IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH COURT III

M.A. 2727 OF 2019

Under Section 33 of Insolvency & Bankruptcy Code, 2016

Filed by
Mr. U. Balakrishna Bhat
Resolution Professional of:
M/s Nitin Fire Protection Industries Limited

...Applicant

In the matter of
C.P. No. 1890 of 2018

Dena Bank

Dena Corporate Centre, C – 10,

G – Block, Bandra – Kurla Complex,

Bandra (East), Mumbai - 400051

...Petitioner

Versus

M/s Nitin Fire Protection Industries Limited

Office No. 801 & 802, C Wing,

Neelkanth Business Park, Kirol Road,

Vidhyavihar (West), Mumbai - 400086

...Corporate Debtor

Order delivered on: 18.01.2022

Coram:
Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance:
For the Applicant:

Per: Shri Chandra Bhan Singh, Member (Technical)

1. The above application M.A. No. 2727/2019 is filed by Resolution Professional, Mr. U. Balakrishna Bhat seeking liquidation of M/s Nitin Fire Protection Industries Limited (hereinafter referred as Corporate Debtor) under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:

    a. *That the Corporate Debtor be ordered and directed to go under liquidation as per Section 33 (1) (a) of the Insolvency and Bankruptcy Code 2016;*
    b. *That this Hon'ble Tribunal be pleased to appoint the Applicant viz. U. Balakrishna Bhat, IBBI Registration Number <u>IBBI/IPA-001/IP-P00658/2017-2018/11107</u> as the liquidator in respect of the Corporate Debtor.*

2. The brief facts of the application are as follows:
    A. The applicant mentioned that this Tribunal vide its order dated 22.10.2019 in Company Petition No. 1890 of 2018 admitted the petition under Section 7 of the Code, filed by Dena Bank (hereinafter referred to as the "Financial Creditor") and Corporate Insolvency Resolution Process (hereinafter referred to as the "CIRP") was initiated against M/s Nitin Fire Protection Industries Limited, (hereinafter referred to as the "Corporate Debtor"). The applicant herein was appointed as the Interim Resolution Professional (hereinafter referred to as the "IRP") of the Corporate Debtor by this Tribunal vide this Order dated 22.10.2019.
    B. It is further stated by the Counsel for the Applicant that an advertisement, inviting Expression of Interest (EoI) in Form G

was published on 11.01.2019, 01.02.2019 and 16.02.2019 in Financial Express (English), Navakal Times (Marathi) and Free Press Journal (English) respectively, 03.03.2019 being the last date for receipt of Express of Interest and 18.03.2019 being the last date for submission of Resolution Plan. Thereafter, the applicant received EoI from 5 Entities and 4 Resolution Plan were received by the Applicant till the last date of submission of the Resolution Plan, out of which 3 were rejected by the CoC and 1 Resolution Plan was later on withdrawn.

C. The Applicant therefore submits that as there was no Resolution Plan for the Corporate Debtor and Statutory Period of 270 days had also expired. Therefore, the Corporate Debtor shall be ordered and directed to be liquidated under the provisions of Section 33 (1) (a) of the Code. The Applicant is ready and had given his consent to carry out the liquidation process of the Corporate Debtor.

D. Subsequently, after this M.A. was filed by the Applicant, the CoC decided to consider the resolution plan whereby this bench vide its order extended the CIRP period and also directed the RP to submit the resolution plan of Mr. Nitin Shah (hereinafter referred to as the "Prospective Resolution Applicant") to the CoC.

E. Further, it is stated that after granting multiple extensions and exclusion for the CIRP Process, this Bench directed the CoC to take a decision with respect to the Resolution Plan. Finally in the 26th Meeting of the CoC, Resolution Plan was put into vote and was rejected by the CoC.

F. Subsequently, in the CoC in its 27th meeting which was held on 29.09.2021, the Applicant states that as the Resolution

Plan had been rejected and no further resolution plan is under consideration, therefore the CoC approved the following in respect of the liquidation:

i) Liquidation of the Corporate Debtor as a going concern by a vote of 97.58%;
ii) Approved the liquidation cost by 79.60%;
iii) Approved remuneration of the liquidator by 79.60% votes;
iv) Approved the estimated expenses for the period between CIRP closure and the passing of the liquidation by 79.60%.

3. After hearing the submissions made by the Counsel appearing for the Resolution Professional and upon perusing the material available on record, it is observed from the minutes of the 27th CoC meeting that the CoC has with 97.58% majority decided to liquidate the Corporate Debtor, the CoC also approved the Liquidation Cost of the Applicant /Resolution Applicant of Rs. 2,21,75,000/- with a cap on remuneration of upto Rs. 45 lacs in the above mentioned meeting. Further the Applicant/ Resolution Professional Mr. U. Balakrishna Bhat has agreed to act as liquidator to carry on the process of Liquidation and given his consent to act as Liquidator. This bench has no option except to allow the above Miscellaneous Application Number 2727 of 2019. Accordingly, we pass the following:

ORDER

1. The above M.A. No. 2727/2019 is allowed and the Corporate Debtor M/s Nitin Fire Protection Industries Limited is ordered to be liquidated.

a. **Mr. U. Balakrishna Bhat**, having Registration No. IBBI/IPA-001/IP-P00658/2017-2018/11107 and having office at: A-005, Western Edge II, Off. Western Express Highway, Borivali (East), Mumbai, Maharashtra – 400066 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.

b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.

c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

d. The Liquidator appointed under section 34(1) of the Code. Will have all powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.

e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.

f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.

g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

h. That on having liquidation process initiated, 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.

i. 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.

With the above directions, this application i.e. M.A. No. 2727 of 2019 is hereby allowed and disposed of.

Sd/-

Chandra Bhan Singh
MEMBER (TECHNICAL)

Sd/-

H.V. Subba Rao
MEMBER (JUDICIAL)