IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KOCHI

MA/78/KOB/2020
in
IBA/258(CB)/2019

Under Section 35 (1)(n) of the IBC,2016

Order delivered on 10.08.2020

Coram:

Shri Ashok Kumar Borah, Member (Judicial)

IN THE MATTER OF

BOON INVESTMENT AND TRADING COMPANY PRIVATE LIMITED
VS.
EXCEL GLASSES LIMITED

Applicant/Liquidator:

Ravindra Chaturvedi, Liquidator
Having address at BKC Centre,
31-E, Laxmi Industrial Estate, New Link Road,
Andheri (W), Mumbai-400 053.

Parties/Counsels Present (through Video Conferencing):

For Liquidator : Shri Akhil Suresh, Advocate along with the Liquidator.

O R D E R

This order has arisen out of the M.A. filed under Section 35(1)(n) of IBC 2016 and Regulation 31(3) of the Insolvency and Bankruptcy Board of India Regulations, 2016 by the Liquidator seeking appropriate directions/order in respect of modifications in the List of Stakeholders Report.

2. The applicant in this MA was appointed as Liquidator by this Tribunal vide order dated 21.10.2019 in IBA/258/KOB/2019 filed by the Financial

Creditor - M/s Boon Investments and Trading Company Pvt Limited against the Corporate Debtor – M/s. Excel Glasses Limited and also ordered to liquidate the company under Section 33(1)(a) of the IBC, 2016.

3. The counsel for the applicant submitted that pursuant to the initiation of the Liquidation process a public announcement for submission of claims was made on 21.10.2019 in Form B under Regulation 12 of the IBBI Regulations, 2016 which was published in Business Standard Newspaper of Kochi Edition on 24.10.2019 in English Language and Mangalam Daily Newspaper of Kerala Edition in Malayalam Language on 24.10.2019.

4. The counsel for the applicant further submitted that at the time of proceedings of the claims received from the employees and workmen, certain deficiencies were found in the claim applications and they were advised vide e-mails and registered letters, for their responses/clarifications. Though the last date for submission of claims was 20.11.2019, most of the claims from workmen/employees were received after the last date for submission of claims. However, since satisfactory responses were not received from many of the employees/workmen and the last date to release the List of Stakeholders Report, according to Regulation 31(2) of the Liquidation Regulations was 20.12.2019, the applicant had accepted the claims received till the said date and upto the amount reflected in audited books of accounts of the Corporate Debtor. On the basis of the aforesaid accepted claims a total liability amounting to Rs 5,44,59,509/- towards workmen/employees, including provision for gratuity was made in the books of accounts of the Corporate Debtor as on date of Liquidation.

5. On 27.12.2019 the applicant appointed an Actuarial Valuer to ascertain the exact amount of gratuity payable including the amount payable as on 21.10.2019 being the date of liquidation, in order to reconcile the same with the books of accounts of the Corporate Debtor and the report of the Registered Actuarial Valuer was received on 10.02.2020.

6. The Applicant has relied upon, among other, the documents/evidence submitted by claimants as proof for the claim, clarifications received, the audited books of accounts of the Corporate Debtor, the legal advice, the Actuarial Valuer certificate and other publicly available records. Accordingly, the applicant would like to modify the claims of the workmen in view of and based on the additional information received by him after submitting the Stakeholders Report. The applicant stated that the Corporate Debtor has not fully funded the Gratuity Policy with LIC of India for payment of gratuity to the workmen/employee. Further, the assets available for liquidation mainly consist of the plant, machinery, land and stocks of unsold goods which were charged to the secured lenders Kerala State Industrial Development Corporation and Kerala Finance Corporation. Hence, all assets would be ranked accordingly for distribution of liquidation proceedings under Section 53 of the Code.

7. Accordingly, the Resolution Professional prayed that he may be permitted to appropriately modify the entry or entries in the List of Stakeholders Report in the manner as directed by this Tribunal and for such other and further directions as this Tribunal may deem fit in the facts and circumstances of the present case.

8. I have heard the Learned counsel for the Liquidator appeared through video conferencing along with the Liquidator and have gone through the relevant documents placed before this Tribunal. In view of the reasons stated in the MA, this Tribunal feels it appropriate to modify the claims of the workmen in view of and based on the additional information received by the Liquidator after submitting the Stakeholders Report.

9. In view of the above the Liquidator is permitted to appropriately modify the entry or entries in the List of Stake holders Report in the subject matter. The Liquidator is directed to meticulously adhere to the Rules and Regulations while carrying out the above exercise.

10. With the above direction MA/78/KOB/2020 in IBA/258/CB/2019 is disposed of.

Dated the 10th day of August, 2020

Sd/-

(Ashok Kumar Borah)
Member (Judicial)