

IN THE NATIONAL COMPANY LAW TRIBUNAL : NEW DELHI

COURT-III

IB- 623/ND/2018
(CA No.503/C-III/ND/2019)

In the matter of :

JM Kapoor & Company
A-371/BASEMENT, DEFENCE COLONY,
NEW DELHI – 110024.

..PETITIONER

Vs.

NOVEX (P) LTD
PLOT NO.2, BEHIND GPO, KASHMERE GATE,
NEW DELHI – 110 006.

..RESPONDENT

SECTION

Under Section 9 of IBC, 2016

Order delivered on 04.9.2019

Coram :

Sh. R. Varadharajan,
Hon'ble Member (Judicial)
Shri Kapal Kumar Vohra,
Hon'ble member (Technical)

For the Petitioner /Op. Creditor : Mr. Sourit Arora, Advocate for R.P.
For the Respondent/Corporate Debtor :
For the Intervener :

ORDER DICTATED IN THE OPEN COURT

This Application has been moved by the Resolution Professional (RP) seeking for the initiation of liquidation of the Corporate Debtor (CD) under Section

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Surjit (04.9.2019) Court-III

33 (1) (a) (i) read with sub Section 2 of IBC, 2016 in view of the Resolution passed in 8th COC Meeting held on 23.7.2019. Ld. Counsel for the RP represents that CIR process was initiated in relation to the CD on 10.12.2018. It is evident from the filing dated 06.8.2019 that consequent to the publication calling for the claim on 24.12.2018 in the newspapers, namely, The Financial Express (In English edition) and "Jansatta" (Hindi) in vernacular, claims were received only from the Operational Creditor (OC) at whose instance this Tribunal was pleased to initiate CIR process as against the CD. It is also brought forth that the COC was constituted on 11.1.2019 and the 1st Meeting of the COC was held on 16.1.2019 wherein the IRP appointed by this Tribunal was replaced with Mr. Ajay Kuma Jain. It is further brought forth that the registered Valuers were appointed by the COC on 22.1.2019, namely, Mr. Ankit Goel & Mr. K. Lal & Associates, both approved Valuers and as per the information filed with this Tribunal, it is seen that the fair value which has been arrived at is to the extent of Rs.10,93,664/- and the liquidation value is Rs.5,39,256/-. It is evident that the R.P. had issued publication inviting Expression of Interest (EOI) on 28.2.2019, 14.5.2019 & 22.6.2019 and correspondingly the dates were also calibrated for final list of eligible prospective Resolution Applicants. Date for receipt of Resolution Plan, which according to the RP, was fixed on 29.4.2019, 30.5.2019 and 26.7.2019. However, no Resolution Plan was received for resolving the insolvency of the CD and in the circumstances, in the 8th COC Meeting, Resolution seeking for liquidation of the CD was passed by the COC comprising the Sole OC, namely, the Petitioner in the main Company petition. From the filing dated 06.8.2019, it is also seen that 180 days of CIR process period had expired on 07.6.2019 and after extension granted by this

Tribunal vide Order dated 10.6.2019, the extended period of CIR Process also expired on 08.8.2019.

It is also brought forth that a Company Application in CA No.488/C-III/MND/2019 under Section 43 of IBC, 2016 has also been filed before this Tribunal bringing to the notice of this Tribunal about the preferential transactions which had taken place in relation to the CD. Ld. Counsel for the R.P. represents that in the said Application, notice has been issued by this Tribunal to the Respondents named therein and the same is pending before this Tribunal. However, it does not detract this Tribunal in entertaining the present application for liquidation of the CD at the instance of COC by the RP.

It is evident from the sequence of events as detailed by the RP and also taking into consideration the status report filed from time to time by the RP, there is no EOI nor any Resolution Plan that has been received and in the circumstances, this Tribunal is left with no alternative except to order liquidation of the CD as sought for in the above application by the RP. Upon a query posed by this Tribunal as to whether any consent has been given by the RP to act as a Liquidator of the CD, Ld. Counsel for the RP points out to Page-52 and Ld. Counsel for the RP represents that one Mr. Ranjan Chakraborti, having Registration No. IBBI/IPA-002/IP-N00541/2017-2018/11618), (e-Mail id – ranjanns@gmail.com & Mobile No.9811703727, will act as the Liquidator subject to order of this Tribunal which has been annexed as Annexure A-9. It is further brought to the notice of this Tribunal that the above said R.P. namely, Mr. Ranjan Chakraborti has been recommended by the COC in its 8th meeting held on 23.7.2019. Taking into consideration the above recommendation of the COC, Mr. Ranjan Chakraborti is

appointed as the Liquidator, who will carry forward the activities of liquidation of the CD. The RP, who is presently acting as such in relation to the CIR process of the CD shall hand over all the records as well as the assets of the CD which may be in the custody of the RP and obtain due discharge from the Liquidator appointed hereinafter.

Mr. Ranjan Chakraborti is hereby appointed as the Liquidator in view of his consent having been furnished to act as such to carry forward the liquidation of the CD henceforth. The Liquidator appointed shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as enjoined upon him. Further,

- a. The Liquidator appointed herein shall issue the public announcement that the CD is in liquidation. In relation to officers/employees and workers of the CD, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge ;
- b. The Liquidator shall investigate the financial affairs of the CD, particularly in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences. The Liquidator shall continue to prosecute before this Tribunal. CA No.483/C-III/ND/2019 without any let and for this purpose, the said Application is fixed for hearing on 02.12.2019.
- 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. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the CD, the Liquidator shall also duly intimate about the order of liquidation

- e. The order of Moratorium passed under Section 14 of the IBC, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the IBC, 2016 shall commence;
- f. The liquidator is directed to proceed with the process of liquidation in a manner laid down in chapter III of Part II of the Insolvency and Bankruptcy Code, 2016
- g. The liquidator is directed to investigate the financial affairs of the CD in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and prosecute or file its response for disposal of any pending Company Applications during the process of liquidation;
- h. The liquidator shall submit a Preliminary report to this Tribunal within seventy-five days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- i. Copy of this order be furnished to the Members of COC by the Liquidator who shall make available all the financial resources for the Liquidation of the CD.

Accordingly, this application is disposed off in the aforesaid terms.

— Sd —

(K.K. VOHRA)
MEMBER (TECHNICAL)

— Sd —

(R. VARADHARAJAN)
MEMBER (JUDICIAL)