

NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (Court-II)

C.A. 1354/C-II/ND/2019

IN

Company Petition No. (IB)-334(ND)/2019

IN THE MATTER OF :

M/s Ambience Commercial Developers Pvt. Ltd

...Operational Creditor

Versus

M/s Jot Impex Private Limited

Ground Floor, Sadar Bazar

Delhi Cantt, New Delhi-110019

...Corporate Debtor

AND IN THE MATTER OF :

Mr. Akhilesh Kumar Gupta

LGF, A 16/9, Vasant Vihar

New Delhi-110057

...Resolution Professional/Applicant

Order Delivered on: 20.12.2019

Section: 33(2) of the Insolvency and Bankruptcy Code, 2016.

CORAM:

CH. MOHD. SHARIEF TARIQ, MEMBER (J)

MR. L. N. GUPTA, MEMBER (T)

PRESENT:

For the Applicant : Ms. Surbhi Sinha

For the Respondent : None



ORDER

PER SH. L. N. GUPTA, MEMBER (T)

This is an application filed by the Resolution Professional under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for passing an order for liquidation of the Corporate Debtor, M/s Jot Impex Pvt. Ltd.

2. Facts in brief are that the Operational Creditor, M/s. Ambience Commercial Developers Pvt. Ltd. filed an application bearing no. IB-334(ND)/2019 under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s. Jot Impex Pvt. Ltd. The said application was admitted by this Tribunal vide Order dated 14.05.2019 and Mr. Akhilesh Kumar Gupta was appointed as Interim Resolution Professional (IRP).

3. In terms of Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a public announcement in FORM-A on 14.05.2019. The Public announcement was also uploaded on the website of Insolvency and Bankruptcy Board of India (IBBI).

4. That the Interim Resolution Professional constituted a Committee of Creditors (COC), comprising of the following creditors :



Creditors	Amount of Claim (in Rs.)
Bank of India	24,60,78,748.65/-
Income Tax	10,19,63,032/-
Ambience Commercial Developers Pvt. Ltd.	2,41,41,462/-
ICICI Bank	2,21,64,937.10/-
DLF Utilities Ltd	11,77,151/-
Total	39,55,25,331/-

5. The first meeting of the CoC was held on 18.05.2019, which appointed the IRP Mr. Akhilesh Kumar Gupta to act as Resolution Professional (RP).

6. It is averred by the Ld. RP that :

"11. That the Applicant prepared and submitted the Information Memorandum as required under Regulation 36 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "Regulations") to the Financial Creditor vide an email dated July 09, 2019.

*12. That a draft of detailed Expression of Interest (EOI) including criteria for prospective Resolution Applicants, ineligibility norms, evaluation matrix for inviting, evaluation and acceptance of Resolution Plan etc was placed before the member of the CoC by the Applicant in 2nd CoC meeting held on July 26, 2019. That the same was approved by the CoC members pursuant to which the Applicant published an advertisement for inviting EOI in Form G (as per Regulation 36A(I) of the Regulations) in one English Newspaper named Financial Express on July 29, 2019 and in one Hindi Newspaper named Jansatta on July 29, 2019. That the last date of receipt of EOI was August 19, 2019. **However, no expression of Interest was received by the Applicant till August 19, 2019 or even after, so to say, despite best efforts.**"*



7. That on getting no expression of interest, the Ld. RP has placed the agenda of the liquidation of the Corporate Debtor before the members of CoC in the 4th Meeting of CoC held on 12.09.2019, which was approved with 100% voting power. The relevant extract of the minutes of the 4th meeting of CoC dated 12.09.2019 are reproduced below :

“Agenda 8 To seek member’s approval for liquidation of the Company

Mr. Akhilesh Kumar Gupta, Resolution Professional apprised the members of the Committee that Form G (Invitation for Expression of Interest) was published on 29th July, 2019 in one English newspaper i.e. Financial Express and one Hindi Newspaper i.e. Jansatta but no EOI has been received till last date, i.e. 19th August, 2019.

The members took note of the same and proposed to liquidate the Corporate Debtor and decide to authorize Mr. Akhilesh Kumar Gupta, Resolution Professional to move an application to the Hon’ble NCLT for liquidation for the Company and also decided to appoint him as liquidator.

Mr. Akhilesh Kumar Gupta, Resolution Professional has also given his consent to act as liquidator of the Corporate Debtor. The same is enclosed herewith and marked as “Annexure B”.

The members passed the following resolution representing their approval :

“RESOLVED THAT *considering the fact that no EOI has been received till last date i.e 19th August, 2019 and in accordance with the provisions of Section 33 of the Insolvency and Bankruptcy Code, 2016, the Committee of Creditors decided to liquidate the Corporate Debtor as per the provisions of insolvency and Bankruptcy code, 2016 and IBBI (Liquidation Process) Regulations, 2016.*



RESOLVED FURTHER THAT Mr. Akhilesh Kumar Gupta, erstwhile Resolution Professional be and is hereby appointed as the Liquidator of the Company at a fees of Rs. 4,20,000/- (exclusive of GST) for a period of 6 months or fee calculated as per Regulation 4 of IBBI (Liquidation Process) (Amendment) Regulations, 2019 whichever is higher.

RESOLVED FURTHER THAT Mr. Akhilesh Kumar Gupta be and is hereby authorized to do all such acts and deeds as may be required in relation to give effect to the above resolution.”

8. The Resolution Professional further submits that he has succeeded in making due recoveries of Rs.4,67,275 (Rupees Four Lakhs Sixty Seven Thousand Two Hundred and Seventy Five) only from M/s Khimani Watch Company Pvt. Ltd. vide Demand Draft No. 903038 dated 15.06.2019 and Rs.3,46,040 (Rupees Three Lakhs Forty Six Thousand and Forty) only vide Cheque No. 000128 dated 24.08.2019 thereby reducing the total liability on the Corporate Debtor by Rs.8,13,315 (Rupees Eight Lakhs Thirteen Thousand Three Hundred Fifteen) only.

9. It is added by the Ld. RP that the possession of the properties of the Corporate Debtor was given by the ICICI Bank to him on 03.08.2019. It is submitted by the Ld. RP that Mr. Ram Lakhan Singh and Mr. Sunil Saini were appointed as registered valuer of the properties, who have submitted their valuation report on 19.08.2019 ad 28.08.2019 respectively.



10. It is further averred by the Ld. RP that :

“15. That it is hereby brought to the notice of this Hon’ble Tribunal that basis the information available on the public domain as well as the information received from the Statutory Auditor, the Applicant has just got the audited financial statements of the Corporate Debtor as on 31st March, 2014 only. That there are no employees/Directors of the Corporate Debtor available who can assist the Ld. RP in providing the information and explanation to complete the Books of Accounts. Therefore, the Ld. RP would not be able to complete the Books of Accounts of the Corporate Debtor and bring them up-to-date as required under Regulation 6 of the IBBI (Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.”

11. In regard to his prayer for exemption from filling of Balance Sheet from the Financial year 2014-15 onwards, on 27.11.2019, this Bench sought the following clarifications from the Ld. RP :

- a. Whether the Corporate Debtor continued its business after March 2014.
- b. When details of main Assets and Investments and further (on the basis of the claims received) liabilities are known to the RP, why should an exemption from preparation/filing books of accounts be sought ?
- c. Has the RP filed an FIR/Red Notice against the Ex-Directors, who have reportedly absconded to Canada ?

12. Though, the Ld. Advocate for the RP informed to have filed clarifications on 28.11.2019, the same have not been received by this Bench and are reportedly lying in the Registry under objection. In the



absence of proper clarification/justification, this Bench is not inclined to allow exemption from preparation and filing of Financial Statements for the years 2014-15 onwards.

13. In the aforesaid background and in absence of receipt of any resolution plan; there being no other alternative, the Ld. RP vide his application has prayed for allowing liquidation of the Corporate Debtor under Section 33 of the Code.

14. As a sequel to the above, the Application is allowed, ordering Liquidation of the Corporate Debtor namely, M/s. Jot Impex Private Limited in the manner as laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant Rules and Regulations along with the following directions :

- a. Mr. Akhilesh Kumar Gupta, Resolution Professional holding Registration No. IBBI/IPA-001/IP-P00780/2017-18/ 11353, is appointed as Liquidator in terms of Section 34(1) of the Code;
- b. Mr. Akhilesh Kumar Gupta is directed to issue Public Announcement stating that the corporate debtor is in liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- 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;

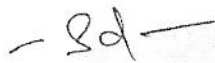
- d. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- e. Liquidator shall ensure preparation of the Financial Statements of the Corporate Debtor for the pending Financial Years and connected statutory filings.
- f. Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued and preferential transactions etc., if any.
- g. 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.
- h. The Registry is directed to communicate a copy of the Order to the Operational Creditor, the Corporate Debtor and the Liquidator at the earliest but not later than seven days from today. A copy of this Order be also sent to the ROC for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT.



- i. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;

15. C.A.1354(ND)/2019 filed under IB-334(ND)/2019 is disposed off in the aforesaid terms.


(L. N. Gupta)
Member (T)


(Ch. Mohd. Sharief Tariq)
Member (J)