IA(IBC)/147/KOB/2021
IN
IBA/38/KOB/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA

IA (IBC)/147(KOB)/2021
in
IBA/38/KOB/2019

(Under Section 33(1) of the IBC, 2016)

Order delivered on: 2.12.2021

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)
Hon'ble Mr. Anil Kumar. B, Member (Technical)

Mr. Vinod Balachandran (Resolution Professionalof
M/s Albanna Engineering (India) Pvt. Ltd),
Having registered office at 70/1909, Asoka Road,
Kaloor, Kochi- 682 017. ... Applicant.

In the matter of: -

M/s Sanghvi Movers Ltd,
Regd Office: Survey No. 92,
Tathawade, Taluka-Mulsi, Pune,
Maharshtra- 411 033. ...Operational Creditor.

Versus.

M/s Albanna Engineering (India) Pvt. Ltd.,
XIV 305 A4(4). 3E, Noel Focus,
Seaport- Airport Road,
Chittethukara, CSEZ P.O., Kakkanad,
Ernakulam, Kerala- 682 037. ...Corporate Debtor.

Parties/Counsel present (through video conference)

For Applicant: Shri.Vinod Balachandran, Resolution Professional along with his Advocate Shri. K.B. Arun Kumar.

IA(IBC)/147/KOB/2021
IN
IBA/38/KOB/2019

ORDER

Per: Ashok Kumar Borah, Member (J)

This IA has been filed under Section 33(1) of the Insolvency and Bankruptcy Code 2016 [hereinafter referred to as I&B Code 2016] by Shri. Vinod Balachandran, Resolution Professional appointed by this Tribunal in IBA/38/KOB/2019 in the matter of Albanna Engineering (India) Private Limited seeking the following reliefs: -

i. Pass an order of Liquidation of the Corporate Debtor in accordance with Section 33(1) (b) of Insolvency and Bankruptcy Code, 2016,

ii. This Tribunal may please to permit the Applicant to utilize the liquidation assets of Rs. 30,59,46,949/- (Rupees Thirty Crore Fifty-Nine lakh Forty-Six Thousand Nine Hundred and Forty-One only) pursuant to the direction of this Tribunal in MA/25/KOB/2020 & MA/71/KOB/2020 in IBA No. 38/2019 dated 30.06.2021 amount retained pursuant to the direction in MA No. 23 of 2020 in IBA No. 38/2019 dated 11.03.2020 for liquidation process of the Corporate Debtor.

The brief facts leading to this IA are as under:

2. The applicant herein is the Resolution Professional M/s. Albanna Engineering (India) Pvt Ltd. The Operational Creditor M/s Sanghvi Movers Ltd. filed I.B.A No. 38/2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as "Code") against M/s Albanna Engineering (India) Pvt. Ltd. (hereinafter referred to as "Corporate Debtor"). This Tribunal vide order dated 25.10.2019 admitted the above

application and appointed the applicant herein as the Interim Resolution Professional. Thereafter applicant has made public announcement for submission of claims. The first COC meeting was convened on 25.11.2019 and the CoC resolved to appoint the IRP as the Resolution Professional of the Corporate Debtor.

3. It is stated that the applicant conducted an enquiry as the part of the solution of the dispute and found that the Corporate Debtor is non-operational and did not hand over the books of accounts/ documents/contracts etc., and it has neither a Registered Office nor any staff or any resolution assets (except personal guarantees issued to financial creditors) for recovery. Since the Corporate Debtor did not have any Resolution Assets, Registered Valuers were not appointed and thus the Fair Value and Liquidation Value was Nil.

4. It is further stated that as per the records of the Corporate Debtor that M/s. Albanna Engineering LLC, UAE, is the 100% holding company of the Corporate Debtor, the Corporate Debtor was formed by the holding company to execute contract for mechanical works of VGO HDT unit for Integrated Refinery Expansion Project with M/s. BPCL-Kochi Refinery. On further enquiry it was found that an amount of Rs.5,46,08,871.37/- is the final amount subject to TDS payable to the 100% holding company of the Corporate Debtor, the Albanna Engineering LLC, Dubai, UAE ("LLC") by M/s. BPCL-Kochi Refinery. In addition, the holding company of the Corporate Debtor M/s Albanna Engineering (India) Pvt. Ltd. had provided two performance bank guarantees to M/s BPCL Kochi Refinery for an

amount approx. Rs. 25 Crore. In the aforesaid circumstances the Applicant approached this Tribunal by filing M.A. No. 23 of 2020 in I.B.A. No. 38/2019 and this Tribunal vide order dated 11.03.2020 passed an order directing M/s. BPCL-Kochi Refinery not to pay any amount to the holding Company until further orders from this Tribunal. This was further followed up by filing MA/71/KOB/2020. On 10.03.2020 certain Operational Creditors of the Corporate Debtor filed MA/25/KOB/2020 before this Tribunal praying to invoke the bank guarantee furnished by the Holding Company of the Corporate Debtor. This Tribunal passed an order in MA 25/KOB/2020 on 30.06.2021 directing M/s BPCL-Kochi Refinery, to invoke the bank guarantee and to deposit the proceeds in an interest bearing fixed deposit. Accordingly, the 4th Respondent therein M/s. BPCL-Kochi Refinery invoked the bank guarantee of Rs. 25,13,38,078/-(Rupees Twenty Five Crore Thirteen Lakh Thirty Eight Thousand and Seventy Eight Only) and deposited in a fixed deposit.

5. It is also stated that the voting rights of the financial creditor M/s. Punjab National Bank Ltd. ARMB Circle Office, Ernakulam was reduced to 87% due to receipt of funds from the 100% holding company of the Corporate Debtor. It is also stated that the Progress Reports were duly filed by the RP within the prescribed time, and the relevant forms uploaded to the IBBI. It is further stated that after getting communication from M/s BPCL-Kochi Refinery regarding invocation of Bank Guarantee pursuant to the order of this Tribunal, the Applicant made paper publication inviting Expression of Interest (EOI). Pursuant thereto, M/s Arabian Engineers and

Fabrication, Fujairah, UAE submitted an Expression of Interest (EOI) to submit Resolution Plan in the above matter. The Evaluation matrix, RFRP and Information Memorandum was duly issued subject to CoC approval. Even though said prospective Resolution Applicant has expressed its interest, no Resolution Plan was submitted within the last date fixed- 8th September 2021. Hence in the 10th meeting of the CoC held on 10.09.2021, it was decided to go ahead with the liquidation of the Corporate Debtor.

6. It is stated that since the Applicant has conveyed his consent to act as Liquidator, the CoC unanimously resolved to appoint the R.P. Mr. Vinod Balachandran, as the Liquidator (in the event the Liquidation is approved by the Adjudicating Authority) and his fees was fixed at Rs. 30,000 p.m. +GST+ out of pocket expenses. The estimated liquidation cost of Rs. 10 Lakh was also approved. The minutes of the 10th CoC meeting along with the voting results is produced before this Tribunal. The Applicant has complied with all requirements under the CIRP Regulations and also intimated to the IBBI regarding such compliances through various IP and CIRP forms as required under the IBC Code, 2016.

7. Hence, the Applicant has filed this application under Section 33(1) of IBC, 2016 seeking the aforesaid reliefs.

FINDINGS

8. We have heard the learned counsel for the Applicant/ Resolution Professional through video conferencing and have gone through the materials placed on record, including the 10th CoC Resolution.

9. When the matter taken up for hearing the learned counsel for the Applicant argued that in the 10th COC meeting held on 10.09.2021 it was decided to go ahead with the Liquidation of the Corporate Debtor and that the Applicant complied with all requirements under the CIRP Regulations. Hence, he prayed that this Tribunal may pass orders to liquidate the Corporate Debtor. The Resolution Professional submitted his original written consent before this Tribunal to act as Liquidator of the Corporate Debtor.

10. We have gone through the Resolution passed by the 10th CoC in its meeting held on 10.09.2021. Agenda Item Nos.5 and 8 are as under: -

Item No 5. –

Agenda: To file for Liquidation of the Corporate Debtor due to non-receipt of any Resolution Plan:

The Resolution Professional informed the COC to consider the Liquidation of the Corporate Debtor under Section 33(2) of the IBC, 2016 due to the following

i. *The CIRP is currently on 90 days extension from August 17, 2021 in order keep time till September 8, 2021 which was the last date of receipt of possible Resolution Plan from the lone Resolution Applicant.*

ii. *No Resolution plan is received till September 8, 2021 which was the last date of receipt of the same.*
The COC considered the same and proposed the filing of the application with Hon NCLT Kochi for the Liquidation of the Corporate Debtor M/s Albanna Engineering (India) Pvt Ltd and passed the following Resolution:
***"RESOLVED THAT** the RP file an application with Hon NCLT Kochi for the Liquidation of the CD u/s 33(2) of IBC, 2016".*

Item No 8 -

Agenda: Appointment of Liquidator u/S 34 of the IBC, 2016:

RP gave his consent to the COC to agree to act as the Liquidator in the event an order of liquidation is passed u/s 33(2) of IBC, *2016 under the same with a monthly fee of Rs. 30,000/- (Rupees Thirty Thousand Only) + GST and actual out of pocket expenses.*

The COC agreed for the same and passed the following Resolution:

> ***"RESOLVED THAT** Mr. Vinod Balachandran be appointed as Liquidator of M/s Albanna Engineering (India) Pvt. Ltd. for a monthly fee of Rs. 30,000/- (Rupees Thirty Thousand) + GST and actual out of pocket expenses in the event an order of Liquidation is passed u/s 33(2) of IBC, 2016."*

11. In view of the above, and that the Resolution Applicant has not furnished any Resolution Plan within the time prescribed, this Tribunal **allow the IA(IBC)/147/KOB/2021** as under: -

a) The Corporate Debtor M/s Albanna Engineering (India) Private Limited is hereby put under liquidation with immediate effect under Section 33(1) of IBC, 2016.

b) The Resolution Professional **Shri. Vinod Balachandran, Reg.No. IBBI/IPA-001/IP-P01554/2018-19/12403,** having registered office at **70/1909, Asoka Road, Kaloor, Kochi- 682 017.** is hereby appointed as Liquidator of the Corporate Debtor under Section 34 of IBC, 2016.

c) That the Corporate Debtor be liquidated in the manner as laid down in Chapter III by issuing a Public Notice stating that the Corporate Debtor is in liquidation. It is also directed that the Applicant shall send this order to ROC under which this Company has been registered.

d) The Applicant herein is hereby directed to act as a Liquidator for the purpose of liquidation of Corporate Debtor company with all powers of the Board of Directors, key managerial persons, and the partners of the Corporate Debtor shall cease to have effect and hereby vested in the Liquidator. The officials/personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

e) Since the Liquidation Order has been passed, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor without prior approval of this Adjudicating Authority, save and except as mentioned in Sub-Section 6 of Section 33 of the Code.

f) The Liquidator shall co-ordinate with all the authorities, and the respective Govt. authorities shall provide complete information required by the Liquidator to facilitate the process of Liquidation.

g) The Liquidator is at liberty to seek any directions, if need be, from this Adjudicating Authority during the Liquidation Process.

h) The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.

i) Moratorium declared vide Order dated 25.10.2019 in IBA/ 38/KOB/2019, henceforth ceased to exist.

Dated this, the 2nd day of Dec., 2021

Sd/-
(Anil Kumar B)
Member (Technical)

Sd/-
(Ashok Kumar Borah)
Member (Judicial)

राष्ट्रीय कंपनी विधि न्यायाधिकरण
NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
कोच्चि खंडपीठ

Certified to be True Copy
07/12/2021
Deputy Registrar
National Company Law Tribunal
Kochi Bench