IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

IA No. 1438/KB/2020
in
CP (IB) No. 265/KB/2019

Under section 33 of Insolvency & Bankruptcy Code, 2016

In the matter of

Cecil Antony & Ors.
Trustees of NSHM Academy and Hari Charan Garg Charitable Trust, Public Charitable Trusts

...Financial Creditor

Versus

SPS Ispat & Power Limited
(CIN: U27100WB2011PLC158285)

...Corporate Debtor

And

Rakesh Kumar Agarwal
RP of SPS Ispat & Power Limited

… Applicant

Order reserved on: 13.01.2021
Order pronounced on: 19.01.2021

Coram:

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

Appearances (through video conference):

For the Applicant	:	Mr Anurag Mitra, Advocate Ms Aryaa Chatterjee, Advocate Mr Rakesh Agarwal, RP

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This court convened *via* video conference today.

2. This is an application filed by the Resolution Professional seeking liquidation of the Corporate Debtor, *viz.,* SPS Ispat & Power Limited (CIN: U27100WB2011PLC158285), on the ground that no Resolution Plan has been received.

3. This Adjudicating Authority *vide* its order dated 08.08.2019 on a Petition filed by Cecil Antony & Ors. (Trustees of NSHM Academy and Hari Charan Garg Charitable Trust, Public Charitable Trusts) (financial creditor) under section 7 of the Insolvency and Bankruptcy Code, 2016 ('the Code') directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed Mr. Santosh Choraria as the Interim Resolution Professional (IRP).

4. In terms of section 15 of the Code, public announcement in Form 'A' was made by the IRP on 09.08.2019 in *Financial Express* (English) and *Aajkal* (Bengali) newspapers fixing the last date of submission of claim as 22.08.2019. Copies of publication are annexed to the application at pages 32 and 33.

5. The Committee of Creditors (CoC) was duly constituted on 31.08.2019 with six financial creditors and the report certifying the constitution of the CoC was filed with the Adjudicating Authority on the same date.

6. The first meeting of CoC was held on 07.09.2019, wherein the Applicant was appointed as the RP by replacing the IRP and the same was confirmed by this Tribunal vide order dated 29.10.2019.

7. Invitation for Expression of Interest (EoI) was published in Form 'G' on 21.10.2019 in *Financial Express* (English) and *Aajkal* (Bengali), Kolkata edition, fixing the last date for receipt of EoI as 11.11.2019. Upon approval from the CoC, the said last date of receipt of EoI was extended twice and revised Form 'G' were published in the same newspapers, first on 23.11.2019 fixing the last date for receipt of EoI as 08.12.2019 and then on 27.12.2019 fixing the last date for receipt of EoI as 15.01.2020.

8. The period of CIRP was to expire on 03.02.2020, therefore, the RP had filed an application for extension of CIRP period. The said period was extended for ninety days by this Tribunal *vide* its order dated 15.01.2020.

9. The Applicant received a Resolution Plan from one NSHM Academy, one of the financial creditors on 17.03.2020. However, the same was withdrawn by the NSHM Academy on 12.06.2020.

10. In the 7th CoC meeting held on 19.06.2020 the RP informed the CoC of the withdrawal of the only Resolution Plan received and that no other Resolution Plan had been received till date. The CoC, in such circumstances, unanimously voted to liquidate the corporate debtor and requested the RP to file an application for liquidation. A copy of 7th Progress Report along with the Minutes of the CoC meeting are annexed to the application and marked as Annexure G at pages 283-305.

11. Rakesh Kumar Agarwal (Regn. No. IBBI/IPA-001/IP-P00443/2017-18/10786) has agreed to act as Liquidator to carry on the process of liquidation and given his consent dated 19.06.2020 in the prescribed Form AA, in terms of section 34(1) of the Code.

12. We have considered the submission made by the ld. Counsel appearing for the Applicant and perused the record.

13. This is a case where the advertisements inviting EoIs were published thrice and the only Resolution Plan received was withdrawn by the prospective resolution applicant. There is no other plan under consideration by the CoC. Extended period of CIRP has expired on 03.05.2020. Therefore, there is no alternative but to order the liquidation of the Corporate Debtor.

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

   a. IA No. 1438/KB/2020 filed by Mr Rakesh Kumar Agarwal, RP of SPS Ispat & Power 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. Rakesh Kumar Agarwal (Reg. No. IBBI/IPA-001/IP-P00443/2017-18/10786), 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, *i.e., Financial Express* (English) and *Aajkal* (Bengali) of Kolkata edition of the said newspapers 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.

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.

15. The application bearing **IA (IB) No. 1438/KB/2020** shall stand

disposed of in accordance with the above directions.

16. **CP (IB) No. 265/KB/2019** to come up for filing of periodical report on **28.04.2021**.

17. 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.

18. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities

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

19.01.2021

SR (LRA)