IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Company Application IA/793(KB)2021
in
Company Petition CP(IB) No. 1376/KB/2018

IN THE MATTER OF:

The Insolvency and Bankruptcy Code, 2016

-And-

IN THE MATTER OF:

Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy(Application to Adjudicating Authority), Rules, 2016

- And -

In the matter of :

Application under Section 25 of the Insolvency & Bankruptcy Code, 2016, read with Rule 11 of the NCLT Rules, 2016

- And -

In the matter of :

Dewesh Auto Creative Services P. Ltd.

.... Financial Creditor

Vs.

AK Power Industries P. Ltd. – Corporate Debtor

And

In the matter of :

PratimBayal, Resolution Professional at CK-104, Sector-2, Salt Lake City, Kolkta – 700091

- Applicant

Vs.

Dewesh Auto Cretive Services Private Limited, a Company incorporated under the Companies Act, 1056 having its Registered Office at 21/3, SN Chatterjee Road, Behala, Kolkata – 700 038

Authorised Officer – Mr. Anil Agarwal

Coram : Shri Rajasekhar VK, Member(Judicial)

Shri Harish Chander Suri, Member(Technical)

For the Petitioners :

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| Mr. Jishnu Chowdhury, Advocate | - | For the Resolution Professional |
| Ms. Aparajita Rao, Advocate | | |

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|---|---|---|
| Date of Hearing | : | 4th August, 2021 |
| Date of Pronouncement of the Order | : | 11.08.2021 |

## O R D E R

Per Harish Chander Suri, Member(Technical)

1. The Company Petition, CP(IB)/1376/KB/2018, had been filed by Dewesh Auto Creative Services P. Ltd., the Financial Creditor, under Section 7 of the

Insolvency & Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, for initiating CIRP in the matter of AK Power Industries P. Ltd., Corporate Debtor.

2. The aforesaid Petition was heard and admitted by this Tribunal on 30th September, 2019, appointing Shri Arun Kumar Khandelia, as the Interim Resolution Professional, who was replaced by Shri PratimBayal, as the Resolution Professional, as confirmed by this Tribunal vide Order dated 18th November, 2019.

3. The RP issued Form G and advertisements were published for submission of Expression of Interest and in the usual course of business, Forensic Auditor was appointed by the Committee of Creditors to conduct forensic transaction audit. All agreements and related documents were made over To the Forensic Auditor to conduct the audit and submit his report.

4. The erstwhile Directors of the Corporate Debtor, presently suspended Board of Directors, had raised an objection about the genuineness of the original Loan Agreement dated 19th December, 2014. It was contended by the Corporate Debtor that no such Agreement was ever executed on behalf of the Corporate Debtor with the Financial Creditor.

5. The copy of the Loan Agreement was also placed before the Corporate Debtor for verification, wherein it transpired that a reference was made to refer disputes, if any, between the parties to the forum of National Company Law Tribunal. It was pointed out by the Corporate Debtor that at the given juncture, i.e. in November, 2014, there was no plans of the Government to resolve commercial disputes under the Insolvency and Bankruptcy Code, through National Company Law Tribunal. The contents of the said Loan Agreement, therefore, are totally false and fabricated to the notice and knowledge of the Financial Creditor. Further, the document has not been authenticated or notarized.

6. In order to verify the genuineness of the said Loan Agreement, the Applicant, by electronic mails dated 5th March, 2020, called upon the Financial Creditor to produce the original document for inspection and verification. Since no reply was received, a reminder was also sent on March 18, 2020. The copies of the said E-mails are annexed with the Application as letter "A".

7. It is stated that in the meeting of the Committee of Creditors conducted on 17th June, 2020, the Forensic Auditor informed the members that as on that date no particular conclusion could be made on Sections 43 and 45 of the Insolvency and Bankruptcy Code, 2016, as they awaited further documents to reach a conclusion. The Forensic Auditor further informed the members of the CoC that the Corporate Debtor had raised questions about the veracity of the documents relied on by Dewesh Auto Creative Services Private Limited, one of the Financial Creditors, in support of his claim. In view of the same, the Forensic Auditor put forth his advice to obtain a report on the authenticity of the document from recognized government forensic laboratory. Pursuant to such report by the Forensic Auditor, the RP had sent E-mail to the Financial Creditor to produce the said agreement for verification but the said e-mail remained unanswered.

8. In the 6th meeting of the Coc, the representative of the Financial Creditor refused to provide the original Agreement for verification until the direction was received from the National Company Law Tribunal, in this regard. The copy of the minutes of the 6th meeting of the Coc dated 17th June, 2020, is annexed with the Application.

9. In the aforesaid circumstances, the RP, by an e-mail addressed to the Transaction and Forensic Auditor sought for the opinion of the Auditor about the said Loan Agreement.

10. It is stated that the verification of the original Loan Agreement is of grave importance since the Forensic Auditor has not been able to complete his report till the genuineness of the document is proven. The Transaction and the Forensic Auditor, by

his mail dated 15th July, 2020, replied to the RP and recommended the verification of the said document by any Government Forensic Laboratory, upon production of the original document. The copies of the e- mail dated 6th July, 2020, sent by the RP and the reply of the Transaction and Forensic Auditor dated 15th July, 2020, are annexed with the Application and marked with the letter "C" collectively.

11. It is also stated that the Transaction and Forensic Auditor has sought to highlight the following points in his reply :

a) The Balance Sheet of the Corporate Debtor does not show any loan or advance amount to indicate the claim of interest alleged to have been paid.

b) There was no qualification by the auditor in the Annual Reports of the Company and that the claim seemed like an afterthought which was further manifested by the mention of National Company Law Tribunal in the agreement purportedly signed in 2014.

c) An acknowledgement from the Corporate Debtor was obtained to pay a sum of Rs. 1,33,50,279.93, by first week of April, 2019, with interest @ 3% from date of application to the date of repayment failing which the Corporate Debtor would pay interest @ 6% per annum with late payment interest @ 3%. The Financial Creditor had raised a claim in terms of the said letter which has already been rejected by the RP. The said letter is also under challenge before this Tribunal.

12. Further, it is stated that the RP is being prevented from performing his duty judiciously due to the lack of co-operation by the Financial Creditor. The RP is duty bound to act taking into regard all objections raised by the parties to the CIRP.

13. It is stated that the CIRP cannot be brought to a successful conclusion without ascertaining the genuineness of the Loan Agreement dated 19th December, 2014, which is the basis of the claim of the Financial Creditor.

14. Under the circumstances, the Resolution Professional prays for passing direction upon the Financial Creditor to submit the original Loan Agreement before this Tribunal and to permit the Resolution Professional to forward the same to a Government laboratory for verification of the genuineness of the said document.

15. Heard the Ld. Counsel appearing for the Resolution Professional and perused the records.

16. In view of what has been stated in the Application, the Financial Creditor, Dewesh Auto Creative Service, is hereby directed to submit before this Tribunal, the original Loan Agreement dated 19th December, 2014, within 15 days of the receipt of this Order, for Forensic Audit by the Government recognized laboratory for verification of the genuineness of the document.

17. The copy of this Order be sent to the Resolution Professional and the Financial Creditor at its registered Office address by Speed Post and by E-mail, both, with proof of service.

18. Urgent certified copy of this Order, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Harish Chander Suri)
Member(Technical)

(Rajasekhar VK)
Member(Judicial)

Dated, the 11th day of August, 2021

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IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Company Application IA/199(KB)2021
in
Company Petition CP(IB) No. 1376/KB/2018

IN THE MATTER OF:

The Insolvency and Bankruptcy Code, 2016

-And-

IN THE MATTER OF:

Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy(Application to Adjudicating Authority), Rules, 2016

- And -

In the matter of :

Application under Section 33(1)(a) of the Insolvency & Bankruptcy Code, 2016, read with Rule 11 of the NCLT Rules, 2016

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In the matter of :

Dewesh Auto Creative Services P. Ltd.

.... Financial Creditor

Vs.

AK Power Industries P. Ltd. – Corporate Debtor

And

PratimBayal, Resolution Professional - Applicant

Coram : Shri Rajasekhar VK, Member(Judicial)

Shri Harish Chander Suri, Member(Technical)

For the Petitioners :

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| Mr. Jishnu Chowdhury, Advocate | - | For the Resolution Professional |
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| Date of Hearing | : | $4^{th}$ August, 2021 |
| Date of Pronouncement of the Order | : | 11.08.2021 |

O R D E R

Per Harish Chander Suri, Member(Technical)

1. The Company Petition, CP(IB)/1376/KB/2018, had been filed by Dewesh Auto Creative Services P. Ltd., the Financial Creditor, under Section 7 of the Insolvency & Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, for initiating CIRP in the matter of AK Power Industries P. Ltd., Corporate Debtor.

2. The aforesaid Petition was heard and admitted by this Tribunal on $30^{th}$ September, 2019, appointing Shri Arun Kumar Khandelia, as the Interim Resolution Professional, who was replaced by ShriPratimBayal, as the Resolution Professional, as confirmed by this Tribunal vide Order dated $18^{th}$ November, 2019.

3. The RP made paper publication on 4th October, 2019, inviting Expression of Interest and the Corporate Debtor, being a registered Micro Small and Medium Enterprise(MSME), submitted the sole Resolution Plan and the same was placed before the CoC in its meeting held on 11th December, 2019. Various deliberations took place in the CoC meetings held between 17th January, 2020 and 23rd September, 2020. Due to lock down on account of spread of pandemic Covid-19, this Tribunal had allowed exclusion of the period of lockdown and granted time to complete the CIRP of the Corporate Debtor by 90 days.

4. In the 12th meeting of the Committee of Creditors, the Resolution Plan was put up for electronic voting.

5. The RP filed an Application for extension of time to complete the CIRP of the Corporate Debtor before this Tribunal and the same was allowed vide Order dated 28th December, 2020, uploaded in the server on 13th January, 2021.

6. In the meantime, one of the Secured Financial Creditors had started re-negotiation with the Resolution Applicant and as there was likelihood of the Resolution Applicant to improve its offer and the plan being approved, the RP filed another Application for exclusion of time from December 11, 2020 till December 28, 2020, being the period of filing of the Application, till the date of the Order in the Application, which was allowed vide Order dated 21st January, 2021.

7. The matter was put up for e-voting again on 25th January, 2021 to 2nd February, 2021 and the same was declined as 56.48% votes were cast in favour of the Resolution and Indian Bank, having 41.05% voting rights voted against the Resolution.

8. It is stated that the 270 days of CIRP period expired on 12th February, 2021 and the Resolution Plan was rejected by the Committee of Creditors. Therefore, the RP had no Resolution Plan approved by the Committee of Creditors to be placed for

consideration before this Tribunal and under the circumstances, the Corporate Debtor was liable to be liquidated.

9. In view of the facts as stated above, the Applicant has prayed for passing an Order requiring the Corporate Debtor to be liquidated under Section 33(2), in the manner, as laid down under Section 33, Chapter III of the Insolvency & Bankruptcy Code, 2016, and also to pass an Order under Section 34(1) of the Code, for appointment of the RP, as the Liquidator of the Corporate Debtor.

10. The written consent by the Resolution Professional and Declaration of eligibility is annexed with the Application, as letter "N".

11. In terms of Regulation 3 of The Liquidation Process Regulation, 2016, read with Section 34 of the Insolvency & Bankruptcy Code, 2016, the Resolution Professional of the Corporate Debtor in CIRP, is eligible to be appointed as the Liquidator of the Corporate Debtor, if Order for Liquidation is passed by this Tribunal. The Resolution Professional has also submitted his consent to act as the Liquidator of the Corporate Debtor, if an Order for Liquidation is passed by this Tribunal under Section 33 of the Code.

12. The consent Form from the RP to act as the liquidator of the Corporate Debtor, is attached as Letter "O", to the Application.

13. The Resolution Professional, having not succeeded in getting any Resolution Plan for the revival of the Corporate Debtor, the Adjudicating Authority has no other alternativebut to pass an Order, requiring the Corporate Debtor to be liquidated in the manner as laid down in Section 33, Chapter-III, of the Insolvency & Bankruptcy Code, 2016.

14. Since there is no other option other than to pass an Order for liquidation of the Corporate Debtor, we are inclined to invoke Section 33 of Chapter-III of the

Insolvency & Bankruptcy Code, 2016, ordering liquidation of the Corporate Debtor, namely, AK Power Industries &Pvt. Ltd., as laid down in this Chapter.

15. The Application filed by Shri PratimBayal, Resolution Professional ofAK Power Industries Pvt. Ltd., (the Corporate Debtor), is hereby allowed and the Corporate Debtor is ordered to be liquidated,amongst following Orders :

i) Shri PratimBayal, Resolution Professional, IBBI/IPA-003/IP-N00213/2018-2019/12385, Mobile Number – 9903886782, CK-104, Sector-2, Salt Lake City, Kolkata – 700 091, e-mail ID – cirp.akpower@gmail.com, is appointed as the Liquidator ;

ii) Shri PratimBayal, is directed to issue Public Announcement in terms of Regulation 12 of the IBBI(Liquidation Process) Regulations, 2016 ;

iii) The Order of moratorium passed under Section 14 of the Insolvency & Bankruptcy Code, 2016 shall cease to have effect and a fresh moratorium under Section 33(5) shall commence ;

iv) This Order is deemed to be a notice of discharge to the Officers, employees and the Workmen of the Corporate Debtor, as per Section 33(7) of the Insolvency & Bankruptcy Code, 2016, except where the business of the Corporate Debtor is being continued as a going concern ;

v) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of the Insolvency & Bankruptcy Code, 2016.

vi) The Registry is directed to communicate this Order to the Registrar of Companies, West Bengal and the Insolvency and Bankruptcy Board of India

16. The copy of this Order be sent to the Liquidator for taking necessary steps.

17. List this matter on 29th October, 2021 for reporting progress.

18. Urgent certified copy of this Order, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Harish Chander Suri)
Member(Technical)

(Rajasekhar VK)
Member(Judicial)

Dated, the 11th day of August, 2021

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