

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 29

IA 68/2021

In

C.P.(IB)1874/MB/2019

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON **09.01.2024**

NAME OF THE PARTIES: PARAMOUNT CONSULTANTS AND
CORPORATE ADVISORS PVT. LTD V/s
PRABHAT TECHNOLOGIES (INDIA) LTD

Section 60(5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

1. None present for the Applicant present. Mr. Rohit Gupta a/w Mr. Shivani Sinha and Mr. Meera Murali, Ld. Counsel for State Bank of India present.
2. In the last order dated 19.12.2023, this Bench has stated that “applicant” seeks time to file application. However, the word “applicant” is to be substituted by the word “State Bank of India”. The order is modified accordingly.
3. The State Bank of India has placed an affidavit dated 18.12.2023 informing that SBI has serious concerns in respect of the fraudulent conduct of the promoters and accordingly, SBI representing 37.87% voting share of the CoC has decided to withdraw its approval to the Resolution Plan submitted for Tribunal’s approval in IA 68/2021. The State Bank of India further informed that this decision was taken by all the Financial Creditors and the remaining Financial Creditors are in the process of their competent

authority approval to proceed further. Accordingly, the State Bank of India seeks the liquidation of the Corporate Debtor.

4. The Counsel informs that plan was approved by 98% vote of the CoC members. After withdrawal of the consent of the SBI, the vote share which was in favour of plan reduces to less than 66% and the same falls below the statutory mandate in terms of Section 30(4) of the Code.
5. The Bench heard the Counsel and perused the materials available on record. This Bench finds that the Financial Creditor who had voted in favour of the plan have withdrawn their consent to the Resolution Plan pending approval of this Bench in IA 68/2021. In view of this decision, the Resolution Plan of the SRA does not have any vote in its favour.
6. Accordingly, in the event of these submissions, we find that the plan does not have requisite mandate and cannot be considered for our approval in terms of Section 31 of the Code which requires this Tribunal to satisfy that the Resolution Plan has approved by the CoC u/s 30(4) meets the requirement u/s 30(2). Since, the plan lacks the approval at the threshold we reject the plan. In terms of section 33(1)(b), we pass an order requiring the Corporate Debtor to be liquidated. State Bank of India proposed the name Mr. Shailesh Desai to act as liquidator of the Corporate Debtor. In view of this we pass the following order.
 - a. This Bench appoints Mr. Shailesh Desai, having Registration No. IBBI/IPA-001/IP-P00183/2017-2018/10362, 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.
- 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.68/2021 is hereby disposed of as dismissed with consequential orders.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

/NP/

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**