

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P.(IB) 1479/(MB)/2017
MA 2036/2019, MA 2126/2019, MA
1204/2018, MA 2221/2019

CORAM:

SHRI V. P. SINGH
MEMBER (J)
SHRI RAJESH SHARMA
MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 19.8.2019

NAME OF THE PARTIES: Biostadt India Ltd
V/s
Sonachi Industries Ltd

Section 8 & 9 of the Bankruptcy and Insolvency Act, 2016

ORDER

35. **MA 2036/2019,MA 2126/2019,MA 1204/2019,MA 2221/2019In
CP.(IB)-1479(MB)/2017**

MA 2126/2019 has been filed under Section 60(5) of IBC, 2016, seeking direction against R2 Allahabad Bank to pay the liquidation expenses incurred by the Liquidator while discharging his duties including wages for security personnel, insurance premium and other liquidation expenses as stated in para 23 of the application.

The applicant contends that the Petition under Section 9 filed against the Corporate Debtor Sonachi Industries was admitted by order of this Bench dated 2.5.2018 and Mr Syamal Bhattacharya was appointed as IRP. After that IRP invited the claims and constituted the CoC which consists of Allahabad Bank as one member having a vote share of 98.57%. Since the petition was admitted by our order dated 2.5.2018 and within the statutory period of 270 days no resolution plan was approved, we passed the order to liquidate the Corporate Debtor, and Mr. Kshitiz Gupta was appointed as Liquidator of the Corporate Debtor.

In compliance with Regulation 12 of IBBI (Liquidation) Regulations, 2016, a public announcement was issued by Liquidator in newspapers on 17.3.2019 for calling of proof of claims by stakeholders and the last date for submission of the claims was 11.4.2019. Pursuant to public announcement, proof of claims were received from various stakeholders including Allahabad Bank, i.e. R2 which has filed the claim of Rs.17,73,22,068/-. Out of the claim submitted by the Allahabad Bank, claim worth Rs.17,55,66,412/- was admitted by the Liquidator.

The applicant further contends that Allahabad Bank being the sole secured creditor having hypothecation/mortgage over all the movable/immovable assets of the Corporate Debtor has submitted its claim on 4.4.2019. Copy of the claim received from Allahabad Bank is annexed with the application as Exhibit E.

It is further stated that subsequent to submission of the claim, Allahabad Bank sent a revised claim to the Liquidator with additions for few costs and change in the interest figure. The claim was re-verified by the Liquidator, and final admission of claim was communicated to Allahabad Bank on 16.5.2019. Copy of the revised claim received from Allahabad Bank is annexed with the application as Exhibit F.

Given the provisions of Section 52 of IBC, 2016, the Liquidator sent an email to Allahabad Bank on 6.5.2019 requesting to decide about their decision to realise the security interest or relinquish the same to be pooled in the liquidation estate. The Liquidator in the email had requested Allahabad Bank to communicate Bank's decision by 10.5.2019. However, no response was received from the Allahabad Bank till that date.

The applicant further contends that the condition of the secured assets is deteriorating. There is no light in the factory and the miscreants are

throwing stones on security personnel due to darkness. It is in the interest of Allahabad Bank that there should be proper security in the factory of the corporate debtor.

It is further contended that the Liquidator has been requesting Allahabad Bank, being the sole secured lender, having hypothecation/mortgage over the assets of the Corporate Debtor, to pay/reimburse expenses, viz. security guard wages, electricity expenses, factory insurance premium, car insurance premium, legal expenses, publication expenses and all other expenses incurred by the liquidator during the liquidation process. Since the factory insurance expired on 18.5.2019, these issues were informed and reminded to the bank on several occasions. Copy of the email sent to Allahabad Bank is annexed with the application as Exhibit L.

The applicant further contends that despite of the direction of this Bench to pay the RP fees and other CIRP expenses, the Bank has not paid the RP fees and other CIRP expenses in full in pursuance to order of this Bench dated 30.11.2018.

It is further contended that after a period of 3 months from the date of liquidation order, first time Allahabad Bank on 24.5.2019 sent an email to the Liquidator stating “ we are not relinquishing our security interest in Sonachi Industries. However, the final decision will be conveyed to you by separate email/letter.” Copy of this email is annexed with the application as Exhibit N. The applicant has also given a summary of expenses in para 23 of the application which is as under:

Expense Head	Amounts (Rs.)
Security Expenses (Mar – May, 2019)	2,50,889/-
Insurance Expense	2,87,292/-
Audit Fees	1,15,000/-
Conveyance	12,080/-
Legal Expenses	75,000/-

Publication Expenses	37,632/-
Misc Expenses	14,962/-
Total	7,92,855/-

Details of such expenses are annexed with the application as Exhibit O.

In the circumstances, the applicant has filed this MA seeking direction against the Financial Creditor, i.e. R2 Allahabad Bank. In reply to the above MA, R2 Allahabad Bank has stated that by email dated 6.5.2019, the applicant informed R2 that he needs to form a Liquidation Estate and file asset Memorandum with this Tribunal. The applicant also informed R2 about the difference between Section 52 and Section 53 of the Code and requested the R2 to communicate their decision before 10.5.2019. In the circumstances, only four days were given for R2 to decide whether to relinquish its security under Section 52 of the Code or opt for sale of the assets under Section 53 of the Code, which does not seem to be a reasonable or sufficient time given to a Financial Creditor to obtain permission and consent from their higher authorities.

After that, by email dated 24.5.2019, R2 informed the applicant that they would not be relinquishing their security interest in respect to the assets of the Corporate Debtor and a final decision will be conveyed to the applicant by separate letter/email. Accordingly, by reply dated 29.5.2019, the applicant has given consent to the decision of R2 and has informed the R2 that on receiving formal communication, they shall discuss and decide the future course of action in accordance with rules and regulations stated under the Code.

Heard the argument of the Ld. Counsel for the parties and perused the records.

Admittedly in this case, after the publication of notice for submission of the claims to the Liquidator, R2, the Allahabad Bank ,has filed its claim

on 4.4.2019 and after that Allahabad Bank further submitted revised claim on 2.5.2019, and the claim was re-verified on 2.5.2019.

Section 52 of the Code is given as under for ready reference:

“52. (1) A secured creditor in the liquidation proceedings may—

(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53, or

(b) realise its security interest in the manner specified in this section.”

In this case, Allahabad Bank, the sole secured financial creditor, has submitted its claim to the Liquidator. By submission of the claim to the Liquidator, there remains no need for taking consent of the Financial Creditor regarding willingness to relinquish the security or not. It appears from the record that Liquidator after receiving the claim has further sent an email and asked Allahabad Bank to confirm whether Allahabad Bank is relinquishing security or not, for which Allahabad Bank failed to send the reply within the stipulated time.

By submitting its claim to the liquidator, and not informing him that he is not relinquishing his security interest, the secured creditor has lost its right to opt for not relinquishing its security interest. In the circumstances, there remains no reason to give further liberty to the secured creditor to exercise its option regarding his willingness to relinquish his security or not.

It is also pertinent to mention that the claims submitted by the secured financial creditor was re-verified by the Liquidator and final admission of the claim was communicated to the Allahabad Bank on 16.5.2019.

In the circumstances as stated above the MA 2126/2019 deserves to be allowed hence allowed. We direct the Liquidator to proceed with the disposing of the liquidation estate, so formed by him as per the manner and mode

mentioned in the Asset Memorandum filed by following the Rules and Regulations prescribed under the Code.

Allahabad Bank is further directed to pay the pending liquidation expenses within 15 days from today and also to continue to pay the liquidation expenses until such time the Corporate debtor is liquidated.

MA 2126/2019 is disposed of accordingly.

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
V. P. SINGH
Member (Judicial)