

IN THE NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

COURT NO. 1

ITEM No.201

IA/186(MP)2021

in

TP 174 of 2019 [CP(IB) 426 of 2018]

Proceedings under Section 33 of IBC, 2016

IN THE MATTER OF:

Amar Agarwal RP of STL Exports Ltd

.....Applicant

Order delivered on 11/08/2023

Coram:

Mahendra Khandelwal, Hon'ble Member(J)

Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

IA/186(MP)2021

The case is fixed for pronouncement of order.

The order is pronounced in open Court, *vide* separate sheet.

-Sd-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

Surbhi-LRA

-Sd-

**MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

**IA No.186 of 2021
IN
CP (IB) 426 OF 2018**

[Application under Section 33 of the Insolvency and Bankruptcy Code, 2016]

Through:

CA Amar Agrawal

Resolution Professional,
STL Exports Limited
Nakshatra,377, Gandhinagar,
Ambazari Road,
Nagpur -440010,

...Applicant/RP

In the matter of : CP (IB) 426 OF 2018:

[Application under Section 9 of the Insolvency and Bankruptcy Code, 2016]

Rashnidhi Kumar & Bros,

Having its registered office at:
34, Ware House Road,
Vinobapath, Indore-452007

...Operational Creditor

Versus

STL Exports Limited

(CIN: U31900GJ2009PTC056575)

Having its registered office at:
Taraganj Industrial Area,
A.B.Road Sarangpur
Rajgarh M.P

...Corporate Debtor

Order Pronounced on:11.08.2023

Coram: Mahendra Khandelwal, Hon'ble Member (J)
Kaushalendra Kumar Singh, Hon'ble Member (T)

Appearance:

For the Applicant: Ld. Adv. Mr. Rishabh Khemuka

ORDER

1. The present application is filed by CA Amar Agarwal Resolution Professional of the Corporate Debtor STL Exports Limited, under section 33 of Insolvency and Bankruptcy Code, 2016 for initiating the liquidation process of the Corporate Debtor. The Corporate Debtor was admitted into CIRP vide order dated 07.07.2020, and CA Amar Agarwal having Registration No. IBBI/IPA-001/IP-P00086/2017-2018/10182, was appointed as IRP. Later his appointment as RP was also confirmed.

2. The submissions made by the applicant in its application and as presented/argued by the learned counsel are summarized hereunder:

i. The Operational Creditor Rashnidhi Kumar & Bros filed an application under section 9 for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor STL Exports Limited which was admitted by the Adjudicating Authority vide order dated 07.07.2020. Mr. Amar Agarwal was appointed as an Interim Resolution Professional ("**IRP**"). Later CA Amar Agarwal was appointed as Resolution Professional ("**RP**").

ii. The RP had published Form-G on 26.11.2020 in local newspapers calling upon the prospective resolution applicants to submit their EOI/ resolution plans for the corporate debtor. The last date for submission of EOI was 11.12.2020. However, but no EOI was received till then. Thereafter in the 3rd COC meeting dated 12.01.2021, COC decided to extend the period for calling of expression of interest, accordingly last date for the submission of EOI was extended till, 26.01.2021.

iii. No EOI/resolution plans were received from either of the prospective resolution applicants till the extended last date for submission of the resolution plan i.e. 26.01.2021. The COC in its 4th meeting dated 06.03.2021, resolved for initiation of the liquidation

process under section 33 of the Code due to non-receipt of the resolution plan. The said resolution was approved with a unanimous vote of 100%.

iv. This instant application was listed for clarification on 19.01.2023, as the COC had earlier not resolved regarding the shortfall for liquidation cost and who shall bear the same, for which the COC has clarified that in event of shortfall, by reason of realization amount assets being less than the liquidation cost, the members of the COC shall make the contribution towards the balance amount in proportion of their voting rights.

v. The CoC in accordance with the regulations 39B and 39C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has approved the estimated liquidation cost of Rs 2,82,980. Further, also resolved to pay the liquidator fee in accordance with Regulation 4(2)(b) of IBBI (Liquidation process) Regulation, 2016. Further, in case of a shortfall in meeting the liquidation cost the same will be borne by the COC members.

vi. It has been submitted that CIRP was initiated on 07.07.2020 but could began only on 23.07.2022 after the correction of name of the IRP. The decision for liquidation was taken on 06.03.2021. As per the section 33(2) of the IBC, the present application can be filed at any time during CIRP period but before finalization of resolution plan. However due to nationwide lockdown imposed under the Disaster Management 2005, the applicant could not file an application before the Adjudicating Authority.

4. We heard the learned counsel appearing for the resolution professional and perused the material available on record. The Corporate Debtor was admitted into CIRP on 23.07.2020 and the decision of liquidation was taken in 4th COC meeting held on 06.03.2021. It is noted that no resolution plan was received even after publishing of EOI, hence COC in its 4th meeting decided to liquidate the Corporate Debtor. Further, the COC in its 7th meeting dated 14.07.2023 has approved the estimated liquidation cost of Rs.2,82,980

and proposed to pay the liquidator fee in accordance with Regulation 4(2)(b) of the IBBI (liquidation process) Regulations, 2016. The shortfall, if any, in meeting out liquidation cost would be borne by COC members. Further, resolutions in accordance with Regulation 39B and 39D are also passed in the said meeting. Since the plans received by the RP were rejected by the CoC, this application deserves to be allowed.

5. In view of the facts and circumstances and documents available on record, we pass the following order:

- i. The corporate debtor STL Exports Ltd. shall be put into liquidation in terms of the provisions of section 33(2) of the Code r.w. Regulations made thereunder which shall be effective from the date of this order.
- ii. The Moratorium declared vide order dated 07.07.2020 on CP(IB) No.426/9/NCLT/AHM/2018, henceforth, ceases to exist, but moratorium under section 33(5) shall trigger from the date of the order of the liquidation.
- iii. The COC also resolved to appoint the applicant herein as a liquidator. The proposed liquidator has provided his written consent and the same is placed on record. But according to section 34(1) of the IBC and the letter dated 18.07.2023 of IBBI, we hereby appoint Mr. Anil Agrawal having, registration No: IBBI/IPA-001/IP-P00531/2017-2018/10956 as a liquidator of the Corporate Debtor i.e. M/s STL Exports Limited. The liquidator so appointed shall complete the liquidation process as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with IBBI (Liquidation Process) Regulations, 2016. The liquidator will be entitled to fee in accordance with Regulation 4(2)(b) of the IBBI (liquidation process), Regulations 2016. Further all the powers of the Board of Directors, key managerial persons, and the partners of the Corporate Debtor, as the case may be, hereafter cease to exist. All these power henceforth vest with the liquidator.

- iv. The personnel of the Corporate Debtor are directed to extend all cooperation to the liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- v. The liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by IBBI and same shall be paid to the liquidator from the proceed of the liquidation estate under section 53 of the Code.
- vi. Once the liquidation process is initiated, subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor. The liquidator has a liberty to institute the suit and other legal proceeding on behalf of the Corporate Debtor with the prior approval of this Adjudicating Authority, as provided in sub section (5) of section 33 of the IB Code.
- vii. This liquidation order shall be deemed to be 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.
- viii. This Adjudicating Authority directs the liquidator to issue a public announcement stating that the corporate debtor is in liquidation. The liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT etc, who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the liquidation order timely. The liquidator will also provide a copy of this order to the trade unions/employee associations of the Corporate Debtor so that the workman/employees could also be informed of this liquidation order through their association.
- ix. The Registry is directed to communicate this order to the concerned Registrar of the Companies, registered Office of the

Corporate Debtor, and the Liquidator by speed-post within one week from the date of this order.

6. Accordingly, the present I.A. No. 186 of 2021 stands allowed and disposed of.

-Sd-

Kaushalendra Kumar Singh
Member (Technical)

-Sd-

Mahendra Khandelwal
Member (Judicial)

Surbhi/LRA