

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT 1, MUMBAI BENCH

MA 480/2020 in CP(IB)1661 (MB)/2017

(Under Section 33(2) of the IBC, 2016)

Vijay Pitamber Lulla

...Applicant/
Resolution Professional

In the matter of

The Greater Bombay Cooperative Bank Ltd.

...Financial Creditor

Vs

Penguin Umbrella Works Pvt Ltd

... Corporate Debtor

Order delivered on 14.2.2020

Coram:

Hon'ble Member (Judicial) Smt Suchitra Kanuparthi

Hon'ble Member (Technical) Shri V Nallasenapathy

For the Applicant: Adv. Raina Birla

Per: V. Nallasenapathy, Member(Technical)

ORDER

1. MA 480/2020 is filed by the Resolution Professional, seeking the following reliefs:
 - a. Exclusion of 45 day's time from the present CIRP process (as approved by the COC with 100% vote during 4th COC meeting) to enable the RP to obtain the Affidavits from the ex-management as per the directions of the Ld. COC members during 4th COC meeting held on 24.12.2019, accordingly to conduct the 5th COC meeting held on 17.01.2020).
 - b. Liquidation of the corporate debtor, together with its winding up based upon the decision of the committee of creditors dated 17.01.2020 during the 4th CoC meeting as there are no assets left to be liquidated and to be distributed amongst the stakeholder and also considering that the corporate debtor is not operational and functional since 2005;



- c. Appointment of Mr. Vijay Pitamber Lulla as the Liquidator of the Corporate Debtor, to carry out the functions of the liquidation & winding up of the Company in the record of the Registrar of Companies.
2. Applicant Resolution Professional, Vijay Pitamber Lulla has filed this application stating that Petition filed under Section 7 of IBC, 2016 was admitted by order of this Bench dated 12.6.2019 and the applicant was appointed as the Interim Resolution Professional, who was confirmed as RP in the first CoC meeting held on 8.7.2019. Copy of the said minutes is enclosed with the application as Annexure 'B'.
3. The applicant submits that the erstwhile Directors of the Corporate Debtor have not co-operated with him in the CIRP, despite his best efforts elicit information regarding the company since the Corporate Debtor was non-operational for the past 15 years. In view of the non-co-operation of the erstwhile directors, an MA was filed by the applicant under Section 19(2) of the Code. During the hearing of the said MA, the erstwhile management of the Corporate Debtor was directed to prepare the accounts and file the same with ROC alongwith relevant e-forms viz. annual accounts and financial statements from the F.Y. 2003-2004 to till date. However, the Mr. Hemant Phophalia, director of the Corporate Debtor failed to comply with the said directions.
4. The said Mr. Hemant Phophalia and other Directors of the Corporate Debtor filed an affidavit in the said MA stating that there are no assets, no records and hence no balance sheets are available.
5. The applicant submits that since the company was non operational for more than 15 years and since no details were available, Information Memorandum could not be prepared. All these aspects were discussed in the CoC meeting held on 17.1.2020 and the CoC resolved to liquidate the Corporate Debtor and decided to appoint Mr. Vijay P Lulla, the RP herein as the Liquidator of the Corporate Debtor for carrying out the liquidation process.
6. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, we are of the view that this case is fit to pass liquidation order under sub-section 1 of section 33 of the Code as no resolution plan has been submitted before the Adjudicating Authority by the Resolution Professional, and accordingly, this Bench orders;



- a. that the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
 - b. that the Resolution Professional herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
 - c. all the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
 - d. that the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
 - e. that the Liquidator will charge fees for conduct of the liquidation proceedings as provided in Regulation 4(3) of the IBBI (Liquidation Process Regulations), 2016.
 - f. that on having liquidation process initiated, 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.
 - g. This liquidation order shall be deemed to be 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.
7. The exclusion of 45 days' time in CIRP is allowed as prayed by the RP in this application.



8. The Liquidator appointed in this case is directed to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

9. The Liquidator, after completion of the liquidation process may file an application under Section 54 of the Code for dissolution of the Corporate Debtor.
10. MA is disposed of with the above directions.

Sd/-
V NALLASENAPATHY
Member (Technical)

Sd/-
SUCHITRA KANUPARTHI
Member (Judicial)



Certified True Copy
Copy Issued "free of cost"
On 17.02.2020


Assistant Registrar
National Company Law Tribunal Mumbai Bench