THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

I.A. 1947 OF 2022

Under Section 33 of Insolvency &

Bankruptcy Code, 2016

Mr. Rajan Rawat

Resolution Professional/

...Applicant

In the matter of

C.P.(IB) No. 1972/MB/2019

The Shop

Operational Creditor

Vs.

Carbontree Industries Private Limited

Corporate Debtor

Order delivered on: 28/04/2023

Coram:

Mr. Prabhat Kumar	**Mr. Kishore Vemulapalli**
Hon'ble Member (Technical)	Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant/RP : Mr. Rajan Rawat, RP

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. The above application I.A. No. 1947/2022 is filed by Mr. Rajan Rawat, seeking liquidation of Carbontree Industries Private Limited (hereinafter referred to as the "Corporate Debtor") under Section 33

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(1) of the Insolvency and Code, 2016 (hereinafter called as "the Code").

2. The brief facts of the application are as follows:

   a. The Applicant mentions that this Tribunal vide its order dated 03.12.2019 in Company Petition No. 1972/IBC/MB/2019 admitted the petition under Section 7 of the Code, filed by The Shop (hereinafter referred to as the "Operational Creditor") and Corporate Insolvency Resolution Process (hereinafter referred to as the "CIRP") was initiated against the Corporate Debtor. Mr. Rajan Rawat, was appointed as the Interim Resolution Professional of the Corporate Debtor by this Tribunal.

   b. Ld. Counsel for the Applicant submits that pursuant to the publication of FORM-G on 28.02.2020, the Applicant informed that no EOI expression of Interest were received. Therefore, in the 3rd meeting of CoC held on 16.03.2020, the CoC with 100% voting decided to liquidate the Company. However, Mr. Subir Chakraborty, Suspended Director of the Corporate Debtor requested the RP to give him an opportunity to put his stand on the same. Mr. Subir Chakraborty requested the CoC members that he is having a restructuring proposal for final creditor and for the Operational Creditors so that the CoC may consider for withdrawal of the case u/s 12A. However, no resolution plan was received.

3. Therefore, the CoC with 100% voting decided to liquidate the Corporate Debtor in its 8th CoC meeting held on 17.12.2020. The relevant extract of the resolution for liquidation of the Corporate is hereinunder: -

> ***"Resolved that there is no Resolution Plan Received till date for the resolution of the Corporate Debtor under the CIRP process. As per the provisions of the IBC we, being a member of the Committee of Creditors (CoC), have decided to liquidate the Corporate Debtor-Carbontree Industries Private Limited. We direct the Resolution Professional to intimate the Adjudicating the Authority to liquidate the Corporate Debtor-Carbontree Industries Private Limited and file an Application with the Adjudicating Authority for liquidation."***

4. The Applicant submits that according to the Ballot Forms received, the IDFC First Bank (20% Voting Share) has given its assent to approve the appointment of Shri Rajan Rawat as the Liquidator while Edelweiss ARC (80% voting share) has not approved the appointment of Shri Rajan Rawat as the liquidator.

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5. During the course of hearing, this Bench noticed that CIRP period in this case expired on 09.06.2020. The Resolution for liquidation of Corporate Debtor was first passed by 100% vote in the CoC meeting held on 16.03.2020, however, no I.A. was file pursuant thereto. However, the Resolution Professional conducted CoCs meeting on 26.11.2020, 02.12.2020, 09.12.2020, 14.12.2020 and 17.12.2020 and 04.01.2021. Another resolution for liquidation of Corporate Debtor was again passed by 100% vote in the CoC meeting held on 17.12.2020. This Bench asked the RP why the application has been filed consequent to a meeting of CoC held after expiry of the CIRP period. Ld. RP explained that Covid-19 pandemic struck from 24.03.2020 and the period starting therefrom should be excluded in determination of expiry of CIRP period. However, this Bench found that no application has been filed praying for such exclusion. In view of this, Ld. RP sought time to file an application and the same was granted vide order dated 27.02.2023.

6. Pursuant to order dated 27.02.2023, an application I.A. No. 1484/2023 is filed u/s 12(2) of Insolvency & Bankruptcy Code, 2016 (hereinafter referred as "Code") on 04.04.2023 by Resolution Professional, Mr. Rajan Rawat (hereinafter referred to as the "Applicant") seeking following reliefs :

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a. *Allow exclusion of 229 days or till the date of liquidation order and lockdown period from the calculation of CIRP period and extension till the date of filing liquidation;*

b. *Grant exclusion of period from 15.03.2020 till 28.02.2022 as per the order of the Hon'ble Supreme Court of India from the CIRP period;*

c. *Grant condonation of delay in filing application after the expiry of 180 days of CIRP period.*

7. In view of decision of Hon'ble Supreme Court in Court of its own motion, this Bench allows the exclusion for the period from 15.03.2020 till 25.01.2021 i.e. date of filing of application in I.A. 1947/2022. Accordingly, I.A. 1483/2022 is partly allowed.

8. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, this bench is of the opinion that the Corporate Debtor is required to be liquidated in the manner as laid down in the IBC 2016.

ORDER

9. The above I.A. No. 1947/2022 is allowed and the Corporate Debtor Carbontree Industries Private Limited is ordered to be liquidated as a going concern for the first attempt and if it fails, then sale by other methods should be tried.

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a. In view of majority members of CoC desenting from appointment of existing RP as liquidator, this Bench hereby appoints Mr. Rakesh Bothra, having Registration No. IBBI/IPA-001/IP-P01445/2018-20I9/12137, email neerajkartikp@gmail.com, Mob- 9922058850, 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. 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.

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f. 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.

g. 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.

h. This liquidation order u/s 33(7) 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.

i. The liquidator shall be at liberty to pursue pending the Interlocutory Application pertaining to avoidance transactions, if any.

With the above directions, the I.A. No.1947/2022 filed u/s33 (1) by the applicant is hereby allowed and disposed of.

Sd/-
PRABHAT KUMAR
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)

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