

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 202
(IB)-550(ND)2020
IA-2762/2023

IN THE MATTER OF:

Mr. Dalip Narinder Gupta ... **Applicant/Petitioner**

Versus

M/s. M. K. Printech Private Limited ... **Respondent**

Under Section: 9 of IBC, 2016

Order delivered on 06.06.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. L. N. GUPTA
HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Gautam Singhal, Adv. Ravikant Sharma for
RP in IA. No. 2762/2023

ORDER

IA-2762/2023: The CIRP in the captioned matter commenced in the terms of the order dated 20.09.2022. A period of 180 days expired on 19.03.2023. As mentioned in the application, the RP could receive only one EOI from M/s Shanti G.D. Ispat & Power Private Limited but even the said company also did not file any resolution plan. Thus on 16.03.2023, the CoC resolved that the CD should be liquidated. The resolution dated 16.03.2023 passed by the CoC deciding to liquidate the CD reads thus:

LIST OF MATTERS VOTED UPON

ITEM NO. 4

TO DISCUSS AND APPROVE LIQUIDATION OF CORPORATE DEBTOR

RP apprised that as CoC members must be aware that a discussion regarding outcome of publication of Form G published on 20.11.2022 took place in previous CoC meeting held on 27.12.2022. CoC member enquired about the prospective resolution applicant and the possibilities of putting corporate debtor into liquidation.

Further, RP Team apprised that though CoC has power to put Corporate Debtor into liquidation any time during the process, however EOI was initiated and information memorandum was already shared to prospective resolution applicant. Thereafter as per the final list of perspective resolution applicant circulated by the resolution professional dated 26th December, 2023 M/s. Shanti G. D. Ispat & Power Private Limited was eligible to submit the resolution plan. However, M/s. Shanti G. D. Ispat & Power Private Limited vide mail dated February 17th, 2023 informed their inability to submit the resolution plan stating that due to internal reason they will not be able to submit the resolution plan.

In this regard, extract of 3rd Meeting of CoC held on 27th December, 2023 are being reproduced as below:

"Representative of Canara Bank enquired about profile of M/s Shanti G. D. Ispat & Power Private Limited. RP Team apprised that they are a Chhattisgarh based company having a net worth of more than Rs. 86 Crores and a turnover of Rs. 132 Crores for the financial year 2021-2022. They are dealing in forest and agri produce and have been awarded oil fields. They are desirous of acquiring different businesses under IB Code.

Representative of Canara Bank enquired about possibilities of putting corporate debtor into liquidation. RP team apprised that though CoC has the powers to decide upon putting corporate debtor into liquidation any time during the process, however, since the process of EOI and resolution plan has already been initiated and Information Memorandum has already been issued to one eligible prospective resolution applicant. Further, objective of the Code is resolution and all the stakeholder must make every effort towards the same."

The matter was placed for discussion and suggestion were invited from the CoC member. Representative of Canara Bank inquired about the valuation report of assets and the employees and business of the Corporate Debtor. RP stated that since, Valuation Report is a confidential document it cannot be disclosed and can only be shared with Committee of Creditors. further, there are no operations, no employees or no revenue of corporate debtor at present and currently corporate debtor has inventory of printing cylinder and rollers and rugs, corrugated boxes etc. only.

Resolution Professional further stated that suspended directors have not yet provided the inventory records and fixed assets register so that inventory physically available could be verified with the records as per books of accounts. Further, in this regard, an application u/s 19(2) was also filed with Hon'ble NCLT and same is pending for adjudication.

Further, as far as debtors are concerned, they all very old debtors, about 2 years old. Further, one of them, M/s Umachi Foods having outstanding balance of about Rs. 26 Lakhs was also admitted into CIRP. Further, suspended directors are yet to submit the copies of purchase invoices / GST portal password/ Income tax portal password so that actual transactions with the parties could be verified / traced. The non-cooperation is hampering the progress in transaction audit and transaction audit report is yet to be concluded.

It was also apprised to CoC that an application u/s 43 is filed for avoidance of preferential transactions of Rs. 19.67 Lakhs on account of payment of unsecured loans of suspended directors.

After discussions, Thereafter, following resolution was placed before the CoC for its approval through evoting: -

RESOLUTION:



"RESOLVED THAT consent of the CoC be and is hereby accorded for filing necessary application u/s 33(2) of Insolvency & Bankruptcy Code, 2016 to liquidate M/s. M. K Printech Private Limited."

"Further resolved that Hon'ble National Company Law Tribunal be and is hereby requested to appoint Mr. Anish Kumar Sanghi, resolution professional as liquidator of M/s. M. K Printech Private Limited."

The resolution was passed with 100% voting share of CoC. The voting sheet in favour of the resolution reads thus:

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As discussed above, voting was conducted through e-voting after circulation of minutes of meeting. Following were the result for evoting:-

Voting Results						
<i>Post E-voting, concluded on 18-03-2023, the following were the results of the voting.</i>						
<i>Results of Voting:-</i>						
<i>S No.</i>	<i>Name of CoC Member</i>	<i>Voting Share %</i>	<i>Yes %</i>	<i>No %</i>	<i>Abstained %</i>	<i>Total%</i>
<i>1</i>	<i>Canara Bank</i>	<i>100%</i>	<i>100%</i>	<i>-</i>	<i>-</i>	<i>100%</i>
	<i>Total</i>	<i>100%</i>	<i>100%</i>	<i>-</i>	<i>-</i>	<i>100%</i>
<i>In terms of section 33(2), the above resolution was required to be passed by a vote of not less than 66% of voting share of the financial creditors. <u>Since, sole member of CoC voted in favor of agenda item, Hence, this resolution stood passed.</u></i>						

As it has been provided in Section 33 sub-Section 2 of the IBC 2016, once the RP informs the Adjudicating Authority about the decision of the CoC to liquidate the CD, the Adjudicating Authority shall pass an order in terms of the provisions of Section 33(1)(b) (i,ii,iii). Accordingly, Mr. Anish Kumar Sanghi with Reg. No: [IBBI/IPA-001/IP-P01796/2019-2020/12786) (e-mail ID: anish.sanghi@gmail.com) (Phone No. 9810309036) is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions, inter alia:

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 (viz. Sections 35, 36, 37, 38, 39 and 41 thereof) and other relevant rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date, enjoined upon him.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including

fraudulent preferences and file a suitable application before this Adjudicating Authority.

d) The Registry is directed to communicate this order to the Registrar of Companies, having jurisdiction over the Corporate Debtor and the Insolvency and Bankruptcy Board of India;

e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

f) 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.

h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company applications during the process of liquidation.

i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation. 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further reports as are required to be filed under the relevant Regulations, in addition,, shall also be duly filed by him with this Adjudicating Authority.

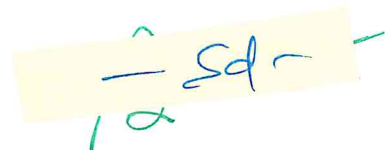
j) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary cooperation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

It goes without saying that fee of the Liquidator would be payable in terms of the provisions of Section 34 (7) of the IBC, 2016 read with Regulation 4 of IBBI (Liquidation Process) Regulation 2016.

With this, the present IA stands disposed of.



(L. N. GUPTA)
MEMBER (T)



(ASHOK KUMAR BHARDWAJ)
MEMBER (J)