

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

COURT – IV

9.

IA-3182/2023, IA-1509/2023  
IN C.P. (IB)/188(MB)2021

CORAM:

SHRI PRABHAT KUMAR  
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI  
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON 27.07.2023

NAME OF THE PARTIES: Aditya Birla Finance Limited  
Vs.  
Delta Iron and Steel Company Private Limited

SECTION: 7, 19(2), 33(1) (b) (i) to (iii) r/w Sec. 33(3) OF THE INSOLVENCY AND  
BANKRUPTCY CODE, 2016.

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**ORDER**

**IA-3182/2023**

1. Mr. Aman Kacheria a/w Siddharth Shankar, Ld. Counsel for the Liquidator present in both IAs. None present for the Respondents.
2. This is an application filed by Mr. Mangesh Vitthal Kekre, Resolution Professional of the Corporate Debtor on 18.07.2023, seeking liquidation of Corporate Debtor M/s. Delta Iron and Steel Company Private Limited under Section 33(1) and 34(1) of Insolvency and Bankruptcy Code, 2016 (hereinafter called as the "Code").

**Brief facts of the Application are as follows:**

- 2.1 This Tribunal vide an order dated 07.06.2022, in Company Petition bearing CP(IB)-188/MB-IV/2021 filed under Section 7 of the Code, by Aditya Birla Finance Limited (hereinafter referred to as the "Financial Creditor"), admitted the petition and Corporate Insolvency Resolution Process (CIRP) was initiated against Delta Iron and Steel Company Private Limited [CIN: U27100MH1996PTC097025] (hereinafter called as the "Corporate Debtor"). The applicant was appointed as Interim Resolution Professional

by this Tribunal vide same order. He was later appointed as Resolution Professional (RP) in the 2<sup>nd</sup> CoC meeting held on 18.07.2022.

2.2 That, the table hereunder reflects the composition of CoC, their material details such as the name of financial creditor, their respective voting share as follows:

Sr.No.	CoC Member	Claim admitted	Voting Share in %
1	Canara Bank	1,71,32,67,676	47.13%
2	Axis Bank Limited	40,82,89,222	11.24%
3	TATA Capital Financial Services	30,03,36,580	8.26%
4	Aditya Birla Finance Limited	18,84,56,760	5.18%
5	Bank of Maharashtra	48,83,33,683	13.43%
6	Union Bank of India	53,67,71,721	14.76%
	Total	3,63,54,55,642	100%

2.3 That, the Resolution Professional and CoC have time and again raised queries, and sought clarifications with respect to the resolution plan submitted by PRA - RKG Fund 1. Also, there have been multiple rounds of negotiations between the CoC and PRA for improvement in the resolution amount.

2.4 That, pursuant to these rounds of discussion, the PRA submitted clarifications/corrections of typographical errors by way of a modified resolution plan. The deliberation and negotiation upon the resolution plan took place in CoC meeting starting from 5th meeting held on 21/11/2022 and continued till 10th meeting dated 04/03/2022.

2.5 That, the CoC observed that there exists a fair chance of revival of the Corporate Debtor by way of a resolution plan, and therefore accorded various opportunities to the PRA for submitting clarifications, certain modifications and revision in its offer. Thereafter, a final resolution plan dated 14/03/2023 was submitted by PRA to the applicant - RP.

- 2.6 That, considering the ongoing negotiations with the PRA and the final decision upon resolution plan was taking some time, therefore, the CoC in its 10th Meeting held on 04/03/2023 [e-voting concluded on 15/03/2023] passed a resolution with 85.24% of voting for further extension of CIRP period by another 60 days.
- 2.7 Pursuant the said resolution, an application, being IA 1741/2023, was filed by the present applicant praying for further extension of CIRP period by another 60 days. The said IA was listed before this Hon'ble AA on 18/05/2023.
- 2.8 That, after receipt of the final resolution plan from PRA, the said plan was put for consideration before CoC in their 11th meeting dated 05/04/2023 and the CoC suggested to put the same for approval through e-voting. While the e-voting window was live, the present applicant received an email from a few CoC members for keeping the existing voting on hold/recalling it for want of certain clarifications from the Resolution Applicant and requested for convening another CoC meeting.
- 2.9 That, the applicant - RP considering the interest of all the stakeholders and in the interest of the resolution of CD called for a CoC meeting for one final discussion with RA and seeking clarifications on the issues so raised by CoC.
- 2.10 That, resultantly the 12th meeting of CoC dated 24/04/2023 was called and the resolution plan dated 14/03/2023 along with the clarifications provided by Resolution Applicant were put for consideration and e-voting by CoC. The e-voting window (after circulation of minutes of the meeting commenced on 26/04/2023 and was kept open till 03/05/2023 at the request of CoC members.
- 2.11 That, the resolution plan which was put for voting by CoC received 60.56% votes only in favour against the minimum requisite voting of 66%. The provisions of Section 33(4) of IBC'16 state that;

*"the committee of creditors may approve a resolution plan by a vote of not less than 66% of voting share of financial creditors after considering its feasibility and viability"*

2.12 That, the Corporate Debtor is a trading concern and the only tangible assets available with CD are 03 vehicles and some furniture items lying in the office of CD. Therefore, RP put up a resolution before the CoC in its 12th CoC meeting dated 24/04/2023 for the assessment of sale of assets in accordance with the provisions of regulation 32 of IBBI (Liquidation Process) regulations, 2016. However, the said resolution received only 11.24% in favour and hence, the said resolution also couldn't be approved.

2.13 That, in the absence of receipt of requisite voting percent, the resolution plan submitted by PRA had not been approved, the applicant initiated the process of preferring an application for Liquidation of CD.

2.14 Furthermore, proviso to section 12(3) provides that;

*"the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor."*

3. The CIRP period of 330 days had also expired on 03/05/2023. Hence, the present applicant was in the process of approaching this Hon'ble Adjudicating Authority by way of filing an application for Liquidation of CD.

4. Pursuant to the directions of this Hon'ble Adjudicating Authority, the present applicant called another meeting, being 13th meeting of CoC dated 26/05/2023, for deciding upon the appointment of Liquidator as well as Liquidation Cost in compliance to the order dated 18/05/2023 wherein the

present Resolution Professional showed his willingness to act as Liquidator for CD and the resolution was approved by the CoC.

4.1. A resolution was put for voting before CoC in terms of the above-mentioned regulations i.e. regulation 398 and regulation 2A. The said resolution was approved by CoC members according 91.74% votes in favour, thereby, approving the resolution.

4.2. Considering the fact that even after considering the extension of 60 days beyond 270 days, the CIRP period of 330 days had already expired and no resolution plan had been approved by CoC, it has become imperative for the present applicant to file this formal application for Liquidation of CD.

4.3. Also, as the IA no. 1741/2023 directing the RP to file an affidavit for passing the order of Liquidation has been disposed of allowing the extension of 60 days in view of Resolution Plan being at advanced stage, the legal counsel advised to file the Liquidation petition now making all the COC members as respondents.

4.4. That, the necessary resolution with respect to Liquidation Cost in accordance with regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 - "Meeting Liquidation Costs" and regulation 2A of IBBI (Liquidation Process) Regulations, 2016 "Contribution to Liquidation Costs" has been passed by CoC, as is evident from the minutes and voting sheet of 13th CoC dated 26/05/2023.

4.5. That, the CoC also deliberated on the compliance of regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and unanimously agreed to sell the assets of CD on a standalone basis considering the fact that the CD was into trading business and there are few tangible assets or a saleable business model except disputed and old Book Debts and Financial Assets.

4.6. That, the present applicant (RP) is hereby providing his consent in the prescribed format of IBBI to act as Liquidator for the Corporate Debtor.

The consent of RP in Form AA is attached herewith as Annexure - P/14.

5. Considering the facts and circumstances as submitted by the Applicant in the Application and Counsel appearing for the Applicant, the Bench is of the considered view that the Corporate Debtor be liquidated. Accordingly, this Bench orders that -

- a. IA-3182/2023 in CP(IB)-188(MB)/2021 filed by the Applicant for the Liquidation of the Corporate Debtor viz. M/s Delta Iron and Steel Company Private Limited is allowed and the company to be liquidated in the following manner:
- b. The Applicant has proposed Mr. Mangesh V. Kekre, having Registration No. IBBI/IPA-001/IP-P00539/2017-18/10964 as the Liquidator in the Application. Accordingly, this Bench hereby appoint Mr. Mangesh V. Kekre, having Registration No. IBBI/IPA-001/IP-P00539/2017-18/10964 as the Liquidator as provided under Section 34(1) of the Code to conduct the liquidation process of the Corporate Debtor.
- c. 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, hereafter ceased to exist and henceforth be vested with the Liquidator.

- f. 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. 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.
  - h. 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 proceedings on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
  - i. 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.
6. With the above directions, the IA-3182/2023 in CP(IB)-188(MB)/2021 filed u/s 33(1) by the Applicant is hereby **allowed** and **disposed of**.

**IA-1509/2023**

7. The one of the Suspended Director appears in person and undertakes to assist the RP in preparing inventory of the record handed over to him. Registry is directed to issue notice to the remaining Suspended Directors to be present in this Court in person on the next date of hearing.
8. List this matter for further consideration on **23.08.2023**.

**Sd/-**  
**PRABHAT KUMAR**  
**Member (Technical)**

**Sd/-**  
**KISHORE VEMULAPALLI**  
**Member (Judicial)**