IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

CA(IB) No. 953/KB/2018

IN CP(IB) No. 51/KB/2018

In the matter of:

State Bank of India

- Financial Creditor

Versus

Andaman Sea Foods Pvt. Ltd.

- Corporate Debtor

Mr. Parveen Bansal, Resolution Professional,
Andaman Sea Foods Pvt. Ltd.

Sd

Coram: Mr. Jinan K.R., Member(Judicial)

For the Resolution Professional :

Mr. Arun Gupta, FCA

For the Corporate Debtor:

Mr. Sailesh Mishra, Advocate

Per Jinan K. R., Member(Judicial)

Date of Pronouncement of the Order : 5th March, 2019

CORRIGENDUM TO ORDER DATED 25th October, 2018

ORDER

Per Shri Jinan K.R., Member(Judicial)

1. The Application Misc. A No. 1197/KB/2018 is filed by the Corporate Debtor for making corrections in the Order dated 25th October, 2018. It is submitted that the name of the Counsel, who had appeared in the Application CA(IB) No. 953/KB/2018 in CP(IB) No. 51/KB/2018, has wrongly been written in the Order and while passing the Order certain documents which have been highlighted on the side of the Ld. Counsel appearing for the Applicant has not been taken into consideration. This Application seems to have filed by the Corporate Debtor. The Corporate Debtor being under the order of Liquidation, an Application of this nature is not at all maintainable. Moreover, correction sought for is partially not permissible as it includes the prayer for modification of the Order.

Sd

This Application is therefore, liable to be dismissed with the direction for correction of the name of the Advocate written in the Order dated 25th October, 2018 after verification of the attendance sheet on the date of hearing.

2. Accordingly, the following rectification is made :

Page – 2

For the Corporate Debtor :
Mr. Sailesh Mishra, Advocate

3. The above rectification of the order of this Tribunal dated 25th October, 2018 has been made in terms of the power conferred upon the Tribunal under Rule 154 of the NCLT Rules,2016.

4. Accordingly, the order dated 25th October, 2018, passed in CA(IB) No. 953/KB/2018 in CP(IB) No. 51/KB/2018, stands rectified as above and this order shall form integral part of the order of this Tribunal dated 25th October, 2018.

5. The amended order shall be uploaded immediately and one copy of the order may also be kept in the file.

6. Urgent copy of this order be supplied to the party.

Signed on 5th March, 2019

Sd
5/3/19

(Jinan K.R.)
Member (Judicial)

GOUR_STENO

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CA(IB) No. 953/KB/2018
IN CP(IB) No. 51/KB/2018

In the matter of:

State Bank of India

- Financial Creditor

Versus

Andaman Sea Foods Pvt. Ltd.

- Corporate Debtor

Mr. Parveen Bansal, Resolution Professional,
Andaman Sea Foods Pvt. Ltd.

Coram: Mr. Jinan K.R., Member(Judicial)

For the Resolution Professional:

Mr. Arun Gupta, FCA

Sd

For the Corporate Debtor:

Mr. Sailesh Mishra, Advocate

Date of pronouncement of the Order : 25th October, 2018

Per Jinan K. R., Member(Judicial)

AMENDED O R D E R

1. This is an Application filed under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for passing an order of liquidation in view of non receipt of the Resolution Plan.

2. The CP(IB) No.51/KB/2018 was filed by the State Bank of India/ Financial Creditor, under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiating CIRP as against the Corporate Debtor/ Andaman Sea Foods Pvt. Ltd. The Application was duly heard and admitted vide Order dated 24-04-2018.

3. Mr. Parveen Bansal had been appointed as an Interim Resolution Professional and thereafter his name had been confirmed as the Resolution Professional and he has submitted altogether five reports. It is alleged that though he was in receipt of audited financial statements for the Financial Years 2014-2015 to 2017-2018, the Director of the Corporate Debtor has not co-operated with him and not submitted the books of accounts, relevant documents and information etc. However, he has proceeded with the Resolution Process. Upon conducting investigation into the affairs of the company, it is learnt that the Director of the Corporate Debtor has diverted the business of the Corporate Debtor since the Financial Year 2014-2015 i.e., for the last 4-5 years and that the Director has also diverted the funds

Sd

of approximately Rs. 2316.76 lacs and that an Application under Section 66(1) of the Insolvency & Bankruptcy Code, 2016 is being filed for taking appropriate action against the Director.

4. Despite publication and calling for 'Expression of Interest', no applicant came forth submitting any Resolution Plan. The period for submission of the Plan was extended once. However, no Resolution Plan was received in response to the publication for invitation for 'Expression of Interest' as submitted by the Ld. CA appearing for the RP.

5. So, according to the Ld. CA , for want of any Resolution Plan and since the CIRP expired as on 20-10-2018, the Committee of Creditors decided not to proceed with the Resolution Process further and approved the decision for filing application for liquidation of the Corporate Debtor before the period of expiry of the CIRP and filed the Application on 11-10-2018.

6. Heard the Ld. CA for and on behalf of the RP and the Ld. Counsel appearing for the Corporate Debtor.

7. When the Application was moved by the Ld. CA for and on behalf of the RP, the Ld. Counsel appearing for the Corporate Debtor has submitted that he is objecting the application for passing an order of liquidation as against the Corporate Debtor alleging that there was no proper publication of invitation of 'Expression of Interest' in the newspaper. He referred to a publication in a web site and raised an objection that what is called for is for the 'Expression of Interest' for an industry which is doing steel business and not for an industry which is doing sea food business and accordingly an order of liquidation cannot be passed. The data regarding the web site publications highlighted on the side of the Corporate Debtor has not been produced for my reference. According to the Ld. Counsel for the Corporate Debtor, since publication is defective, non receipt of the Resolution Plan cannot be taken into consideration for passing an order of liquidation.

52

8. The submission on the side of the Ld. Counsel appearing for the Corporate Debtor seems to be not correct. One among the notifications published by the RP in a news paper Financial Express is brought to my notice by the Ld. CA. It is annexed along with the third progress report at page no. 33. It is a publication published by the RP in Form G. The data furnished in the above said invitation of the Resolution Plan is related to Andaman Sea Foods Pvt. Ltd. and not related to steel industries as submitted by the Ld. Counsel for the Corporate Debtor.

9. The copy of the publication brought to my notice being published in compliance with the sub Regulation (5) of Regulation 36A of the Insolvency & Bankruptcy Code, 2016, the objection raised by the Ld. Counsel for the Corporate Debtor is found not at all sustainable under law. Moreover, the valuation report of the assets of the Corporate Debtor shows that there are no fixed assets other than a car belonging to the Corporate Debtor. Therefore, considering the present financial status of the Corporate Debtor, that the corporate debtor company is not functioning and that it has no valuable assets other than the Car, indicates that nobody would come forward to take over the Company.

10. Here in this case, 180 days of CIRP period expired on 20-10-2018 and the Committee of Creditors did not apply for extension of period of CIRP but took a decision by 100% vote share not to proceed further and authorised the RP to apply for liquidation of the Corporate Debtor.

11. In view of the above said discussion, I do not find any irregularity or illegality in the proceedings initiated by the Resolution Professional and in arriving at the decision by the Committee of Creditors by recommending to pass an order of liquidation of the Corporate Debtor for want of receipt of the Resolution Plan under Section 33(1) (a) of the Insolvency & Bankruptcy Code, 2016. Therefore, I find no other alternative other than to pass an

Sd

order requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter III read with Section 33(1) of the Insolvency & Bankruptcy Code, 2016 by appointing the very same RP as the liquidator since he showed his willingness to continue as the Liquidator.

12. Accordingly, an order of liquidation is passed upon the following directions:-

ORDER

(i) Mr.Parveen Bansal is appointed as the liquidator in CP (IB) No. 51/KB/2018.

(ii) Mr.Parveen Bansal is directed to issue public announcement in one of the leading English newspaper as well as in one vernacular newspaper having wide circulation where the registered office of the corporate debtor is situated as per Section 33(1) (b) (ii) of the Code read with Reg. 12 (1) of IBBI (Liquidation Process) Regulations, 2016.

(iii) The Registry is directed to communicate this order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi.

(iv) The Order of Moratorium passed under Section 14 of the I&B Code, 2016 shall cease to have effects and a fresh moratorium under Section 33 (5) shall commence.

(v) This order is deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33 (7) of I&B Code, 2016.

(vi) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of the Insolvency and Bankruptcy Code, 2016.

Sd

(vii) Upon proceeding with the liquidation the Liquidator shall file a ***preliminary report*** as per regulation 5 read with Reg.13 of the IBBI(Liquidation) Regulations,2016 at the registry with in 75 days from the liquidation commencement date and continue to file ***progress reports*** as per Reg.15(1) with in 15 days after the end of the quarter in which he is appointed.

(viii) The fee payable to the Liquidator shall form part of the liquidation cost as provided under Reg. 4(1) of the IBBI (Liquidation Process) Regulations,2016.

13. The CA is disposed of accordingly.

14. The copy of this order is to be sent to the Liquidator, Financial Creditor and the Corporate Debtor for information and for taking necessary steps.

15. Urgent photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

Sd-

(Jinan K.R.)
Member (Judicial)

GOUR_STENO

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CA(IB) No. 953/KB/2018

IN CP(IB) No. 51/KB/2018

In the matter of:

State Bank of India

- Financial Creditor

Versus

Andaman Sea Foods Pvt. Ltd.

- Corporate Debtor

Mr. Parveen Bansal, Resolution Professional,
Andaman Sea Foods Pvt. Ltd.

Coram: Mr. Jinan K.R., Member(Judicial)

For the Resolution Professional:

Mr. Arun Gupta, FCA

Sd

For the Corporate Debtor:

Mr. Sailesh Gupta, Advocate

Date of pronouncement of the Order : 25th October, 2018

Per Jinan K. R., Member(Judicial)

ORDER

1. This is an Application filed under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for passing an order of liquidation in view of non receipt of the Resolution Plan.

2. The CP(IB) No.51/KB/2018 was filed by the State Bank of India/ Financial Creditor, under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiating CIRP as against the Corporate Debtor/ Andaman Sea Foods Pvt. Ltd. The Application was duly heard and admitted vide Order dated 24-04-2018.

3. Mr. Parveen Bansal had been appointed as an Interim Resolution Professional and thereafter his name had been confirmed as the Resolution Professional and he has submitted altogether five reports. It is alleged that though he was in receipt of audited financial statements for the Financial Years 2014-2015 to 2017-2018, the Director of the Corporate Debtor has not co-operated with him and not submitted the books of accounts, relevant documents and information etc. However, he has proceeded with the Resolution Process. Upon conducting investigation into the affairs of the company, it is learnt that the Director of the Corporate Debtor has diverted the business of the Corporate Debtor since the Financial Year 2014-2015 i.e., for the last 4-5 years and that the Director has also diverted the funds

sd

of approximately Rs. 2316.76 lacs and that an Application under Section 66(1) of the Insolvency & Bankruptcy Code, 2016 is being filed for taking appropriate action against the Director.

4. Despite publication and calling for 'Expression of Interest', no applicant came forth submitting any Resolution Plan. The period for submission of the Plan was extended once. However, no Resolution Plan was received in response to the publication for invitation for 'Expression of Interest' as submitted by the Ld. CA appearing for the RP.

5. So, according to the Ld. CA , for want of any Resolution Plan and since the CIRP expired as on 20-10-2018, the Committee of Creditors decided not to proceed with the Resolution Process further and approved the decision for filing application for liquidation of the Corporate Debtor before the period of expiry of the CIRP and filed the Application on 11-10-2018.

6. Heard the Ld. CA for and on behalf of the RP and the Ld. Counsel appearing for the Corporate Debtor.

7. When the Application was moved by the Ld. CA for and on behalf of the RP, the Ld. Counsel appearing for the Corporate Debtor has submitted that he is objecting the application for passing an order of liquidation as against the Corporate Debtor alleging that there was no proper publication of invitation of 'Expression of Interest' in the newspaper. He referred to a publication in a web site and raised an objection that what is called for is for the 'Expression of Interest' for an industry which is doing steel business and not for an industry which is doing sea food business and accordingly an order of liquidation cannot be passed. The data regarding the web site publications highlighted on the side of the Corporate Debtor has not been produced for my reference. According to the Ld. Counsel for the Corporate Debtor, since publication is defective, non receipt of the Resolution Plan cannot be taken into consideration for passing an order of liquidation.

Sd

8. The submission on the side of the Ld. Counsel appearing for the Corporate Debtor seems to be not correct. One among the notifications published by the RP in a news paper Financial Express is brought to my notice by the Ld. CA. It is annexed along with the third progress report at page no. 33. It is a publication published by the RP in Form G. The data furnished in the above said invitation of the Resolution Plan is related to Andaman Sea Foods Pvt. Ltd. and not related to steel industries as submitted by the Ld. Counsel for the Corporate Debtor.

9. The copy of the publication brought to my notice being published in compliance with the sub Regulation (5) of Regulation 36A of the Insolvency & Bankruptcy Code, 2016, the objection raised by the Ld. Counsel for the Corporate Debtor is found not at all sustainable under law. Moreover, the valuation report of the assets of the Corporate Debtor shows that there are no fixed assets other than a car belonging to the Corporate Debtor. Therefore, considering the present financial status of the Corporate Debtor, that the corporate debtor company is not functioning and that it has no valuable assets other than the Car, indicates that nobody would come forward to take over the Company.

10. Here in this case, 180 days of CIRP period expired on 20-10-2018 and the Committee of Creditors did not apply for extension of period of CIRP but took a decision by 100% vote share not to proceed further and authorised the RP to apply for liquidation of the Corporate Debtor.

11. In view of the above said discussion, I do not find any irregularity or illegality in the proceedings initiated by the Resolution Professional and in arriving at the decision by the Committee of Creditors by recommending to pass an order of liquidation of the Corporate Debtor for want of receipt of the Resolution Plan under Section 33(1) (a) of the Insolvency & Bankruptcy Code, 2016. Therefore, I find no other alternative other than to pass an

Sd

order requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter III read with Section 33(1) of the Insolvency & Bankruptcy Code, 2016 by appointing the very same RP as the liquidator since he showed his willingness to continue as the Liquidator.

12. Accordingly, an order of liquidation is passed upon the following directions:-

ORDER

(i) Mr.Parveen Bansal is appointed as the liquidator in CP (IB) No. 51/KB/2018.

(ii) Mr.Parveen Bansal is directed to issue public announcement in one of the leading English newspaper as well as in one vernacular newspaper having wide circulation where the registered office of the corporate debtor is situated as per Section 33(1) (b) (ii) of the Code read with Reg. 12 (1) of IBBI (Liquidation Process) Regulations, 2016.

(iii) The Registry is directed to communicate this order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi.

(iv) The Order of Moratorium passed under Section 14 of the I&B Code, 2016 shall cease to have effects and a fresh moratorium under Section 33 (5) shall commence.

(v) This order is deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33 (7) of I&B Code, 2016.

(vi) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of the Insolvency and Bankruptcy Code, 2016.

Sd

(vii) Upon proceeding with the liquidation the Liquidator shall file a ***preliminary report*** as per regulation 5 read with Reg.13 of the IBBI(Liquidation) Regulations,2016 at the registry with in 75 days from the liquidation commencement date and continue to file ***progress reports*** as per Reg.15(1) with in 15 days after the end of the quarter in which he is appointed.

(viii) The fee payable to the Liquidator shall form part of the liquidation cost as provided under Reg. 4(1) of the IBBI (Liquidation Process) Regulations,2016.

13. The CA is disposed of accordingly.

14. The copy of this order is to be sent to the Liquidator, Financial Creditor and the Corporate Debtor for information and for taking necessary steps.

15. Urgent photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

sd

(Jinan K.R.)
Member (Judicial)

GOUR_STENO