THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(*Arguments through web-based video conferencing platform*)

IA No. 756/2020
In
CP (IB) No. 573/Chd/Hry/2019
(Admitted Matter)

Under Sections 33(1) r/w 34(1) of the Insolvency & Bankruptcy Code, 2016 read with IBBI (Liquidation Process) Regulations, 2016

In the matter of:

Mallesham Jetti
…Petitioner-Operational Creditor

Vs.

Ebusinessware(India) Private Limited
..…Respondent-Corporate Debtor

In the matter of IA No. 756/2020:-

Jugraj Singh Bedi,
Resolution Professional of
Ebusinessware(India) Private Limited (Corporate Debtor)
Resident of 1250, Ground Floor, Dr. Mukherjee Nagar,
New Delhi, NCT of Delhi-110009
Email: jb@jsba.in; irp.ebw@gmail.com
Ph: 9810272652
….Applicant

And

In the matter of
Through Resolution Professional
of Committee of Creditors
(Operational Creditor having 100% voting power)
Email:-mallesh.jetti@gmail.com …Resolution Professional

And

1. Jaya Prasad Vejendla,
   resident of C/23, Svn colony Guntur
   Andhra Pradesh India 522007
2. Chandra Hari,
   resident of 4th Floor, 92 New Cavendish Street

London W1W 6XJ GB

3. Ajay Kumar,
resident of 719 Four Story Quarter Near Police Station,
Rajouri Garden, Tagore Garden, West Delhi- India 110027

…Respondents

Order delivered on: 03.02.2023

Coram: Hon'ble Mr Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr Subrata Kumar Dash, Member (Technical)

Present :

For Applicant
in IA No. 756/2020: : Mr. Gaurav Mittal, Advocate
For Resolution Professional : Mr. Jugraj Singh Bedi

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No. 756/2020

The present application is being filed by the Resolution Professional, Mr Jugraj Singh Bedi Regn No. IBBI/IPA-001/IP-P00731/2017-2018/11208 on behalf of the Committee of Creditors (hereinafter referred to as 'CoC') in the ongoing corporate insolvency resolution process of Ebusinessware (India) Private Limited (hereinafter referred to as "corporate debtor") under Section 33(1) and 34(1) of Insolvency and Bankruptcy Code, 2016 ('IBC') for the initiation of liquidation process of the Corporate Debtor.

2) It is prayed by the applicant to pass an order for the liquidation of the corporate debtor i.e. Ebusinessware (India) Private Limited and to appoint the Resolution Professional as a liquidator of the corporate debtor. It is further prayed that expenses till 26.09.2020 i.e., Rs. 6,13,144/- being

incurred by Resolution Professional be directed to form part of liquidation cost as decided by the Committee of Creditors, and the CoC be directed to incur all expenditures relating to Liquidation Process.

3) The brief facts of the case, as stated in the application are that

i) The Corporate Insolvency Resolution Process was initiated against the Corporate Debtor by order dated 18.05.2020, and the applicant was appointed as an Interim Resolution Professional (IRP). Pursuant to the order dated 18.05.2020, IRP made a public announcement on 21.05.2020, inviting the claims from the public.

ii) The Committee of Creditors (CoC) was constituted, having sole operational creditor. In the first meeting of the CoC held on 16.06.2020 it was resolved that the present application will be continued as Resolution Professional (RP). The IRP has taken control of the corporate debtor as per the provisions of the IBC. A copy of the minutes of the first meeting of the CoC is attached as Annexure A-2 of the application.

iii) It is further submitted that in the 2nd meeting of CoC held on 07.07.2020, it was intimated by the Resolution Professional that the RP has visited the old corporate office of the corporate debtor and collected all the records in the presence of the Suspended Board of Director i.e. Ajay Kumar and Chandra Hari. The balance sheets of the corporate debtor reveal that the company was inoperative from 2014 and there are some advances given to the parties which are recoverable.

iv) In the aforesaid meeting, auditors were appointed for the formulation of opinion on avoidance transactions under Sections 43, 45, 50 or 66 of IBC. A copy of the minutes of the 2nd meeting of the CoC is attached as Annexure A-8 of the application. As per the legal opinion dated 17.09.2020, no case was made out for avoidance transactions.

v) The RP has sent letters to four parties for the recovery of loans and advances given by the corporate debtor. The Information Memorandum was prepared as per Section 29 of IBC read with Regulation 36 of IBBI (IRPCP) Regulations, 2016. The Information Memorandum mentioned that there were no physical assets of the corporate debtor as it was not acting as a going concern for the past several years. Moreover, there were no employees or workmen in the role of corporate debtor for more than seven years. Due to the aforesaid reasons no registered valuer was appointed to determine the fair value and the liquidation value of the corporate debtor.

vi) In the 5th meeting of the CoC, it was resolved to publish Form G in the newspaper inviting expression of interest for the Resolution Plan of the corporate debtor.

vii) In the 6th meeting of CoC held on 26.09.2020, the RP had placed a legal opinion dated 17.09.2020, whereby it has been stated that the transactions of the corporate debtor cannot be considered as preferential and the Resolution Professional can proceed without filing any application. It was further resolved to liquidate the corporate debtor and RP was authorized to file an application for the liquidation of the corporate debtor.

viii) On 18.01.2021 a claim from the Employees' Provident Fund Organization(EPFO) filed the claim in Form B amounting to Rs. 90.72 Lakhs and the same has been admitted by the Resolution Professional on 09.04.2021. Further, on 14.09.2021 Income Tax Department intimated to the corporate debtor about the outstanding demand; however, no Form B has been filed by the department. On 17.09.2021, the RP updated the IBBI portal with these outstanding claims under the head of Operational creditors(Government Dues).

4) It is pertinent to mention that the CoC has decided to fix the remuneration of the Liquidator for Rs. 1,00,000/- per month (plus GST) in addition to the actual out-of-pocket expenses in its 6th meeting held on 26.09.2020. It is further recommended by CoC that the corporate debtor cannot be sold as a going concern under Clause(e) of Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016 as the corporate debtor is defunct for the last seven years.

5) Now, coming to the merit of the application, before considering the prayer, we would like to refer the Section 33(1) and (2) of IBC, and the same is reproduced below:-

"Section 33(1): Initiation of liquidation

(1) Where the Adjudicating Authority, —

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,

it shall—

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [1][approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

6) A bare perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

i. Before the expiry of the Insolvency Resolution Process period;

ii. Maximum period permitted for completion of the Corporate Insolvency Resolution Process under Section 12 or the fast track Corporate Insolvency Resolution Process under Section 56 as the case may be; and

iii. If does not receive a resolution plan under sub-section (6) of Section 30.

7) It is observed that the present application has been filed under Section 33(1)(a) of IBC for the initiation of the liquidation process of the corporate debtor. The Resolution Professional has published Form G inviting the Expression of Interest (EOI) on 04.09.2020. However, pursuant to the above publications, no EOI was received as the corporate debtor was not functioning as a going concern for the last seven years. In the 6th Meeting of COC held on 26.09.2020, the COC decided to liquidate the Corporate Debtor by passing a Resolution in the aforesaid meeting.

8) It is noted that the agenda for the appointment of a Resolution Professional as Liquidator has been discussed in the 6th CoC Meeting held on 26.09.2020. It has been decided to appoint the present Resolution Professional as Liquidator at a remuneration amounting to Rs. 1,00,000/- per month (plus GST). Moreover, the Resolution Professional has given his written consent in Form-AA to act as a liquidator of the Corporate Debtor, which is attached at page 5 of the compliance affidavit filed vide Diary No.01494/5 dated 17.10.2022.

9) After going through the facts, we are of the considered view that no useful purpose would be served by placing the corporate debtor, which is not having any assets, under a lengthy liquidation process as there are no realisable assets in possession of the corporate debtor and no progress in this regard has been made since the initiation of CIRP on 18.05.2020. Thus, invoking the inherent powers under Rule 11 of NCLT Rules, 2016, we direct the liquidator to complete the liquidation process at the earliest preferably

within 30 days of this order, and file an application for dissolution enclosing his final report and the compliance certificate in Form H.

10) In the present case, the sole member of the CoC is the petitioner in the main petition for admission of the CIRP against the corporate debtor, and seven meetings of the COC were held. The COC approved the payments to the IRP in the first CoC meeting dated 16.06.2020. Further, as per Item No. 3 of the 6th CoC meeting held on 26.09.2020, the COC has approved the liquidator's remuneration to carry out the liquidation process and wind up the company. In view of the same, he is duty bound to pay the amount of Rs 6,13,144/- upto 26.09.2020 representing the CIRP cost including the remuneration of Resolution Professional as prayed for, and the liquidation process cost as decided by the CoC.

11) The Law Research Associate of this Tribunal has checked the credentials of Mr Jugraj Singh Bedi, and there is nothing adverse against him. In view of the above, we appoint Mr Jugraj Singh Bedi Regn No. IBBI/IPA-001/IP-P00731/2017-2018/11208 email: jb@jsbaa.in as the Liquidator.

12) In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor i.e. **Ebusinessware (India) Private Limited,** is directed to be liquidated in the manner as laid down in Chapter III of the Code.

13) Accordingly, by exercising our power under Section 33(1) pass the following order:-

(i) The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016;

(ii) Mr Jugraj Singh Bedi bearing Registration No. IBBI/IPA-001/IP-P00731/2017-2018/11208, Mobile No. 9810272652, email: jb@jsba.in is hereby appointed as liquidator;

(iii) Mr Jugraj Singh Bedi shall take over the charge of the entire records and assets of the corporate and perform his duty, as required under the Code and Regulations

(iv) The Registry is directed to communicate a copy of the Order to the Liquidator;

(v) A copy of this order be sent by the Registry to the concerned Registrar of Companies (RoC), for updating Master Data. After updating Master Data, RoC shall send a compliance report to the Registrar, NCLT within a period of 30 days;

(vi) The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

(vii) The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.

14) Thus, IA No. 756/2020 stands allowed and disposed of.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

February 03, 2023
PB/ASH