

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

IA No. 1368/KB/2020
in
CP (IB) No. 1161/KB/2018

Under section 33 of Insolvency & Bankruptcy Code, 2016

In the matter of

Bishandas Iron Works
(Registered partnership firm) ... Operational Creditor

Versus

Swati Mining Private Limited ... Corporate Debtor
[CIN: U14200WB2007PTC114999]

And

Santanu Brahma
RP of Swati Mining Private Limited ... Applicant

Order reserved on: 13.01.2021
Order pronounced on: 22.01.2021

Coram:

Shri Rajasekhar V.K. : Member (Judicial)
Shri Harish Chander Suri : Member (Technical)

Appearances (through video conference):

For Applicant : Mr Prodyut Banerjee, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This court convened through video conference.

2. This is an application filed by the Resolution professional upon the instructions of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, *viz.*, Swati Mining Private Limited, [CIN: U14200WB2007PTC114999], on the ground that no Expression of Interest (EoI) has been received from any prospective resolution applicant.
3. This Adjudicating Authority *vide* its order dated 08.07.2019 on a Petition filed by Bishandas Iron Works (operational creditor) under section 9 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. Saurabh Basu [Regn No. IBBI/IPA-002/IP-N00319/2017-2018/10924] as the Interim Resolution Professional (IRP).
4. The Applicant submits that in terms of section 15 of the Code, public announcement was made on 11.07.2019, in *Financial Express* (English) and *Aajkal* (Bengali) of Kolkata edition of the said newspapers, fixing 22.07.2019 as the last date for submitting the claim.
5. The Committee of Creditors (CoC) was duly constituted by the IRP. At a later point of time the IRP expressed his unwillingness to continue the work. The CoC proposed the name of Mr. Santanu Brahma [Regn. No. IBBI/IPA-001/IP-01482/2018-2019/12251], whose appointment as the RP has been recorded by this Tribunal in the order dated 26.09.2019.
6. The RP prepared the information memorandum and circulated the same on 16.11.2019. Copy of email circulating the information

memorandum is annexed to the application and marked with letter B at page 24.

7. Invitation for EoI was published in Form 'G' on 29.11.2019 in *Financial Express* (English), *Morning India* (English), *Ekdin* (Bengali) and *Sanmarg* (Hindi), fixing the last date for receipt of EoI as 15.02.2020.
8. The period of CIRP was to expire on 04.01.2020, therefore, with the approval of the CoC the RP had filed an application for extension of CIRP period. The said period was extended for 90 days i.e. till 02.04.2020, by this Tribunal *vide* its order dated 02.12.2019.
9. Despite extension of time, till date no resolution plan has been filed by any of the prospective resolution applicants. On 01.08.2020, the RP called for 8th meeting of the CoC wherein the CoC was apprised of the said facts.
10. The Resolution Professional, Mr Santanu Brahma [Regn. No. IBBI/IPA-001/IP-P-01482/2018-2019/12251], has agreed to act as liquidator to carry on the process of liquidation.
11. We have considered the submission made by the Applicant/RP in person and perused the record.
12. This is a case where no Resolution Plan has been received by the RP. Extended period of CIRP has expired on 02.04.2020. Therefore, there is no alternative but to order the liquidation of the Corporate Debtor.
13. This Bench, therefore, hereby orders as follows: -
 - a. IA No. 1386/KB/2020 filed by Mr Santanu Brahm, RP of the

Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;

- b. Mr Santanu Brahma [Regn. No. IBBI/IPA-001/IP-P-01482/2018-2019/12251], the Applicant/RP herein, is hereby appointed as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.
- 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), *Morning India* (English), *Ekdin* (Bengali) and *Sanmarg* (Hindi), 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 been registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.
14. The application bearing **IA (IB) No. 1368/KB/2020** shall stand disposed of in accordance with the above directions.
15. **CP (IB) No. 1161/KB/2018** to come up for filing of periodical report on **28.04.2021**.
16. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Id. Counsel for information and for taking necessary steps.
17. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

22.01.2021

SR (LRA)