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In the National Company Law Tribunal, Jaipur

IA No. 15/JPR/2019
IB- 107(ND)/2017
TA No. 48/2018

UNDER SECTION 9 OF IBC, 2016

In the matter of:

M/s Kei Industries Ltd. ……………………. **Applicant/Petitioners**

VS.

M/s Shipra Infraproject Pvt. Ltd. …………………………**Respondent**

Order delivered on 01.02.2019

Coram: Shri R. Varadharajan, Member (Judicial)

For Petitioner (s) : Nitesh Shrivastava, Adv.

For Respondent(s) : None-appeared

ORDER

IA No. 15/JPR/2019

This is an application which has been moved under Section 12(A) of the Insolvency and Bankruptcy Code, 2016 (IBC) seeking for withdrawal of application admitted by this Tribunal under Section 9 of IBC, 2016 at the instance of the petitioner in the capacity of Operational Creditor. During the course of submissions learned counsel for the RP submits that on 03.06.2017, publication as required to be effected under IBC, 2016 calling for the claims were duly affected in 'Naya India' in vernacular and 'Indian Express' in English. However, despite the public notice calling for the claims, no claim was filed before the RP by any person save the Operational Creditor, namely, Kei Industries Limited. Under the circumstances, the said Operational Creditor constituted the only member of Committee of Creditors (CoC) and this application has come about in view of necessary forms FA filed as Annexure-P1 to the application for withdrawal of the main CP.

Perusal of the said form shows that the same is dated 26th December, 2018, which seems to be beyond the period of 270 days for completion of CIRP. Taking into consideration, the extended period of 90 days and also the mandatory period fixed under the provisions of IBC, 2016 for the completion of CIRP of a Corporate Debtor being that of 180 days under the provisions of Section 33, which is extracted hereunder:

> (1) Where the Adjudicating Authority-
> (a) Before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under Section 12 or the fast track corporate insolvency resolution process under Section 56, as the case may be, does not receive a resolution plan under sub-Section (6) of Section 30 or
> (b) Rejects the resolution plan under Section 31 for the non-compliance of the requirements specified therein, it shall-
> (i) Pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
> (ii) Issue a public announcement stating that the corporate debtor is in liquidation; and
> (iii) Require such order to be sent to the authority with which the corporate debtor is registered.
>
> (2) Where the resolution professional at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating

Authority of the decision of the committee of creditors [approved by not less than sixty-six per cent of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i) (ii) and (iii) of clause (b) of sub-section (1).

Thus, if no resolution plans come through within the CIRP period then recourse to this Tribunal is to pass an order requiring Corporate Debtor to be liquidated as laid down in Chapter III of IBC, 2016 as also of the consequential directions, which are required to be issued by this Tribunal. It is also required to be noticed beyond the CIRP period of 180 days or 270 days, as the case may be, the Committee of Creditors (CoC) seems to have no role to play and in the circumstances any decision which is taken by the CoC cannot be relied on.

It is also brought to the notice of this Tribunal that prior to the application seeking for withdrawal, an application at the instance of resolution of the CoC has been filed as early as on 07.06.2018 vide Diary No. 3771 recommending liquidation and the matter was pending before the New Delhi Bench of this Tribunal and that upon transfer of the files to this Bench in view of the Notification No. SO 3145(E) dated 28.06.2018 the said application has been numbered as TA No. 48/2018. Taking into consideration the said application, this Tribunal passes an order for Liquidation of the Corporate Debtor under Section 33(2) of the Code.

In view of the order of liquidation as made above of the Corporate Debtor namely, M/s Shipra Infraprojects Pvt. Ltd. the following consequences will follow: -

(i) M/s Shipra Infraprojects Private Limited to be liquidated in the manner as laid down under the provisions of IBC, 2016, more particularly given in Chapter-III of IBC, 2016 and also in terms of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(ii) Consequently, the Liquidator named being the present RP himself namely, Mr. Abhishek Anand having Registration No. IBBI/IPA-002/IP-N00038/2016-2017/10077 will act as the liquidator for the purpose of carrying forward the liquidation mode and is directed to issue a public announcement as envisaged under the provisions of IBC, 2016 read with Attendant Regulations stating that the Corporate Debtor is in liquidation and also communicate to Registrar of Companies, Jaipur forthwith, with whom the Corporate Debtor is registered in the register of Companies.

(iii) Communication be also duly sent to the Income Tax Authorities as contemplated under Section-178 of Income Tax Act, 1961 as well as to other revenue authorities which has a bearing on the operations of the Corporate Debtor. Liquidator to file reports from time to time before this Tribunal as mandated and within the specific time period as contemplated under the provisions of IBC, 2016 and Regulations framed thereunder.

(iv) The CIRP of the Corporate Debtor comes to a close and moratorium granted under Section 14 of IBC, 2016 at the time of admission is also lifted. However, provisions of Section 33(5) and 33(6) of IBC, 2016 shall apply.

-Sd-

(R. Varadharajan)
Member (Judicial)