IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court - I)
KOLKATA

IA (IB) No. 1257/KB/2022
in
CP (IB) No. 249/KB/2019

An application under section 33 of Insolvency & Bankruptcy Code, 2016

In the matter of

United Bank of India

... Financial Creditor

Versus

Progress Cultivation Limited

... Corporate Debtor

-And-

In the matter of:

Pankaj Kumar Kedia,

Resolution Professional of Progress Cultivation Limited

… Applicant

Order reserved on : 17th November, 2022

Order pronounced on : 1st December, 2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (through video conferencing):

For the Applicant:

1. Mr. Udit Agarwal, Adv
2. Mr. Pankaj Kumar Kedia, RP in person

ORDER

Per: Balraj Joshi, Member (Technical)

1. This court was convened via video conferencing.

2. This is an application filed by the Resolution Professional with the approval of the Committee of Creditors ('CoC') seeking liquidation of the Corporate Debtor, viz., Progress Cultivation Limited [CIN: U01400WBWB2009PLC134240], on the ground that the CoC has decided to liquidate the Corporate Debtor by 100 % votes. The applicant has sought for the following reliefs:

   a. *To pass necessary order of liquidation under Section 33(2) of the Insolvency and Bankruptcy Code, 2016;*

   b. *To confirm the appointment of Mr. Pankaj Kumar kedia, the applicant having Registration No. IBBI/IPA-001/IP-P01037/2017-18/11710 as Liquidator;*

   c. *Such other order / orders as this Adjudicating Authority may deem fit and proper.*

3. This Adjudicating Authority *vide* its order dated 12th May 2022 on a Petition filed by Dena Bank ('financial creditor') under section 7 of the Insolvency and Bankruptcy Code, 2016 ('the Code') directed initiation of the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and appointed **Mr. Pankaj Kumar Kedia** (the applicant) as the Interim Resolution Professional ('IRP'). The applicant was later appointed as the Resolution Professional ('RP').

4. The applicant submits that in terms of section 15 of the Code, public announcement was made on 15th May 2022, in ***Financial Express*** (English) and ***Edkin*** (Bengali) newspapers, thereby inviting claims from

creditors of the Corporate Debtor. The public announcement was uploaded on the website of IBBI.

5. In terms of Regulation 6(2)(c) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the last date for submission of proof of claim was 26.05.2022 and the last date to constitute the CoC was 26th May 2022.

6. The applicant received only one claim in total *i.e.* from PNB Bank, the Financial Creditor. Accordingly, the CoC was constituted of the sole member of PNB Bank with 100% voting rights. The applicant filed its report certifying the constitution of CoC on 4th June 2022.

7. The applicant had duly intimated the suspended members of the Board of Directors of the Corporate Director on several occasions to co-operate in the process and to provide access to documents and records pertaining to the said company for the smooth conduct of CIRP. However, due to reluctance of the suspended members of the Board of Directors in co-operating with the applicant, the applicant filed an application under Section 19 (2) of the Code being IA/657/KB/2022.

8. The applicant after due discussions and deliberations with the CoC in the 1st meeting held on 11th June 2022, appointed valuers for different class of assets as per Regulation 27 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

9. The CoC *vide* its 4th meeting held on 25th July 2022, further approved the Form G for inviting Expression of Interest (EOI) from the prospective resolution applicant. The applicant published the Form G on 26th July 2022 in the newspapers namely ***Business Standard*** (English) and ***Ekdin*** (Bangla).

10. The applicant further filed an application under section 66 being IA/915 (KB) 2022 of the Code for avoidance of fraudulent transactions against the suspended members of the board of Corporate Debtor, which is pending for adjudication.

11. The last date for submission of EOI was 10th August 2022. Within the said time, the applicant has received enquiries from two prospective resolution applicants being Jindal Steel and Power Ltd. and Kundan Group. However, after preliminary discussions with these two, no further advancements took place.

12. As none of the enquiries was materialised, the CoC further approved the publication of Form G for the second time and the applicant published the said Form G on 1st September 2022 in the newspapers namely ***Business Standard*** and ***Ekdin***.

13. The applicant in the 6th meeting held on 23.09.2022 informed the CoC that no response was received against the publication of Form G till last date of submission i.e.. 16th September 2022 and that in the absence of any resolution plan, the Corporate Debtor may be referred into liquidation. After detailed discussion on same, the CoC passed a resolution with 100% votes, for liquidation of Corporate Debtor.

14. Hence, the RP has filed the instant application under section 33(2) of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor on expiry of the CIRP period.

15. The applicant /Resolution Professional, **Mr. Pankaj Kumar Kedia** [Reg. No. IBBI/IPA-001/IP-P01037/2017-18/11710], has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator, in terms of section 34(1) of the Code and has a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member.

16. We have considered the submission made by the learned Counsel on behalf of the applicant /RP and perused the record.

17. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six percent of voting share to liquidate the corporate debtor

18. This Bench, therefore, hereby orders as follows: -

    a. Prayers as sought for in **I.A. (IB) No. 1257/KB/2022** filed by Mr. Pankaj Kumar Kedia, Resolution Professional of Progress Cultivation Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code;

    b. **Mr. Pankaj Kumar Kedia [**Reg. No. IBBI/IPA-001/IP-P01037/2017-18/11710**],** is hereby appointed as Liquidator is hereby appointed as Liquidator as provided under section 34(1) of the Code.

    c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

    d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., ***Financial Express*** (English)(Kolkata Edition) and ***Ekdin*** (Kolkata Edition) (Bengali) , stating that the Corporate Debtor is in liquidation.

    e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.

f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

g. On initiation of the liquidation process but 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, as provided in section 33(5) of the Code read with its proviso.

h. In accordance with section 33(7) of the Code, 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.

i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.

19. The application bearing **IA (IB) No. 1257/KB/2022** shall stand disposed of in accordance with the above directions.

20. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

21. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

22. List the main **CP (IB) No. 249/KB/2019** for reporting progress on **05.01.2023.**

[Balraj Joshi] **[Rohit Kapoor]**
Member [Technical] **Member [Judicial]**

Signed on this, the 1st day of December, 2022

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