IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA

IA (IB) No.295/KB/2020
in
CP (IB) No.11/KB/2019

In the matter of:
An Application under sections 43, 44, 45 read with section 49 and 66 of the Insolvency and Bankruptcy Code, 2016.

CP (IB) No.11/KB/2019

In the matter of:

Corporation Bank	...	*Financial Creditor*
	Versus	
Bansal Refineries Private Limited	…	*Corporate Debtor*

And

IA (IB) No.295/KB/2020

In the matter of:

Pinaki Sarkar, Liquidator of Bansal Refineries Private Limited	…	*Applicant*
	Versus	

1. Amicus Oil & Chemicals Private Limited
2. Tridev Dealers Pvt. Ltd.
3. Sigma Chloro Paraffin Pvt. Ltd.
4. Helix Holdings Pvt. Ltd. … Respondents

Order reserved on: 25 February, 2022
Order pronounced on: 19 April, 2022

Coram:

Shri Rajasekhar V.K.	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (through video conference):

For the Applicant/Liquidator	:	None
For the Respondents	:	None
For member of the suspended Board	:	Ms. Urmila Chakraborty, Advocate Ms. Mitul Chakraborty, Advocate

ORDER

Rajasekhar V.K., Member (Judicial)

1. This Court convened through video conferencing.

2. The present IA has been filed by Mr Pinaki Sarkar, Liquidator of Bansal Refineries Private Limited, under section 43 of the Insolvency and Bankruptcy Code ***("Code")***.

3. This Adjudicating Authority *vide* order dated 09 July 2019 admitted Bansal Refineries Private Limited ***("Corporate Debtor")*** under Corporate Insolvency Resolution Process ***("CIRP")*** on a Petition filed under section 7 of the Code by Corporation Bank, registered as CP (IB) No.11/KB/2019.

4. Ms. Mamta Binani was appointed as the Interim Resolution Professional. Mr Pinaki Sarkar was appointed as the Resolution Professional (RP) by this Adjudicating Authority *vide* order dated 13 August 2019, which was amended on 20 August 2019.

5. This Adjudicating Authority *vide* order dated 17 January 2020 ordered the Corporate Debtor to be liquidated. Mr. Pinaki Sarkar was appointed as the Liquidator.

6. On perusal of the record, it is seen that the Liquidator has stated the following:

   (1) The IRP and the RP had sent several e-mails to the Suspended Board of Directors requesting them to provide the documents, but the suspended Board of Directors did not cooperate with the RP. The RP had prepared the Information Memorandum with the documents that were available in the public domain.

   (2) No Expression of Interest was submitted to the Resolution Professional. The Applicant apprised the Committee of Creditors ("CoC") in the 4th CoC meeting held on 26 November 2019, that the RP had only received the Valuation Report and that the Forensic Report was awaited.

(3) Since the Corporate Debtor was not a going concern, and no proper documents were received by the RP, and also the 180 day CIRP period was getting over, the CoC resolved to liquidate the Corporate Debtor in its 5th CoC meeting held on 19 December 2019.

(4) On receipt of the Forensic Audit Report by the Liquidator, the Liquidator ascertained that numerous undervalued and preferential transaction with related parties were entered into with the intention to defraud other creditors.

(5) The Corporate Debtor made a sale of inventories worth ₹1.87 crore during the financial year 2016-17, but from the credit sale and the financial statements provided, it is apparent that there was no sale as there was no realisation of money against the sale of inventory. Further, the sale of inventory was at a lower price in comparison with the value reflected in the books of account.

(6) It was noted that a sale of ₹1,78,59,685/- (Rupees one crore seventy-eight lakh fifty-nine thousand six hundred and eighty-five only) was booked and debt balance of Amicus Oil and Chemical Private Limited was increased by ₹1,87,52,670/- (Rupees one crore eighty-seven lakh fifty-two thousand six hundred and seventy only). The same was reflected in the unaudited balance sheet of Amicus Oil and Chemical Private Limited but no realisation was made against the sale from related party.

(7) The Corporate Debtor had a stock of ₹6,51,54,180/- (Rupees six crore fifty-one lakh fifty-four thousand one hundred and eighty only) of finished goods, by-products, raw materials and fuel, but they were sold at much lower amount of ₹1,78,59,685/- (Rupees one crore seventy-eight lakh fifty-nine thousand six hundred and eighty-five only). The Applicant has averred in the application that the following amounts are receivable from the related parties as on the commencement of CIRP:

a.	Amicus Oil and Chemical Private Limited	:	₹2,15,91,377/-
b.	Tridev Dealer Pvt. Ltd.:	:	₹2,27,100/-
c.	Sigma Chloro Paraffin Private Limited:	:	₹2,62,55,408/-
d.	Helix Holdings Private Limited:	:	₹61,12,528/-

7. The Liquidator has stated in his application that the above transactions are undervalued and fraudulent in terms of sections 45 and 66 of the Code as the

sale of inventory was entered into with the related parties at a price lower than the book value which clearly demonstrates the intent of the Corporate Debtor and that these transactions are within the definition of transactions to defraud creditors, *i.e.,* sections 49 and 66 of the Code. However, these are allegations that cannot be made lightly, and the Liquidator has to prove the same before the Adjudicating Authority.

8. On perusal of the records, it is seen that the Liquidator has not entered appearance since 09 August 2021. Thereafter, the IA was listed on three dates *i.e.,* on 01 November 2021, 12 January 2022 and 25 February 2022. Court notice had also been sent to the Liquidator, the Counsel for the Liquidator, and the Respondents on 18 January 2022. The notices have been duly delivered, yet neither did the Liquidator appear on 25 February 2022 nor did the Counsel appointed by the Liquidator appear.

9. The Liquidator should not expect that applications filed by him will be given due consideration even if he, as applicant, does not choose to appear. We do not see any reason to treat the Liquidator differently from other applicants whose applications will meet the same fate if they choose not to appear on multiple occasions.

10. In view of the above circumstances, we are constrained to **dismiss IA (IB) No.295/KB/2020 in CP (IB) No.11/KB/2019, for non-prosecution.**

11. We are also constrained to refer this matter to the IBBI for such lackadaisical behaviour of the Liquidator wherein he has filed an IA but has not shown any interest or intent to pursue the same.

12. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their learned Counsel for information and for taking necessary steps. The Registry is directed to send a copy of this order to the IBBI for further necessary action on their part in so far as the actions of the Applicant/Liquidator are concerned.

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

BALRAJ JOSHI Digitally signed by BALRAJ JOSHI Date: 2022.04.19 16:35:14 +05'30'

Rajasekhar V K Digitally signed by Rajasekhar V K Date: 2022.04.19 15:55:44 +05'30'

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

19 April, 2022

GGRB [LRA]