

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

MA No. 1879/2019
In
C.P. 1364/I&BP/2018

Under Section 33 of Insolvency &
Bankruptcy Code, 2016
In the matter of
J. S. Enterprises
.... Operational Creditor
vs.
Karthik Nirman Pvt. Ltd.
... Corporate Debtor

M.A. No. 1879/2019
Ms. Jovita Reema Mathias
Resolution Professional
... Resolution Applicant

Order delivered on 24.06.2019

Coram: Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)
Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Applicant: Mr. Amir Arsiwala, Advocate

Per V. Nallasenapathy, Member (Technical)



ORDER

1. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor by an order dated 13.06.2018 of this Adjudicating Authority on a Section 9 Petition filed by the Operational Creditor, wherein Ms. Jovita Reema Mathia, was appointed as Interim Resolution Professional (IRP) and thereafter confirmed by the Committee of Creditors (CoC) as Resolution Professional (RP).

2. The RP submits that the public announcement was made on 20.06.2018 fixing 02.07.2018 as the last date for submitting the claim. Subsequently the RP constituted the Committee of Creditors (CoC).

3. The RP submits that two registered valuers were appointed as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016 and an Information Memorandum was prepared as provided under Regulation 36(1) of the said regulation. It is further submitted that an expression of

interest was published on 15.08.2018 inviting prospective resolution applicants to submit their resolution plan and Form G for invitation of resolution plan was published in newspaper on 18.08.2018. Consequently two prospective resolution applicants sent their expression of interest.

4. The RP submits that a resolution plan was received from Mr. S. Ravichandran in response to expression of interest received by RP. The said Mr. Ravichandran is a promoter director of the Corporate Debtor and submitted documents for the proving that he is eligible to present the resolution plan pursuant to Section 240A of the Code, which provides that the provisions of classes (c) and (h) of Section 29A shall not apply to the corporate insolvency resolution process of any micro, small and medium enterprises. The RP has disclosed that the said resolution applicant has provided an affidavit under Section 30(1) stating that he is eligible under Section 29A to present a resolution plan. However, RP submitted that the said Resolution Applicant is not complying with another eligibility criteria as provided under 29A(e) of the Code as he disqualified to act as a director under the Companies Act, 2013.

5. The RP submits that another Resolution plan was received from a Resolution Applicant (Spark Group) and the CoC in their 6th meeting discussed about the resolution plan which offers only 1.50 crores as against the claim of Rs. 2.90 Crores of the Corporation Bank, the Financial Creditor. The CoC requested the Resolution applicant to improve the offer considering the value of collateral securities mortgaged with the bank which is around Rs. 3 Crores. The CoC further instructed the RP to allow a new resolution applicant to submit his resolution plan.

6. The CoC in their 7th meeting considered the views of the Resolution Applicant and since no resolution plan was submitted by the Spark Group till date and in the view of the fact that the CIRP period was already over despite exclusion of certain period from CIRP and extension of 90 days of CIRP period, decided to liquidate the Corporate Debtor with 100% voting, as provided u/s 33 of the Insolvency & Bankruptcy Code, 2016 (Code). Hence, this application.

7. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, for the RP has complied with the procedure laid under the Code read with Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations), for the valuation report filed by the valuer has not been disputed by the CoC, on verification, we are of the view that this case is fit to pass liquidation order under sub-section 1 of section 33 of the Code as no

resolution plan has been approved by the Adjudicating Authority and accordingly, this Bench orders;

- a. 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.
 - b. that the MR. Bharatiraju Vegiraju, Registration No. IBBI/IPA-002/IP-N00706/2018-2019/12325, herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
 - c. that 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.
 - d. 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.
 - e. that the liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.
 - f. 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.
 - g. that this liquidation order shall be a deemed to be 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.
8. Consequently, the Applicant Resolution Professional is appointed as the Liquidator as provided 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 in the liquidator;



9. Accordingly, this Misc. Application is hereby allowed directing 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.

Sd/-

V. Nallasenapathy
Member (Technical)

Sd/-

Bhaskara Pantula Mohan
Member (Judicial)



Certified True Copy
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On 11/10/19
B. A. Park

Deputy Registrar
National Company Law Tribunal Mumbai Bench
Government of India