

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
23-02-2024 AT 10:30 AM**

CP(IB) No.341/7/HDB/2019

And

**IA (IBC) 1105/2023, IA No. 947/2020 & IA (IBC) 75/2021 in CP(IB) No.341/7/HDB/2019
u/s. 7 of IBC, 2016**

IN THE MATTER OF:

Bharat Tubes & Tin Printers

...Financial Creditor

VS

BTT Industries Pvt Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA (IBC) 75/2021

Orders pronounced. In the result, this application is dismissed as we are of the view that this application is not maintainable and appeals are also pending before Hon'ble NCLAT. **Accordingly, this application is dismissed.**

IA (IBC) 1105/2023, IA No. 947/2020

For hearing, matter adjourned to 20.03.2024.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

**I.A. (IBC) No. 75 of 2021
IN
CP (IB) No.341/7/HDB/2019**

Under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016

BETWEEN

Mr. G. Murali
Resolution Professional for
M/s. BTT Industries Pvt Ltd
H.No. 16-11-19/4, G-1,
Saleem Nagar, Malakpet, Hyderabad – 500036

...Applicant/Resolution Professional

Versus

Committee of Creditors
Comprising of 2 Operational Creditors

...Respondent

Date of Order: 23.02.2024

Coram:

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA

HON'BLE MEMBER (JUDICIAL)

SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Parties/Counsels present:

For Applicant : Ld. Resolution Professional G. Murali

For Respondent : NA

PER BENCH
ORDER

1. This is an application filed by Mr. G. Murali, Resolution Professional of 'M/s. BTT Industries Pvt Ltd' (hereinafter referred as 'Corporate Debtor') under Section 33(1) (a) of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred as 'IBC') seeking to initiate Liquidation Proceedings of the Corporate Debtor. This Application was filed by the Applicant against the 'Committee of Creditors' (hereinafter referred as 'CoC') of Corporate Debtor.
2. The Corporate Debtor was admitted into 'Corporate Insolvency Resolution Process' ('CIRP') by this Tribunal vide order dated 15.10.2019 and the Applicant herein was appointed as the Resolution Professional of the Corporate Debtor.
3. The Committee of Creditors (CoC) of the Corporate Debtor was constituted by the Applicant. The Financial Creditors of the Corporate Debtor were excluded from CoC as they being related parties and CoC was formed with two operational creditors i.e., one being V.S. Rao & Co with 0.01% voting share and the other being TSSPDCL, Mahabubnagar with 99.99% voting share.
4. The Applicant herein did not issue a public announcement of Invitation for Expression of Interest (EOI) in Corporate Debtor, as the same was not

approved by the CoC. The ground for not issuing the EOI was the lack of assets of Corporate Debtor, except other investments and cash.

5. As there was no Invitation for EOI issued by the Applicant, no resolution plan for Corporate Debtor was received by the CoC for approval. Moreover, the Corporate Debtor is not a going concern.
6. In lieu of these facts, the Applicant herein sought for an order initiating Liquidation Proceedings of Corporate Debtor.
7. We heard liquidator and perused the application filed for liquidation of corporate debtor by liquidator and our observations are as under:

- (i) The present Application since was filed under Section 34(1)(a) of IBC, we extract the same herein below:

“Section 34. Initiation of liquidation.

1) Where the Adjudicating Authority,--

*(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, **does not receive a resolution plan** under sub-section (6) of section 30; or*

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall--

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent. of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

Explanation.-- For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.”

and as per the above provision in the above section, the Adjudicating Authority can pass an order requiring the Corporate Debtor to be liquidated when no resolution plan was received by the Adjudicating Authority under Section 30(6) of IBC.

6. But, in this case we find that no “Invitation for Expression of Interest in the Corporate Debtor” by resolution professional and consequently no Resolution Plan could be received.
7. The reason given by the Resolution Professional for not inviting EOI is that the same was not approved by the CoC, despite his repeated requests.
8. In this context, Ld.Resolution Professional relied on the following resolutions:

“Item No 5: To discuss and approve for Expression of Interest (EOI) (Date & selection of two news papers) as per IBC, 2016. (Voting)

The RP has informed to the members of the CoC that the CoC need to take a decision regarding EOI publications date and selection of two papers (i.e one in English news paper and another in regional news paper) within 75 days from the date of commencement of CIRP date i.e. 15th October, 2019 as per the IBC, 2016. Hence, this agenda items mentioned from the 3rd CoC meeting onwards to get the approval from the CoC members. The RP has informed to the CoC members that, either need to issue Form G or need to go for liquidation, this decision has to be taken immediately but the CoC members have not taken any decision regarding the same due to lack of assets except few non-current investments of Rs.98,77,350/- and some cash balance with Rs.18,011/- only in the provisional financial statement as on commencement of CIRP i.e. 15th October, 2019 provided by the corporate debtor and the CoC members informed to the RP to defer this item due to all the available non-current investments relating to unlisted company and chance of realization is very less.

This item deferred and not agreed in voting, considering the decision of one of the CoC members i.e. M/s TSSPDCL, Mahabubnagar with 99% voting share. Hence, this agenda item not approved. RP noted the same.

Item No.6: To discuss and approve for Eligibility criteria, Request for Resolution Plan and Evaluation Matrix: (Voting):

Based on the item no.5 (the above point) regarding the finalization of issue of Form G, this item is also deferred and not agreed in the voting, considering the decision of CoC members i.e. M/s TSSPDCL, Mahabubnagar with 99.9% voting share. Hence, this agenda item not approved. RP noted the same.”

9. According to the Resolution professional TSSPDCL who is having 99.99% voting share in COC is not cooperating with the resolution professional, therefore it has become difficult for him to complete CIRP.

10. Before, we proceed further we carefully refer to the Regulation 36A which is as below:

Regulation 36A of The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 says that, criteria for prospective resolution applicant which needs as approved by the Committee in accordance with clause (h) of sub-section (2) of section 25 shall be specified in the Form G.

11. Thus, it is clear from Regulation 36(1)(4) a of IBBI, (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, it is clear that publication of Form-G requires prior consultation and approval of the COC. In so far as the case on hand is concerned, according to the RP, he has been reminding the COC about the timelines prescribed under IBC for issuing of Form-G public announcement and requesting co-operation of members of COC, but the members of COC have not co-operated.

12. In this contest, it is pertinent to note that TSSPDC, which is having 99.99 percent voting share in the COC , has disapproved the RP's proposal. In our considered view the stand taken by TSSPDCL is not correct. In fact, at the behest of TSSPDCL, this Tribunal vide orders in IA No.653/2020 dated 29.05.2023, ordered enquiry against the corporate debtor by the Central Government subsequently, subsequently, on an Appeal filed by respondents NO.8&9 in the order dated 29.05.2023 has been stayed by Hon'ble NCLAT vide order dated 14.07.2023.
13. Be that as it may, liquidation is the last resort under IBC and every effort should be made for revival of the Company. In the facts and circumstances of this nature where not even form-G has been issued, for the reasons stated above, we are of the opinion that COC shall co-operate with the RP in taking forward the CIRP instead of liquidation.
14. The present Application was filed on 15.12.2020 and pending adjudication of this Application, an application vide IA No. 653/2020 was adjudicated by this Tribunal by an order dated 29.05.2023. The said application was filed by TSSPDCL (one of the Operational Creditors and member of CoC) alleging fraudulent and malicious initiation of CIRP against Corporate Debtor herein and seeking an investigation into the affairs of Corporate Debtor and the group companies. The relevant portion of the order dated 29.05.2023 is as follows:

“26. In view of all the above facts, we are of the view that prayer for seeking for reference to the Central Government to conduct an investigation into the matters of CD and other BTT group companies in relation to the claim of TSSPDCL may be granted, hence we direct registry to write to Central Government for appointing an Inspector to examine the issue and submit his report within a period of 2 months from the date of receipt of this order.

27. The other prayer to put a restraint on sale or alienation of property is not relevant in this case and deserve to be dismissed, hence dismissed.

28. With these orders IA is partly admitted and disposed of.”

(ii) Aggrieved by this order, some of the Respondents in the said IA No. 653 of 2023 approached the Hon’ble ‘National Company Law Appellate Tribunal, Chennai’ (hereinafter referred as ‘NCLAT’) . The details of the Appeals and the relevant orders of The Hon’ble NCLAT in the appeals are as follows:

- IA No. 658/2023 in Company Appeal (AT) (CH) (Ins) No.200/2023 (filed by Respondents No. 8 & 9 in IA 653 of 2023)

The relevant portion of order dated 14.07.2023:

“This Appeal has been filed by Respondent Nos. 8 & 9, arrayed in the Impugned Order (the impugned order here being the order in IA No.653 of 2023 passed by this Tribunal) dated 29.05.2023.

.....

In the meantime, further proceedings in view of the Impugned Order passed against the Appellants shall remain stayed till the next date of hearing.”

- IA No. 589/2023 in Company Appeal (AT) (CH) (Ins) No.185/2023 (filed by Respondents No. 5 & 7 in IA 653 of 2023)

The relevant portion of order dated 07.08.2023:

“In view of the fact that the connected Comp. Appeal. (AT) (CH) (Ins) No. 200/2023 an ‘interim order of stay’ was passed by this ‘Tribunal’ on 14.07.2023, and the same pertains to only to Appellants’ therein, a similar order of stay in respect of the ‘Impugned Order’ is passed by this ‘Tribunal’ to and in

favour of the 'Appellants' in Comp. App. (AT) (CH) (Ins) No.185/2023 grants stay till 12.09.2023."

- Company Appeal (AT) (CH) (Ins) No.228/2023 (filed by Respondents No. 3 & 4 in IA 653 of 2023)

The relevant portion of order dated 07.08.2023:

"In view of the fact that the connected Comp. Appeal. (AT) (CH) (Ins) No. 200/2023 an 'interim order of stay' was passed by this 'Tribunal' on 14.07.2023, and the same pertains to only to Appellants' therein, a similar order of stay in respect of the 'Impugned Order' is passed by this 'Tribunal' to and in favour of the 'Appellants' in Comp. App. (AT) (CH) (Ins) No.228/2023 grants stay till 12.09.2023."

(iii) Later, all these appeals were clubbed together and heard at the same time. The stay granted by the Hon'ble NCLAT in these appeals was extended from time to time and is still in force. The relevant portion of order dated 08.02.2024 passed by Hon'ble NCLAT in these Appeals is as follows:

"The 'Office of the Registry', is directed to 'List' the matter on 12.04.2024, under the caption, 'For Admission (After Notice)'.

Till the next date of 'Hearing', the earlier 'Interim Order', granted by this 'Tribunal', shall 'continue'."

(iv) The outcome of these appeals will definitely have an impact on the CIRP of the Corporate Debtor. Moreover, the order passed by this Tribunal in IA 653 of 2023 dated 29.05.2023 is still in operation as against the other Respondents who did not approach the Hon'ble NCLAT. The said order is to conduct an investigation into the matters of the Corporate Debtor and the group companies. The outcome of this investigation too will have an impact on the CIRP of Corporate Debtor. In these circumstances, the Corporate Debtor cannot be ordered to be Liquidated without properly ascertaining the actual state of affairs.

15. Hence, we hereby direct the RP, to call for meetings of the members COC at the earliest, to discuss RFRP and approval of Form-G. The members of COC shall sincerely endeavor to take the CIRP forward. RP shall file the report within three weeks from today.
16. Thus, this Application is partly allowed, only to the extent indicate above and the relief for liquidation of corporate debtor is hereby dismissed.

SD

Charan Singh
Member Technical

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

AK/pavani