IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

IA (IB) No. 937/KB/2021
in
CP(IB) No. 2149/KB/2019

An Application under section 33(1) (a) of Insolvency and Bankruptcy Code, 2016

In the matter of:
Hempragati Vyapaar Private Limited

...Financial Creditor

Versus

JPM Export Private Limited

...Corporate Debtor

And

In the matter of:

Avishek Gupta

Resolution Professional of JPM Export Private Limited

...Applicant

Date of Hearing - 26.11.2021

Date of pronouncement the order – 21.12.2021

Coram:

Shri Rajasekhar V.K.	**:**	**Member (Judicial)**
Shri Balraj Joshi	**:**	**Member (Technical)**

Appearances (through video conferencing)

For the Applicant:

1. Mr. Aritra Basu, Advocate.
2. Mr. Arka Banerjee, Advocate.

ORDER

Per Rajasekhar V.K., Member (Judicial)

1. This court convened via video conferencing.

2. This is an application filed by the Resolution Professional upon the instructions of the Committee of Creditors (‘*CoC*’) seeking liquidation of the Corporate Debtor, viz. JPM Export Private Limited [CIN: U17120WB2009PTC137865], on the ground that no resolution plan was approved by the CoC.

3. This Adjudicating Authority *vide* its order dated 27.01.2021 on a Petition filed by Hempragati Vyapaar Private Limited (‘Financial Creditor’) under section 7 of the Insolvency and Bankruptcy Code, 2016 (‘the Code’) directed initiation of the Corporate Insolvency Resolution Process (‘CIRP’) against the Corporate Debtor and appointed Mr. Avishek Gupta as the Interim Resolution Professional (‘IRP’). Subsequently, the IRP was appointed as the Resolution Professional (‘RP’).

4. The Applicant submits that in terms of section 15 of the Code, public announcement was made on 30.01.2021, in **Financial Express** (English) and **Aaj Kaal** (Bengali) (Kolkata Edition), fixing 10.02.2021 as the last date for submitting the claim. The public announcement was uploaded on the website of IBBI.

5. Pursuant to the publication, the IRP received various claim from the creditors of the Corporate Debtor and based on the claims received, verifications were made and the CoC was duly constituted.

6. The first meeting of the CoC was held on 25.02.2021 and subsequently, on 06.03.2021 through e-voting the IRP was reappointed as the RP by the CoC by 100% of votes.

7. The Applicant states that in terms of regulation 36A of the Corporate Insolvency Resolution Plan Regulations, publication for invitation of Expression of Interest (EoIs) in 'Form G' was done on 12.04.2021 in **Financial Express** (English) and **Aaj Kaal** (Bengali) (Kolkata edition) newspapers. The submission of EoI inviting Resolution Plan was on or before 27.04.2021, with an extension till 03.05.2021.

8. It is submitted that with reference to the publication the RP received (four) EoIs from prospective Resolution Applicants, namely, Rupnarayan Dealers Private Limited in consortium with Sunflower Trade Link Private Limited and Pukhraj Estate Developers Private Limited, KAI International Private Limited, Growthally Advisors Private Limited and Klick2buy Ventures Private Limited. However, only one Resolution Applicant i.e., Klick2Buy Ventures Private Limited had submitted a Resolution Plan along with an EMD amount of Rs.10,00,000 (Rupees Ten Lakh only)

9. Further, the Resolution Plan submitted by the Resolution Applicant offered an amount of Rs 2.5 Crores with an upfront payment of Rs. 20 Lakh and required release of the Personal Guarantor of promoter and his relatives and Corporate Guarantees of other group companies. The CoC in their 7th Meeting communicated to the Resolution Applicant to come up with an improved Financial Proposal and with no release of any Personal or Corporate Guarantees[1].

10. On 29.07.2021 the Resolution Applicant submitted a revised Resolution Plan and offered an amount increased by 25% i.e., Rs. 3.125 Crores with an upfront payment of Rs.20 Lakh. However, the revised Resolution Plan did not provide any clause pertaining to the release of the Corporate & Person Guarantors.

11. The CoC in its 9th CoC Meeting with voting share of 97.38% decided the amount offered under the Plan by the Resolution Applicant is below their expectation and unsatisfactory. Hence, the revised plan submitted by the Resolution Applicant was

[1]Annexure C of I.A. 937/KB/2021

rejected by the CoC and the RP was directed to file a liquidation application with before the Adjudicating Authority.

12. Hence, the RP has filed this application under section 33 of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor.

13. On 28.09.2021, through e-voting, the Applicant/Resolution Professional, Mr. Avishek Gupta [Reg.No. IBBI/IPA-003/IP-N00135/2017-2018/11499], was elected as liquidator to carry on the process of liquidation in terms of section 34(1) of the Code the Liquidator has given his consent to act as Liquidator and has also filed a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member[2].

14. We have considered the submission made by the learned Counsel on behalf of the Applicant/RP and perused the record.

15. section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the Resolution Professional at any time during the CIRP but before confirmation of the Resolution Plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor in the present case, the CoC has resolved by 97.38% voting share to liquidate the Corporate Debtor.

16. This Bench, therefore, hereby orders as follows:-

    (a) Prayers as sought for in **I.A.(IB)No.937/KB/2021** filed by **Mr. Avishek Gupta, RP** of the Corporate Debtor, is allowed and the Corporate Debtor JPM Export Private Limited is ordered to be liquidated in terms of section33(2) of the Code read with sub-section(1) thereof;

[2]Annexure H of I.A. 937/KB/2021

(b) Mr. Avishek Gupta [Reg.No. IBBI/IPA-003/IP-N00135/2017-2018/11499], is hereby appointed as Liquidator as provided under section 34(1) of the Code.

(c) The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(d) Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., **Financial Express** (English) and **Ek Din** (Bengali) (Kolkata edition), stating that the Corporate Debtor is in liquidation.

(e) All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.

(f) The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the CorporateDebtor.

(g) On initiation of the liquidation process and subject to section 52 of the Code, no suitor 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, as provided in section 33(5) of the Code.

(h) In accordance with section 33 (7) of the Code, this liquidation order 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) In terms of section 33 (1) (b) (iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, WestBengal, Kolkata, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.

(j) The application bearing IA(IB)No.937/KB/2021 shall stand disposed of in accordance with the above directions.

(k) The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld.Counsel for information and for taking necessary steps.

(l) Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

(m) List the main CP (IB) No.2149/KB/2019 on **08.02.2022** for reporting progress on.

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Order dated December 21, 2021

SA, LRA