

NATIONAL COMPANY LAW TRIBUNAL
COURT - I, MUMBAI BENCH

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IA No. 1113 of 2020

in

CP (IB) No. 4488/MB/2018

In the matter of an application under Section 33(1) of IBC, 2016

Kashyap Vaidya,
Resolution Professional of Ashapura Intimates Fashion Limited
Shop No.3-4, Ground Floor, Pacific Plaza
Plot No. 507, TPS IV, off. B.S. Road,
Mahim Division, Dadar (W), Mumbai – 400 028

... Applicant

In the matter of:

IDFC First Bank Limited

...Financial Creditor

V/s

Ashapura Intimates Fashion Limited

...Corporate Debtor

Date of Order: 05.10.2020

CORAM:

Hon'ble Janab Mohammed Ajmal, Member Judicial

Hon'ble Shri V. Nallasenapathy, Member Technical

Appearance (via video conferencing):

For the Applicant : Mr Ayush Rajani (PCA) a/w Mr Kashyap Vaidya
(Resolution Professional) i/b. AKR Advisors

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This is an application by the Resolution Professional, Mr. Kashyap Vaidya, under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 (the Code) seeking orders for liquidation of the Corporate Debtor.
2. This Bench by an order dated 28.06.2019 admitted the Petition (CP IB No. 4488/MB/2018) under Section 7 of the Code initiating Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor and appointed the Applicant herein as the Interim Resolution Professional (IRP). The IRP constituted Committee of Creditors (CoC) on 01.08.2019 and in 2nd CoC meeting held on 26.08.2019, the Applicant was confirmed as Resolution Professional (RP) of the Corporate Debtor.
3. It is submitted that the CoC in the Meeting held on 11.10.2019 resolved to seek for Extension of CIRP by 90 Days and accordingly MA No. 3677 of 2019 was filed before this Tribunal, and the same was allowed by this Tribunal extending the CIRP period by 90 days vide order dated 25.11.2019. In view of this extension, the CIRP period came to an end on 24.03.2020.
4. It is submitted that Kanti Karamsey & Co. and S C Mehra & Associates were appointed as Valuers and Transaction Auditors of the Corporate Debtor with the approval of CoC. The Applicant placed the Fair Value and Liquidation Value before the CoC Members.
5. It is submitted that, in response to the Expression of Interest (EOI) received in Form-G, two Prospective Resolution Applicants i.e. Dollar

Industries Limited and JG Hosiery Private Limited showed interest in submitting Resolution Plan but, no Resolution Plan was submitted by them. Further, one more EOI was submitted by Nova Corp. But, they also did not submit any Resolution Plan.

6. The Applicant submits that the CIRP Period of 270 days expired on 24.03.2020 and since no Resolution Plan was received the Applicant filed the present application for liquidation under section 33(1)(a) and sought reliefs.

7. Section 33(1) of the Code provides as below:

"33. Initiation of Liquidation-

(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) -----
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8. The Applicant further submits that the CoC passed a resolution with majority of not less than 66% of voting share, appointing Mr Bhavesh Rathod as the Liquidator of the Corporate Debtor and the remuneration payable to him is as per Regulation 4 of the IBBI (Liquidation Process Regulation), 2016. Even though, it is submitted that the resolution for

appointment of Liquidator was passed with the requisite majority of more than 66%, we have noticed that the above resolution was supported by 60.47% voting share of CoC and 20.47% voted against the resolution and the remaining CoC abstained from voting.

9. The Applicant submitted that, considering the percentage of voting among the members present and voting, the percentage works out to 70.36% voting in favour of resolution and hence the resolution is passed.
10. The Applicant to buttress his point as above, relied on the Judgement of the Hon'ble NCLAT in the matter of '*Tata Steel Limited vs. Liberty House Group, CA (AT) 198 of 2018*', wherein it is held as below:

"45. A member of the 'Committee of Creditors' who is not present in the meeting either directly or through Video Conferencing and thereby not considered its feasibility and viability and such other requirements as may be specified by the Board, their voting shares, therefore, cannot be counted for the purpose of counting the voting shares of the members of the 'Committee of Creditors'. Therefore, we hold that only the members of the 'Committee of Creditors' who attend the meeting directly or through Video Conferencing, can exercise its voting powers after considering the other requirements as may be specified by the Board. Those members of the 'Committee of Creditors' who are absent, their voting shares cannot be counted.

46. We find that the 'Resolution Plan ' submitted by 'JSW Steel' has been approved by the 'Committee of Creditors' with 97.12% voting shares and voters having 2.88% voting shares remained absent. If some members of the 'Committee of Creditors' having 2.88% voting shares remained absent, it cannot be held that they have considered the feasibility and viability and other requirements as specified by the Board, therefore, their shares should not have been counted for the purpose of counting the voting shares of the 'Committee of Creditors'. In fact, 97.12% voting shares of members being present in the meeting of the 'Committee of Creditors' and all of them have casted vote in favour of 'JSW Steel we hold that the 'Resolution Plan'

submitted by 'JSW Steel ' has been approved with 100% voting shares."

11. However, we are unable to accept the contention of the Applicant that the resolution for appointment of liquidator was passed with more than 66% of voting, in view of the fact that the Hon'ble Supreme Court in the case of '*K Sashidhar vs. Indian Overseas Bank & ors. [Civil Appeal No. 10673]*' at para no 29 held that:

"29.....

.....Concededly, Regulations 25 and 39 must be read in light of Section 30(4) of the I & B Code, concerning the process of approval of a resolution plan. For that, the "percent of voting share of the financial creditors" approving vis-a-vis dissenting-is required to be reckoned. It is not on the basis of members present and voting as such. At any rate, the approving votes must fulfill the threshold percent of voting share of the financial creditors. Keeping this clear distinction in mind, it must follow that the resolution plan concerning the respective corporate debtors, namely, KS & PIPL and IIL, is deemed to have been rejected as it had failed to muster the approval of requisite threshold votes, of not less than 75% of voting share of the financial creditors. It is not possible to countenance any other construction or interpretation, which may run contrary to what has been noted herein before."

12. However, without going into the fact that whether the CoC passed the resolution with requisite percentage of voting or not, based on the mandate of Section 33(1)(a), since no Resolution Plan was received within CIRP period and also considering the fact that 270 days of CIRP period are over, this Bench hereby orders the liquidation of the Corporate Debtor.
13. Mr Bhavesh Rathod, Insolvency Professional, has given his consent to act as a Liquidator of the Corporate Debtor.

ORDER

The application be and the same is allowed. The Corporate Debtor, Ashapura Intimates Fashion Limited, shall be liquidated in the manner as laid down in Chapter-III of the Code with the following consequential directions:

- a) Mr Bhavesh Rathod having Registration No. IBBI/IPA-001/IPP01200/2018-19/11910 is appointed as Liquidator.
- b) The Liquidator shall issue public announcement stating that the Corporate Debtor is in liquidation.
- c) The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.
- d) The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate here from.
- e) Subject to section 52 of the IBC 2016 no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- f) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- g) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.
- h) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.

- i) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
- j) The Liquidator is directed to send a copy of this Order to concerned Registrar of Companies and Insolvency and Bankruptcy Board of India, New Delhi.

Sd/-
V. Nallasenapathy
Member Technical

Sd/-
Janab Mohammed Ajmal
Member Judicial