
Kaushalendra Kumar Singh, Member (Technical)

Appearance:

For the Applicant: Ld. Adv. Mr. Harshil Patel (Online)

ORDER

1. This instant application is filed by Mr. Ravi Kapoor, Resolution Professional of the Corporate Debtor i.e. M/s Arya Filaments Private Limited under section 33 of the Insolvency and Bankruptcy Code, 2016 for seeking liquidation order of the Corporate Debtor.

2. The averments made in application and submitted by the learned Counsel for the applicant are as follows:

(i) This Adjudicating Authority vide its order dated 17.08.2018 admitted the Petition under section 7 of the Code, filed by the Financial Creditor i.e., Kotak Mahindra Bank Limited for initiation of



Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor i.e., M/s Arya Filaments Private Limited. Mr. Ravi Kapoor herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor and was subsequently confirmed as Resolution Professional (“RP”) by this Adjudicating Authority.

(ii) In order to determine the Liquidation Value and Fair value of the Corporate Debtor in accordance with Regulation 35, the IRP appointed different registered valuers for valuation of Plant & Machinery, Land and building and Securities/Financial Assets.

(iii) The IRP also constituted the COC consisting of two Financial Creditors namely Union Bank of India with 46.40% vote and Kotak Mahindra Bank with 53.60% vote and filed a report dated 12.09.2018 with this Adjudicating Authority certifying the constitution of COC as required under regulation 17 (1) of the CIRP regulation. The applicant published an advertisement dated 31.10.2018 for inviting expression of interest (EOI) to be submitted by 15.11.2018. However, no EOI was received. As per 3rd COC meeting dated 09.01.2019, the last date for submission of EOI vide an advertisement published on 23.01.2019, was revised to 07.02.2019. Thereafter only one resolution plan was received on 23.03.2019 from Rajesh Gupta jointly with Mr. Sanjiv Gupta & Mr. Rajendra Shinde.

(iv) In the 4th COC meeting dated 16.04.2019, resolution plan submitted by the resolution applicant was discussed. After certain improvements in the plan, the CoC in its 5th COC meeting approved the revised resolution plan with 100% voting.

(v) The NCLT, Indore Bench approved the Resolution Plan valuing Rs 6,79,22,000/- under Section 30(6) of the Code, and rejected the prayer made by the resolution applicant in IA 96 of 2020 to revise the resolution plan and to put it for vote before the COC for approval,

vide common order dated 23.10.2020 in IA 280 of 2019 and IA 96 of 2020 in TP 229 of 2019 [CP (IB) 29 of 2018].

(vi) The resolution applicant appealed against the order dated 23.10.2020 by filing a Company Appeal No. 1054 of 2020 before NCLAT, seeking modifications under the approved resolution plan. However, the company appeal was dismissed and the modifications sought were rejected vide order dated 10.12.2020.

(vii) The RP in accordance with the approved resolution plan for its effective implementation constituted a monitoring committee, comprising of representatives of financial creditors and resolution applicant. In the first meeting of the Monitoring Committee held on 16.01.2021, the order of approval of Resolution Plan passed by this Adjudicating Authority, along with the payment schedule for successful implementation of the Resolution Plan was placed before the Committee. However, the SRA requested that the implementation schedule may be revised till 730 days instead of original schedule of 365 days, which was accordingly rejected by members of the committee.

(viii) Meanwhile, the successful resolution applicant preferred an appeal before the Hon'ble Supreme Court by filing civil appeal no 295 of 2021 which was also dismissed, thereby modifications sought under the resolution plan were rejected vide judgment dated 13.09.2021.

(ix) In the second meeting of the monitoring committee held on 07.10.2021, the total time frame of 365 days, as prescribed under the resolution plan was considered for the implementation and execution of the resolution plan. The successful resolution applicant stated they were willing to deposit Rs 50,00,000/- and for the remaining amount proposed to submit revised repayment schedule within 15 days, to which the monitoring committee did not agree.



(x) In the third meeting of the Monitoring Committee held on 29.10.2021, the successful resolution applicant failed to comply with the terms of the approved resolution plan and defaulted to adhere to the payments schedule. The committee recommended for liquidation of the corporate debtor, thereby exercising their vote.

3. After hearing the submissions made by Counsel for the Applicant RP and upon perusing the material available on record, it is observed that this Adjudicating Authority vide its order dated 17.08.20218 passed an order for initiation of CIRP against M/s Arya Filaments Pvt Ltd. Further, in an order dated 23.10.2020 in IA No. 280 of 2019 the resolution plan was duly approved. Thereafter SRA preferred an IA No. 96 of 2020 before this Adjudicating Authority seeking grant of their prayer for revision of the approved resolution plan by way of withdrawal which was turned down. The Successful Resolution Applicant then filed an appeal in NCLAT, which was rejected. The Successful Resolution Applicant then preferred an appeal before the Hon'ble Supreme Court of India in Civil Appeal No. 295 of 2021, which was also dismissed. Finally, the Successful Resolution Applicant failed to comply with the terms of the approved resolution plan and defaulted to adhere the payment schedule. Following that the member of the monitoring committee decided for the liquidation.

4. Thereafter the SRA preferred an appeal IA No. 266 of 2023 before this Adjudicating Authority seeking to defer the liquidation order which was dismissed on 21.09.2023 on grounds that the said proposal could have come up from monitoring committee and that the SRA doesn't have any locus to straightway approach this Adjudicating Authority for any such relief.

5. It is further observed that the Monitoring committee in its meeting held on 29.10.2021, have unanimously resolved to liquidate the Corporate Debtor and approved appointment of Resolution Professional as liquidator. The RP has also given his consent to act as liquidator.



6. It is also observed that monitoring committee has recommended the Liquidator to sell the Corporate Debtor as going concern under clause (e) or (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and consented to contribute for liquidation cost, in case of shortfall.

7. The remuneration of liquidator is resolved to be Rs.1,80,000/- plus tax and out of pocket expenses on actual basis, for the first three months and fee for further period resolved to be decided mutually thereafter.

8. IBBI in its letter dated 18.07.2023, has recommended that IP other than the IRP/RP may be appointed as liquidator in all the cases where a liquidation order is to be passed henceforth, and the liquidator can be appointed from the panel list of IBBI.

9. It is also noted that the Monitoring Committee filed an IA/277/MP/2023 requesting to defer the pronouncement of order seeking liquidation for another three months. It was, however, made clear vide order dated 12.10.2023 that after having reserved the application, the pronouncement of order cannot be deferred till 3 months. It was also clarified in the said order that the monitoring committee can nevertheless, withdraw its petition before the pronouncement of order. We note that no such application for withdrawal of the present application is filed.

10. In view of the facts and circumstances and documents available on record, we pass the following order:

(i) The corporate debtor M/s Arya Filaments Private Limited shall be put into liquidation in terms of the provisions of section 33(2) of the Code r.w. Regulations made thereunder which shall be effective from the date of this order. Accordingly, we allow IA/218/2021.

(ii) The Moratorium declared under section 14 of the Code shall cease to have effect from the date of the order of liquidation.

(iii) According to section 34(4)(b) of the Code and the letter dated 18.07.2023 of IBBI, we hereby appoint Mr. Gagan Jhavar



having registration no. IBBI/IPA-001/IP-P-02382/2021-2022/13579 and email id: jhavar_co@yahoo.com as a liquidator of the corporate debtor i.e. M/s Arya Filaments Private Limited. The liquidator so appointed shall complete the liquidation process as per the provisions of the Code r.w. the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(iv) All the powers of the Board of Directors, key managerial persons, and the partner of the corporate debtor, as the case may be, hereafter cease to exist. All these power henceforth vest with the liquidator.

(v) The personnel of the corporate debtor are directed to extend all cooperation to the liquidator as required by him in managing the liquidation process of the corporate debtor.

(vi) The liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by IBBI and same shall be paid to the liquidator from the proceed of the liquidation estate under section 53 of the Code.

(vii) Once the liquidation process is initiated, subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the corporate debtor. The liquidator has the liberty to institute a suit and other legal proceedings on behalf of the corporate debtor with the prior approval of this Adjudicating Authority, as provided in sub-section (5) of section 33 of the Code.

(viii) This liquidation order shall be deemed to be 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.

(ix) This Adjudicating Authority directs the liquidator to issue a public announcement stating that the corporate debtor is in liquidation. The liquidator will also serve a copy of this order to the



various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the corporate debtor so that the authorities concerned are informed of the liquidation order timely. The liquidator will also provide a copy of this order to the trade unions/employee associations of the corporate debtor so that the workman/employees could also be informed of this liquidation order through their association.

(x) The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the corporate debtor, the resolution professional, successful resolution applicant v and the liquidator by speed post as well as e-mail within one week from the date of this order, after completion of all the formalities.

(xi) The present resolution professional is directed to hand over the relevant documents and control of the corporate debtor to the newly appointed liquidator forthwith.

11. Accordingly, the present **I.A. No.218 of 2021** is allowed and stands disposed of.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER TECHNICAL

-SD-

P. MOHAN RAJ
MEMBER JUDICIAL

Surbhi Rathore