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IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - III

C.A.No.295/C-III/ND/2019

C.A.297/C-III/ND/2019

IB 343/ND/2017

In the matter of:

COLUMBIA PETROCHEM PVT.LTD. R.G. Steels

....OPERATIONAL CREDITOR

Vs.

PETROLUBE INDIA LIMITED

.....CORPORATE DEBTOR

SECTION:

UNDER SECTION 33 R/W SECTION 34 OF IBC, 2016

Order Delivered on 23.09.2019

Coram:

Sh. R. Varadharajan

Hon'ble Member (Judicial)

Shri K. K. Vohra

Hon'ble Member (Technical)



Handwritten signature and date: 23/9/19

For the Petitioner/Op. Creditor: Mr. Sanjeev Singh, Mr

Prashant Tripathi,

Advocates (Hero Fincorp Ltd)

(For ex-Management Mr. Kartik Bhardwaj, Advocate

ORDER

This application has been preferred by the Resolution Professional (RP) appointed by this Tribunal namely Mr. Ashwani Kumar Gupta seeking under the provisions of Sec.33 read with Sec.34 of Insolvency & Bankruptcy Code (IBC) 2016 for the liquidation of the Corporate Debtor (CD). From the application it is evident that the admission of the main company petition at the instance of one of the Operational Creditor (OC) of the CD was admitted on 25.1.2018 and Corporate Insolvency Resolution Process (CRIP) was initiated as a consequence of admission. At the time of Admission one Mr. Amar Nath Kukreja, was appointed as the Interim Resolution Professional (IRP) and the fact that the said IRP had issued a public announcement which was published in "Pioneer English" as well as "Hindi" Edition on 7.2.2018 calling for the claims from the Creditors of the CD. Subsequent of the collation of the claims as made by the Creditors before the IRP, Committee Creditors (COC) have been constituted on 5.3.2018. The list of Financial Creditors of the CD who constituted the members of the COC and the respective voting share is as follows:



S.No	Name of Creditor	Voting Share%
1	Kotak Mahindra Bank Limited	77.90
2	Yes Bank Limited	4.44
3	Hero Fincorp Limited	6.94
4	HDFC Bank Limited	1.65
5	Dewan Housing Finance Corporation Ltd.	0.91
6	Magma Fincorp Limited	1.83
7	Indusind Bank Limited	3.79
8	Paisalo Digital Limited	1.57
9	Capital First Limited	0.97

It is also evident from the application that in the first COC held on 13.3.2018 the Members of the COC had changed the IRP to the present RP who has filed this application and the said change seems to have been approved by this Tribunal on 5.4.2018. In the meanwhile, it is also brought to the notice of this Tribunal by the RP that the earlier IRP had appointed registered Valuers on 14.2.2018. However, the same stood changed by the present RP with the approval of the COC by appointing two Valuers on 9.5.2018. It is also brought to the notice of this Tribunal that invitation for expression of interest was issued on 21.7.2018 which subsequently was extended by the COC on 18.8.2018 pursuant to which the same got published on 21.8.2018. On 2.9.2018, the final list of eligible prospective Resolution



applicants were made and the last date of submission of Resolution Plan which was required to be given on 20.9.2018 by the Prospective Resolution applicants was extended by the COC in its meeting held on 24.9.2018. Resolution Plan was placed before the COC for approval. However, the COC has not approved the resolution plan by E/Voting on 29.9.2018 and in the circumstances no resolution plan was filed before the Adjudicating Authority namely this Tribunal for the approval of the Resolution Plan. It is also evident from the averments made in the application and the documents filed thereunder that the 180 days period for the completion of CIRP had expired on 24.7.2018 and even though the period of CIRP was extended by this Tribunal vide order dated 9.7.2018 at the instance of the COC taking into consideration such extension granted by the Tribunal had also expired. During the course of the CIRP, it is brought to the notice of this Tribunal that the following status reports have been filed by the IRP/RP in relation to the progress made for resolving the Insolvency of the CD namely 5.3.2018, 19.3.2018, 23.5.2018, 2.7.2018, 9.7.2018, 19.7.2018, 14.8.2018, 21.8.2018, 24.8.2018 and finally the present application on 6.10.2018. A brief synopsis of the reports which have been filed by the IRP /RP has been given by way of tabulation in the application itself which for the sake of brevity is not repeated save the material happenings for the consideration of this application as given below namely even though the COC had initially fixed the net worth criteria /requirement at Rs.10 crores as on 31.3.2018. However, subsequently with a view to obviate the necessity of taking the Corporate Debtor to liquidation as no



EOI's were received for the said threshold as fixed by the COC, the net worth requirement was reduced to Rs.7.5 crores as at 31.3.2018 for the prospective Resolution applicants. The COC meeting held on 18.8.2018 which also got published in "Business Standard" in English and Hindi Editions of 21.8.2018. Pursuant to the revised net worth criteria as fixed by the COC, Resolution plan seem to have been received from M/s. Hari Ram Gupta jointly with Arpit Gupta and Pratik Gupta who were found to be eligible Resolution applicants and in the circumstances the necessary follow ups to provide the requisite documents were also given. Since the above persons who have submitted the Resolution Plan also happens to be the persons involved in the affairs and Management of the Corporate Debtor, a condition was also imposed that their submission of Resolution Plan and its approval would be subject to the provisions of Sec.29 (A) of IBC 2016 as applications u/s.45 and Sec.66 of IBC, 2016 were in the process of being filed based on the transactional audit. The plan, namely the resolution plan it is averred was submitted on 20.9.2018 which provided for a total payment of Rs.8,01,32,858/- subject to release of all collateral and personal guarantee. Since the above resolution plan as submitted was not acceptable to the members of the COC, one more chance was given to the resolution applicants. It is averred in the application that to the above said resolution plan to revise the plan and to submit the same before the RP before the start of the scheduled COC meeting proposed on 26.9.2018. On 26.9.2018, deliberation seems to have taken place between the members of the COC as well as the resolution applicant. The RP was directed to place the



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resolution plan for E/voting and E/Voting was conducted from 28.9.2018 to 29.9.18 and as per the result of the E/Voting, the COC by voting share 84.17% has not approved the resolution plan as submitted by the resolution applicants and it is also recommended by way of resolution that the present RP, namely, Ashwani Kumar Gupta to be proposed as the Liquidator for which the proposal resolution had been approved with 82.34% of the voting share of the members of the COC and in the circumstances this application.

From the narration of the happenings as above, it is seen that attempt have been made by the COC for resolution of insolvency first by reducing the net worth criteria as well as by giving opportunity to the promoter of the CD, being the resolution applicants to provide a better Resolution Plan to prevent the company from going into liquidation but despite best efforts of the COC, no resolution plan submitted by the resolution applicants was meeting their expectations as against the amount claimed by the creditors payment was only to the extent of 15.24% in relation to cash component and 8.27% by allotment of Equity share component in the Resolution Plan. It is pertinent to note that total amount claimed in relation to financial creditors, be it secured or unsecured as well as operational creditors including government and workmen and employees dues aggregates to a sum of Rs.5175.63 lacs against which the admitted claim is to the extent of Rs.5152.61 lacs, whereas the resolution plan provided only for 794.92 lacs in cash component and Rs.426.21 lacs in Equity shares component expressed in value terms. The hair cut which was required to be suffered by



the respective members of the COC is purely a commercial decision of the members of the COC and taking into consideration the overall interest including the commercial one, if a decision has been arrived at by the COC after making considerable efforts as is evident from the facts which have had transpired during the CIRP of the Corporate Debtor for resolution and by the rejection of the resolution plan the Creditor have thereby hurtled the CD to liquidation cannot be faulted in view of the decision of the Hon'ble Supreme Court rendered in case Skashidharan Vs Indian Overseas Bank. In the circumstances, we are unable to also consider the objections made by the unsuccessful resolution applicants in C.A No.297/C-III/ND/2019.

The report of the RP also bring to the notice of this Tribunal that applications in relation to the undervalued transactions as contemplated u/s.45 of IBC 2016 as well as in relation to fraudulent transactions as contemplated u/s.66 of IBC 2016 has been filed before this Tribunal and that the same is pending disposal as against the Board of Directors whose powers stand suspended. It is also evident from the report as filed along with the application that the erstwhile Board and personnel of CD have also not been cooperating with the RP during the CIRP process. Be that as it may, however, in view of the expiry of the period CIRP has contemplated under the provisions of IBC and as the resolution plan had also been rejected by the COC by overwhelming majority of more than 84%, this tribunal taking into consideration the provisions of Sec.33 of IBC is perforce required to initiate the liquidation process in relation to the CD.



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Since the COC had also proposed the name of Mr. Ashwani Kumar Gupta to act as liquidator and has also expressed his consent as such we appoint the said Mr. Ashwani Kumar Gupta to act as the Liquidator to take forward the liquidation process of the CD. In view of the declaration of the Liquidation of the CD, the following directions are issued namely "Mr. Ashwani Kumar Gupta, the present RP is hereby appointed as the Liquidator in view of the CoC proposing his name as the Liquidator and also in view of his consent having been furnished to act as such to carry forward the liquidation of the CD henceforth. The Liquidator appointed shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as enjoined upon him.

- a. The Liquidator appointed herein shall issue the public announcement that the CD is in liquidation. In relation to officers/employees and workers of the CD, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge;
- b. The Liquidator shall investigate the financial affairs of the CD particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences;



- c. 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;
- d. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which governs the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation;
- e. The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- f. The liquidator is directed to proceed with the process of liquidation in a manner laid down in chapter III of Part II of the Insolvency and Bankruptcy Code, 2016;
- g. The liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations and prosecute or file its response for disposal of any pending Company Applications of 2019 during the process of liquidation;

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- h. The liquidator shall submit a Preliminary report to this Tribunal within seventy-five days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- i. Copy of this order be sent to the Members of COC and the COC to provide for the fees and expenses of liquidation in terms of Regulations framed in this regard by IBBI to the Liquidator;
- j. The above application is disposed of in the aforesaid terms.”

— Sd —

K. K. VOHRA
MEMBER (TECHNICAL)



— Sd —

22/07/2011
R VARDHARAJAN
MEMBER (JUDICIAL)

Sd
25/9/11
सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
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