

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH,
KOLKATA

IA No. 432/KB/2021
in
CP (IB) No.1542/KB/2018

In the matter of:

Under section 33(1) read with section 33(2) of the Insolvency & Bankruptcy Code, 2016;

In the matter of:

Balaji Metals

... Operational Creditor

Versus

Gontermann – Peipers India Limited

... Corporate Debtor

In the matter of:

Raj Singhanian

..... Applicant

Order reserved on: 26/04/2021
Order pronounced on: 30/04/2021

Coram:

Shri Rajasekhar V.K. : Member (Judicial)
Shri Harish Chander Suri : Member (Technical)

Appearances (through video conferencing):

Mr. Madhu Sudan Sarkar, Advocate] For West Bengal State Electricity
Mr. Mousamjit Sarkar, Advocate] Distribution Company Limited
Mr. Deepanjan Dutta, Advocate]
Mr. Raj Singhanian] RP in person

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ORDER

Per Harish Chander Suri, Member (T):

1. This is an application under Section 60(5) of the Insolvency & Bankruptcy Code, 2016, filed by the Resolution professional upon the instructions of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, viz., *Gontermann – Peipers India Limited*, on the ground that the resolution plan submitted by the resolution applicant JSW Steel Limited was not approved by the CoC through e-voting as the CoC through the RP requested the Resolution Applicant to consider removing the clause relating to the personal guarantee of the promoters of the Corporate Debtor and submit a revised Resolution Plan was not given within the timeframe and hence there is no other alternative but to recommend for liquidation and the Committee of Creditors in its fifteenth meeting held on 03.04.2021 passed a resolution with 90.95% vote share to approve the liquidation of the Corporate Debtor.
2. This Adjudicating Authority *vide* its order dated 11.12.2019 on a Petition filed by Balaji Metals (*operational creditor*) under section 9 of the Insolvency and Bankruptcy Code, 2016 (*‘the Code’*) had directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed the Applicant herein as the Interim Resolution Professional (IRP).
3. CoC was duly constituted and the first meeting of CoC was held on 9th January, Thereafter, IRP had published Form-G in the newspapers with regard to invitation for Expression of Interest for submission of Resolution Plan on 24.02.2020 Thereafter, on 25.03.2020, lockdown was implemented by the Central and State Governments owing to the Covid-19 pandemic. The revised EOI was published on 14.08.2020. On 06.11.2020 this Adjudicating Authority gave exclusion for covid period from 24.03.2020 to 31.08.2020 and also allowed extension of 90 days as per section 12(2). This Adjudicating Authority

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vide order dated 1st September, 2020 appointed the said Interim Resolution Professional (IRP) as Resolution Professional (RP).

4. Pursuant to the initial publication of Form G dated 24.02.2020 the RP had received three EOI's and subsequently on publication of revised EOI on 14.08.2020 one more Resolution Applicant had shown interest. In the meantime there was a breakout of Covid-19 pandemic throughout the country and the Central Government as well as the State Government imposed strict Lockdown disrupting the entire process. The last date for submission of Resolution Plan as per revised Form G was 08.10.2020 but owing to Covid restrictions the CoC approved in the 7th CoC meeting the extension of the last date of submission of the Resolution Plan to 29.10.2020. Pursuant to above, the Resolution Professional received two Resolution Plans within the extended timeline. In the 10th, 11th and 12th CoC meeting held on 07.12.2020, 18.12.2020 and 08.01.2021 adjourned and concluded on 19.01.2021 respectively, the Authorised Representative of the Resolution Applicants presented their respective Resolution Plans and CoC members interacted with them.
5. During the 12th CoC meeting the representative of one of the Resolution applicant showed their practical difficulties in participating and decided to withdraw their Resolution Plan thus M/s. JSW Steel Limited became the sole Resolution Applicant in this Resolution Plan Process.
6. In the 13th CoC meeting held on 01.02.2021, adjourned and concluded on 03.02.2021, the RP placed the compliant Resolution Plan of JSW Steel Limited before the CoC for their consideration and necessary approval. However, the Resolution Plan was not approved by the CoC upon e-voting on the resolution for approval. One of the major reasons for rejection of the Plan by the CoC was a conditional clause given by the Resolution Applicant with regard to assignment of the Personal Guarantee of the erstwhile promoters of the Corporate Debtor in favour of the Resolution Applicant by the secured financial creditors of the Corporate Debtor. The CoC through the RP requested the

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Resolution Applicant to consider removing the clause related to the personal guarantee of the promoters of the Corporate Debtor and submit a revised Resolution Plan but the Resolution Applicant did not submit any revised resolution plan with the given timeframe.

7. The matter was placed before the CoC by the RP in its 14th CoC meeting held on 02.03.2021. Thereafter, the representatives of employees and workmen requested both the CoC members and the RP to take one last attempt and try to convince the representatives of JSW Steel Limited so that they give a revised Resolution Plan considering the interest of all stakeholders. The CoC agreed for the same and accordingly, the RP communicated with the senior officials of the Resolution Applicant and gave them a last chance to submit a revised Resolution Plan latest by 31.03.2021. However, he did not receive any revised plan from the Resolution Applicant JSW Steel Limited.
8. In the Fifteenth CoC meeting held on 03.04.2021, it was decided that the Adjudicating Authority be requested to pass the order of liquidation in view of rejection of the resolution plan under section 31 of the IBC and the resolution professional be appointed as the Liquidator.
9. The Applicant/Resolution Professional, Mr. Raj Singhania (Reg. No. IBBI/IPA-001/IP-P00188/2017-2018/10367), has agreed to act as liquidator to carry on the process of liquidation and given his consent dated 13th April, 2021 to act as Liquidator, in the prescribed Form AA, in terms of section 34(1) of the Code.
10. We have considered the submissions made by the Applicant/RP in person and perused the record.
11. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating authority of the decision of the CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the

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present case, the CoC has resolved by 90.95% voting share to liquidate the Corporate Debtor.

12. This Bench, therefore, hereby orders as follows: -

- a. IA No.432/KB/2021 filed by Mr. Raj Singhania RP of Gontermann-Peipers (India) Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;
- b. Mr. Raj Singhania, [Reg. No.IBBI/IPA-001/IP-P00188/2017-18/10367, the Applicant/RP herein, is hereby appointed as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.
- c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, stating that the Corporate Debtor is in liquidation.
- e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. On initiation of the liquidation process but 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, as provided in section 33(5) of the Code read with its proviso.

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- h. In accordance with section 33(7) of the Code, this liquidation order 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. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the Corporate Debtor is been registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.
13. The application bearing **I.A. No. 432/KB/2021** shall stand disposed of in accordance with the above directions.
14. **CP(IB) No. 1542/KB/2018** to come up for filing of periodical report on **22.07.2021**.
15. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
16. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Order dated 30th April, 2021.

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