NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

6. MA 2589/2019

I.A. 1370/2021

IN

C.P.(IB)-3622(MB)/2018

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **25.01.2022**

NAME OF THE PARTIES: TJSB Sahakari Bank Ltd

V/s

Unimetal Casting Ltd.

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Counsel for the Resolution Professional, Mr. Dharmesh J Shah, counsel for the COC, Mr. Rohit Pandit, counsel for the Applicant in IA 1370/202, Ms. Tanya Chil and counsel for the IRP, Mr. Tejas Parikh are present through virtual hearing.

M.A. 2589/2019

Heard the counsel appearing for the RP. The above Application is filed for Liquidation of the Corporate Debtor Company. The above Application is allowed and detailed order will follow.

List I.A. 1370/2021 on 01.04.2022.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Sd/-
H.V. SUBBA RAO
Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-III

MA No. 2589 of 2019
In
CP No. 3622/I&B/2018

Under Section 33 of Insolvency & Bankruptcy Code, 2016

In the matter of

TJSB Sahakari Bank Ltd.
… Financial Creditor

V/s.

Unimetal Casting Ltd.
… Corporate Debtor

MA No. 2589/2019

Mr. Tejas J. Parikh … Applicant/ Resolution Professional

Order delivered on 25.01.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearances (via videoconferencing):

For the Applicant: Mr. Dharmesh Shah, Advocate
Mr. Tejas J. Parikh, Resolution Professional-in-person

ORDER

1. It is an application filed by the Applicant/ Resolution Professional, seeking liquidation of the Corporate Debtor namely (M/s. Unimetal Casting Ltd Ltd.) on the ground that no resolution plan has been received by him, hence this application under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016, praying following reliefs:

   a. *To consider and give an early date for hearing since the total period of 180 days for Corporate Insolvency Resolution Process end on 23.07.2019;*

b. *To pass an order directing the initiation of Liquidation of the corporate Debtor in accordance with Section 33 of the Insolvency Bankruptcy Code, 2016;*

c. *To pass an order discharging the present Applicant from his duties as RP on expiry of CIRP;*

d. *To pass an order for Appointment of the liquidator of the Corporate Debtor."*

2. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor namely Unimetal Casting Ltd. by an order of this Adjudicating Authority dated 25.01.2019 on a Petition filed by the Financial Creditor under Section 7 of the Code, wherein Mr. Tejas Jatin Parikh, was appointed as Interim Resolution Professional (IRP). Thereafter on 09.04.2019 in the 2nd Committee of Creditors (CoC) meeting the Applicant, was appointed as Resolution Professional (RP).

3. The RP submits that the public announcement was made on 02.02.2019 in "Times of India" in English and in "Pudhari in Marathi (Kolhapur edition) on 02.02.2019, fixing 14.02.2019 as the last date for submitting the claim. Subsequently, the IRP constituted the CoC.

4. The RP submits that in the 2nd CoC meeting held on 09.04.2019 it was decided to appoint a Valuer, accordingly, RP had appointed two registered valuers as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016 and the Information Memorandum was prepared as provided under Regulation 36(1) of the said regulation. It is further submitted that an advertisement was issued, inviting Expression of Interest in Form G on 16.05.2019 fixing 31.05.2019 as last date for submission of Expression of Interest by the Prospective Resolution Applicants (PRA).

5. The Resolution Professional submits that only 1 (one) Expression of Interest was received by him from Prospective Resolution Applicant ("PRA") namely M/s. Prudent ARC Ltd. The said PRA was given opportunity to submit the resolution plan. However, no Resolution plan was received within the stipulated period and no extension was sought.

6. This Tribunal vide an order dated 04.02.2021 allowed the exclusion of 506 days from 23.07.2020 till 10.12.2020 and extension of 90 days, which ended on 10.3.2021. After the extension of CIRP period, Prospective Resolution Applicant Mr. Ajit Deodhar, Ex-promoter director of Corporate Debtor has submitted the Resolution Plan.

7. The Resolution Professional submits that the Resolution Plan was approved by CoC in its meeting held on 26.02.2021, the same could not be placed before this Tribunal for following reasons:

   i. Performance guarantee of Rs. 25 Lakhs was not submitted by Mr. Ajit Deodhar, Ex-promoter Director of Corporate Debtor, Resolution Applicant being MSME decided by the CoC.

   ii. Globomet Engineering Pvt. Ltd., the investor in the Corporate Debtor, withdrawn the support to the Resolution Plan.

   8. The CoC in its meeting held on 20.11.2021, it was informed in the meeting that there are no chance of revival of the Corporate debtor Company. The following Resolution was passed;

   > *"Resolved that since no fresh Resolution Plans has been received, post decision of Globomet Engineering Pvt. Ltd. (investor mentioned in Resolution Plan submitted by Mr. Ajit Deodhar, Resolution Applicant) to withdraw from Resolution Plan, the CoC herewith consents to and unanimously decides to liquidate Corporate Debtor "Unimetal Castings Limited" and authorise the Resolution*

Professional to press for liquidation application MA 2589 already filed before NCLT and pending for final order.
Resolved further that, CoC members unanimously approved appointment of Mr. Pankaj Sham Joshi having IBBI registration number (IBBI/IPA-02/IP-N00507/2017-18/11556), as liquidator of Unimetal Casting Limited."

9. Hence, the CoC in its meeting held on 20.11.2021, unanimously decided to liquidate the Corporate Debtor Company. Accordingly, the Resolution Professional filed this application for liquidation of the Company as provided u/s. 33 of the Insolvency & Bankruptcy Code, 2016 (Code).

10. Mr. Pankaj Sham Joshi to be appointed as liquidator, has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator.

11. Upon hearing the submissions of the Applicant and on the perusal of the Application and the documents enclosed therein it is found, the RP has complied with the procedure laid down under the Code; Regulations made thereunder. The reasons assigned in the petition with regards to taking the decision of liquidation of Corporate Debtor by COC appears to be convincing. On verification, we are of the considered view that this is a fit case to pass liquidation order under sub-section 1 of section 33 of the Code for liquidation in the absence of any resolution plan. Hence ordered;

ORDER

a. The Miscellaneous Application No. 2589 of 2019 is hereby allowed.

b. That the Mr. Pankaj Sham Joshi, Registration No. IBBI/IPA-02/IP-N00507/2017-18/11556, Email id-pjoshi.ip@gmail.com, herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.

c. 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.

d. 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.

e. The Liquidator appointed under section 34(1) of the Code. Will have 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.

f. 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.

g. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.

h. 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.

i. 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.

j. 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.

k. Accordingly, this Misc. Application No. 2589 of 2019 is hereby allowed and disposed of.

Sd/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)