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NATIONAL COMPANY LAW TRIBUNAL, COURT-V, NEW DELHI

I.A. 5288/2020 in Company Petition No. (IB) 1808(ND)/2019

In the matter of:

Tata Capital Financial Services Ltd.

Financial Creditor

Vs.

Baldeo Metals Private Limited

CIN: U28113DL1997PTC084694

M-15 New Mandoli Industrial Area

Saboli Shahdara Delhi-110045

Corporate Debtor

AND

In the matter of:

Mr. Prabhat Ranjan Singh

Applicant/Resolution Professional

Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for liquidation of the Corporate Debtor.

Judgment delivered on: 02.03.2021

Coram:

ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

K.K. VOHRA, MEMBER (TECHNICAL)

Present:

For the Resolution Professional: Mr. Prabhat Ranjan Singh, RP

Mr. Riddhe Suri, Adv

ORDER

Per: K.K. Vohra, Member (T)

1. This is an application filed by the Resolution Professional (RP) under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (Code) for issuance of directions for liquidation of the Corporate Debtor (CD), Baldeo Metals Private Limited.
2. The Financial Creditor (FC), Tata Capital Financial Services Limited, had filed an application under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against the CD. The said application was admitted by this Tribunal on 04.06.2020 initiating CIRP against the CD and appointing Mr. Dhiren Shantilal Shah as the Interim RP (IRP).

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3. IRP made the Public Announcement in respect of initiation of CIRP and intimated to the suspended directors of the CD. Thereafter, the IRP constituted a Committee of Creditors (CoC).

4. The applicant got appointed on 26.08.2020 replacing the IRP. It is submitted in the application that the applicant proposed to CoC to publish Form-G for inviting Expression of Interest from prospective Resolution Applicants. However, the CoC in its 5th meeting held on 12.11.2020 decided to liquidate the CD. The minutes and voting result of the 5th meeting has been placed on record (page 7 and 18 of application).

5. On perusal of the minutes of the 5th meeting of CoC, it is seen that main financial creditors have decided to liquidate the CD for the reason that 'it is a trading concern with no assets and inventories' and that publication of Form-G will be fruitless (pg 16). In the minutes, it is seen that the suspended directors were absent from the meeting (pg 8). Further, on perusal of the voting result, it is seen that SBI having 78.6% voting share has approved the resolution and FC, Tata Capital Financial Services Limited (applicant for CIRP) having 8.61% has disapproved the resolution for liquidation. Also, the other two members of CoC, Axis Bank and Deutsche Bank (having 12.7% voting share), abstained from voting. The minutes of the meeting also show that the transaction auditor was appointed by RP (Item no. 5 pg 12).

6. A perusal of the audited financials for the FY 2018-19 (pg 7 of supplementary affidavit) reveals that the company had total assets of 46.4 crores as on 31.03.2019 and Rs. 70.5 crores as on 31.03.2018. It is seen that the main portion of the current assets are sundry debtors.

7. The RP has now filed the present application with a prayer for liquidation as the CoC in its fifth meeting approved the Resolution for Liquidation of CD with 78.6% voting share.

8. RP has filed a supplementary affidavit dated 23.01.2021 submitting, among other things, the judgement of the Hon'ble NCLAT in Company Appeal (AT) No. 194 of 2020 titled as Sunil S. Kakkad Vs. Atrium Infocom Private Limited & Ors. In the aforesaid judgement the Hon'ble Appellate Tribunal has held that the decision of the CoC to liquidate the Corporate Debtor without taking any steps for resolution is non-justiciable.

9. Section 33 (2) of Code has authorized CoC to make the decision of liquidation of CD at any stage of CIRP. Section 33(2) is reproduced below:

"where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority (AA) of the decision of the committee of creditors (approved by not less than sixty-six percent of the voting share) to liquidate the corporate debtor, the AA shall pass a liquidation order...."



Explanation: For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum. "

10. In view of the above, the liquidation has to follow as recommended by the CoC in terms of provisions of Section 33 (2) of the Code. CoC has taken a decision to go into liquidation keeping in view the realisability of the assets and passed the resolution to liquidate the CD.

11. In the factual background and in conformity with the decision of the CoC with 78.6% voting share, the payer for Liquidation of the CD under Section 33 of the Code is liable to be allowed.

12. The CoC has also approved the appointment of RP as Liquidator. The RP has filed its written consent dated 27.11.2020 to act as a Liquidator (pg 26).

13. In the result, the application is **allowed by ordering liquidation** of the corporate debtor, namely Baldeo Metals Private Limited in the manner laid down in the Chapter III of Part II of the Code, along with following directions:

A. Mr. Prabhat Ranjan Singh Registration No. IBBI/IPA-002/IP-N-00428/2017-18/11239, is appointed as Liquidator in terms of Section 34(1) of the Code;

B. Mr. Prabhat Ranjan Singh is directed to issue Public Announcement stating that the CD is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Regulations);

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. The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Code shall commence;

E. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Code and in accordance with the relevant Regulations;

F. The Liquidator shall also follow pending application, if any, for its disposal during the process of liquidation including initiation of steps for recovery of dues of the CD as per law;

G. The Liquidator is also directed to take all necessary legal actions to recover pending receivables from the sundry debtors.



- H. The Liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (1) of the Code;
14. The Liquidator shall submit a Preliminary Report to the AA within seventy-five days from the liquidation commencement date as per Regulation 13 of the Regulations.
- Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.
15. I.A. 5288/ND/2020 filed in IB 1808 (ND) /2019 is disposed of in the aforesaid terms.

- Sol -
(K. K. VOHRA)
MEMBER (T)



- Sol -
(ABNI RAJAN KUMAR SINHA)
MEMBER (J)


3/3/2021


3/3/2021
समैन्द्र शुक्ल / SAMENDRA SHUKLA
सहायक पंजीयक / ASSISTANT REGISTRAR
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