

NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
SPECIAL BENCH (COURT-II)

C.A. 1524/C-II/ND/2019
IN
Company Petition No. (IB)-228(ND)/2018

IN THE MATTER OF :

M/s Relan Buildwell Pvt. Ltd.

...Financial Creditor

Versus

M/s Kaliber Associates Pvt. Ltd.

...Corporate Debtor

AND IN THE MATTER OF :

Mohan Lal Jain

C/o Sumedha Management Solutions Pvt. Ltd.

B-1/12, 2nd Floor, Safdarjung Enclave

New Delhi-110029

...Resolution Professional/Applicant

Order Delivered on: 02.01.2020

Section: 33(1)(a) and 33(2) of the IBC, 2016.

CORAM:

CH. MOHD. SHARIEF TARIQ, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Puneet Singh Bindra, and
Mr. Akash Singh, Advocates

For the Respondent : None

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

This is an application filed by Sh. Mohan Lal Jain, the Resolution Professional of M/s Kaliber Associates Pvt. Ltd. under Sections 33(1)(a) and 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for seeking the following main reliefs :

"(i) Pass an order for liquidation of the Corporate Debtor (Kaliber Associates Pvt. Ltd.) in accordance with Section 33 (1) and 33(2) of the code."

"(ii) Appoint the Applicant, Mohan Lal Jain, an Insolvency Professional, IBBI Registration No. IBBI/IPA-002/IP-N00006/2016-17/10006 as Liquidator of the Corporate Debtor in accordance with Section 34 of the Code."

2. Facts of the case in brief are that the Financial Creditor, Relan Buildwell Pvt. Ltd. filed an application bearing No. IB-228/(ND)/2018 under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s. Kaliber Associates Pvt. Ltd. The said application was admitted by this Tribunal vide Order dated 18.01.2019 and Mr. Vinay Talwar was appointed as Interim Resolution Professional (IRP).

3. In terms of the Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a public announcement in Form-A on 21.01.2019. The Public announcement was also uploaded on the website of Insolvency and Bankruptcy Board of India (IBBI).

4. The Interim Resolution Professional constituted a Committee of Creditors (CoC), which comprised of BDR Builders & Developers Pvt. Ltd, Columbia Buildtech Pvt. Ltd, Paradise Systems Pvt. Ltd, Aadhar Infraholding Limited, Union Bank of India and Relan Buildwell Pvt. Ltd.

5. That the CoC in its second meeting held on 15.04.2019, unanimously decided to replace the IRP Mr. Vinay Talwar by another Resolution Professional Ms. Ritu Rastogi (IBBI/IPA-001/IP-P00204/2017-18/10393).

6. That the CoC again in its 8th meeting had replaced the Resolution Professional Ms. Ritu Rastogi by Shri. Mohan Lal Jain. The same was approved by this Tribunal vide order dated 09.07.2019.

7. It is submitted by the Ld. RP that :

“17 The advertisement inviting EOI in Form-G was duly published by the Applicant in two newspapers on 02.08.2019 and also hosted on the website of the Corporate Debtor and



the IBBI. Pursuant to the same, one Sumanglam Infratech along with Joint Applicant, Strategy Investors, Partners, Experts, Nominee had made an enquiry through email dated 09.08.2019 and requested for eligibility norms, format of EOI and other documents for submission of EOI for the Corporate Debtor and accordingly the Applicant had sent the requested documents through email dated 12.08.2019 to prospective resolution applicant, however, the Applicant did not receive any EOI from M/s Sumanglam Infratech or any other prospective resolution applicant....”

8. That the Resolution Professional had sought extension of the CIR period, which was extended till 15.11.2019 by this Tribunal vide Order dated 23.09.2019.

9. That the RP had extended the last date for submission of Expression of Interest by 31.10.2019 and Resolution Plan by 10.11.2019 again through publication of Form-G on 25.10.2019.

10. It is further submitted by the RP that since no EOI was received, the RP placed the following resolution before the 14th Meeting of CoC held on 04.11.2019 for consideration, which :

“RESOLVED THAT pursuant to the provisions of section 33 of the Insolvency and Bankruptcy Code, 2016 (including all the amendments and modifications for the time being in force) and rules and regulations made there under, approval of committee of creditors be and is hereby accorded to initiate



liquidation proceedings of Kaliber Associates Pvt. Ltd. ('Corporate Debtor') and authorise Mr. Mohan Lal Jain, Resolution Professional to file an application for initiation of the liquidation with the Adjudicating Authority.

"RESOLVED FURTHER THAT the committee be and are hereby authorise Mr. Mohan Lal Jain Resolution Professional to continue to manage the affairs of the corporate debtor including defending the legal cases filed or that may be filed against RP/Corporate Debtor, until an order of liquidation of the corporate debtor is passed by the Adjudicating Authority."

11. It is stated by the RP that the resolution for liquidation was rejected by the CoC by 73.10% of votes. The RP submits that since neither any Expression of Interest nor any Resolution Plan has been received, there is no other alternative left except to seek liquidation of the Corporate Debtor. It has also been brought to the notice of this Bench that the CIRP period has expired on 15.11.2019.

12. That the Ld. RP has also submitted his written consent to act as Liquidator in compliance of Section 34(1) of IBC 2016.

13. That the provisions of Section 33(1)(a)(i) make it amply clear that if no Resolution Plan is received within the statutory timeline stipulated under Section 12 of the IBC 2016, it is mandatory for this Tribunal to Order Liquidation of the Corporate Debtor.



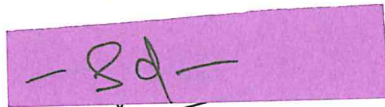
14. In sequel to the above, the Application is allowed, ordering Liquidation of the Corporate Debtor, M/s. Kaliber Associates Private Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant Rules and Regulations along with the following directions :

- a. Mohan Lal Jain, an Insolvency Professional, IBBI Registration No. IBBI/IPA-002/IP-N00006/2016-17/10006, is appointed as Liquidator, and he is directed to issue Public Announcement stating that the Corporate Debtor is in Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- b. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- c. This order shall be 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 and Bankruptcy Code, 2016;
- d. Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued, preferential and fraudulent transactions etc.,
- e. Liquidator shall also take action as necessary on findings of the Transaction and Forensic Review Audit Report.

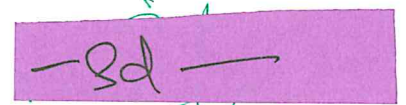


- f. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- g. The Registry is directed to communicate a copy of the Order to the Financial Creditor, the Corporate Debtor and Liquidator at the earliest but not later than seven days from today. A copy of this Order be also sent to the ROC for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT.
- h. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;

15. C.A-1524/C-II/(ND)/2019 filed in IB-228(ND)/2018 is disposed-off in the aforesaid terms.



(L. N. Gupta)
Member (T)



(Ch. Mohd. Sharief Tariq)
Member (J)