IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (Court -II)
KOLKATA

IA(IBC)/1107(KB)2023
in
CP(IB)/1180(KB)2020

Under section 60(5) read with section 30(4) and section 33(1)(a)
of the Insolvency & Bankruptcy Code, 2016

In the matter of:

State Bank of India …. **Financial Creditor**

Versus

Kaushik Global Logistics Limited

(**U51109WB2000PTC091319)** .... **Corporate Debtor**

And

In the matter of:

Mr. Ram Ratan Modi,

Resolution Professional of Kaushik Global Logistics Limited

… **Applicant**

Order reserved on: 04/09/2023

Order pronounced on: 21/11/2023

Coram:

Smt. Bidisha Banerjee	:	**Member (Judicial)**
Shri Balraj Joshi	:	**Member (Technical)**

Appearances (through hybrid mode):

For RP	:	Mr. Pranit Bag, Adv. Mr, Mohit Sharma, Adv. Mr. Ram Ratan Modi, RP in person
For R1 & R2 in IA/1073/2022 & R1 & R2 in IA/588/2023 (Suspended Members of Board of Directors of Corporate Debtor)	:	Mr. D. N. Sharma, Adv. Mr. Abhishek Jain, Adv.
For CBI in IA/979/2023	:	Mr. Rudraman Bhattacharyya, Adv. Mr. S. K. Tiwari, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.

2. This application has been filed u/s. 60(5) read with sections 30(4) and 33(1)(a) of the Insolvency and Bankruptcy Code, 2016, (in short "**IBC**") by the Resolution Professional (in short **"RP"**) of Kaushik Global Logistics Limited, Corporate Debtor, praying for taking on record Final Progress Report and passing of order of liquidation of the Corporate Debtor. This application is supported by an affidavit[1] duly affirmed by the RP.

3. This Adjudicating Authority, on a petition filed u/s. 7 of the IBC read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by State Bank of India, Financial Creditor, *vide* order[2] dated 10/06/2022 in CP(IB)/1180(KB)2020, had ordered initiation of CIRP against Kaushik Global Logistics Limited appointing Mr. Ram Ratan Modi as the Interim Resolution Professional (in short "**IRP**").

4. In terms of section 15 of the IBC read with regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 (in short "**CIRP Regulations**") Public Announcement[3] was made in **Form A** on 12/06/2022 in "*Financial Express*" (English) and "*Aajkal*" (Bengali) inviting claims from creditors of the Corporate Debtor and Committee of Creditors (in short "**CoC**") was duly formed on 02/07/2022 with three secured Financial Creditors, namely, (1) State Bank of India, (2) Bank of Baroda and (3) Bank of India. In terms of regulation 17 of the CIRP Regulations 2016, IRP has filed report with this Adjudicating Authority on 03/07/2022 intimating constitution of CoC[4].

5. 1st CoC meeting was held on 11/07/2022. The appointment of applicant as Resolution Professional was not confirmed by the CoC at its first meeting.

[1] At pages 31 to 33 of the application
[2] Annexure A-1 at pages 34 to 45 of the application
[3] Annexure A-2 at pages 46 & 47 of the application
[4] Averments in paragraphs 3 & 4 at page 15 of the application

Subsequently, at the 6th CoC meeting[5] held on 09/11/2022, the CoC has approved the appointment of IRP as Resolution Professional (in short **"RP"**).

6. One of the suspended members of the Board of Directors of the Corporate Debtor had filed an appeal before the Hon'ble NCLAT being **Appeal (AT) (Insolvency) No. 744 of 2022**. Upon hearing the appeal on 08/07/2022, Hon'ble NCLAT has passed the following orders[6]:

   "………….CoC may proceed and receive the Resolution Plan but voting with regard to approval of the plan will not be done without leave of the Court".

   However, the aforesaid appeal was dismissed by the Hon'ble NCLAT *vide* its order[7] dated 09/01/2023.

7. In terms of regulation 36A of the CIRP Regulations, 2016, **Form G[8]** was published on 24/08/2022 in "*Financial Express*" (English) and "*Aajkaal*" (Bengali) inviting Expression of Interest (in short "**EoI**") from prospective resolution applicants (in short "**PRA**"). The last date of submission of EoI was on 08/09/2022. In response, the applicant had received three EoIs within the stipulated due date. Upon verification, provisional and final list[9] of PRAs were issued on 18/09/2022 and 03/10/2022 respectively. Accordingly, copy of Information Memorandum, Request for Resolution Plan (in short "**RFRP**") and Evaluation Matrix were duly shared with the PRAs for submission of resolution plan. According to Form G published, last date of submission of Resolution Plan was 23/10/2022. One of the PRA, viz., **Rishikunj Vincom Private Limited**, *vide* e-mail dated 21/10/2022 had requested for extension of time for submission of resolution plan till 04/11/2022. With the approval given by the members of the CoC unanimously, time to submit resolution plan was extended till 04/11/2022 and the same was informed to all the prospective resolution applicants by e-mail dated 25/10/2022. A copy of minutes of the 5th CoC

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5 Annexure A-11 at pages 150 to 166 of the application
6 Annexure A-4 at pages 67 and 68 of the application
7 Averments in paragraph 22 at pages 20 and 21 of the application
8 Annexure A-7 at pages 108 to 110 of the application
9 Annexure A-8 at pages 111 to 112 of the application

meeting held on 29/10/2022 as well as e-voting results forms **Annexure A-10**[10]. Accordingly, the applicant had received one resolution plan from **Rishikunj Vincom Private Limited** on 04/11/2022.

8. Meanwhile, on 05/11/2022 the applicant had admitted claim of **Dhanlaxmi Bank Limited** being one of the secured Financial Creditor, whose claim was under verification and accordingly reconstituted the CoC on 05/11/2022 with four Secured Financial Creditors as well as updated the List of Creditors also on 05/11/2022. The reconstituted/updated list of CoC was submitted with the Adjudicating Authority vide IA(IBC)1447(KB)2022[11].

9. At the 6th CoC meeting held on 09/11/2022, the CoC after due deliberations on the point of extension of CIRP period by 90 days had unanimously approved the agenda for extension of CIRP period by 90 days from 07/12/2022. Accordingly, an application being IA(IBC)/1532(KB)2022 was filed by the applicant praying for 90 days extension from 07/12/2022. Upon hearing the application, this Adjudicating Authority vide order[12] dated 07/12/2022 had allowed the application and granted 90 days extension of CIRP period thereby the 270 days CIRP period would expire on 07/03/2023.

10. At the 11th CoC meeting[13] held on 23/02/2023, the revised resolution plan was put for voting. Also, proposed a resolution for exclusion of 66 days from 04/11/2022 to 09/01/2023, during which period no decisions could be taken on the resolution plan in terms of the order of the order of the Hon'ble NCLAT dated 08/07/2022, was placed before the CoC members for approval. Considering the urgency, the RP *vide* e-mail dated 27/02/2023 requested the CoC members to give consent to file an exclusion application. Copies of e-mails collectively form **Annexure A-19[14]**. Accordingly, the CoC accorded their consent for exclusion of 66 days from the CIRP period and an application being IA(IBC)499(KB)2023 was filed with this

[10] At pages 134 to 149 of the application
[11] Averments in paragraphs 17 at page 19 of the application
[12] Annexure A-13 at pages 173 of the application
[13] Annexure A-18 at pages 202 to 226 of the application
[14] Annexure A-19 at pages 227 to 229 of the application

Adjudicating Authority for exclusion of 66 days from the CIRP period. This Adjudicating Authority vide order[15] dated 20/03/2023 passed in the aforesaid IA had excluded 66 days from 04/11/2022 to 09/01/2023, thereby the 270 days CIRP period would come to an end on 12/05/2023.

11. Meanwhile, *vide* e-mail[16] dated 17/04/2023, one of the members of the CoC, namely, Bank of Baroda informed the applicant pertaining to additional assets of the Corporate Debtor and the time from 17/03/2023 to 21/04/2023, i.e., 35 days were taken to identify, get the same valued in order to apprise the CoC members and the Resolution Applicant the factual position of the additional assets of the Corporate Debtor. Thereafter, at the 13th CoC meeting held on 24/04/2023, the resolution plan was put for voting before the CoC. One of the members of the CoC, i..e., State Bank of India vide e-mail dated 04/05/2023 has requested to extend the voting timeline on Resolution Plan by 30 days[17]. The copy of the minutes as well as summary of e-voting of 13th CoC meeting forms Annexure A-23[18].

12. The applicant called the 14th CoC meeting on 06/05/2023 to discuss on further exclusion of timeline from the CIRP period and accordingly following Resolutions were passed:

> *"**RESOLVED FURTHER THAT** the Resolution Professional be and is hereby authorized to file an application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 with the Hon'ble NCLT, Kolkata Bench praying for exclusion of 60 days from CIRP period on the ground of time taken/utilized officially/required for identification and valuation of addition of assets and extension sought by SBI for voting on resolution plan."*
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> *"**RESOLVED FURTHER THAT** the Resolution Professional be and is hereby authorized to take all action and incur expenditure necessary to give effect to the above Resolution passed by the Committee. The said expenses shall form part of the CIRP cost."*

It was recorded in the Minutes[19] of the 14th CoC meeting that during the meeting all the CoC members were present and accorded their consent unanimously for the

[15] Annexure A-20 at pages 230 to 232 of the application
[16] Annexure A-21 at pages 233 to 234 of the application
[17] Averments in paragraph 32 at psge24 of the application
[18] At pages 249 to 257 of the application
[19] Annexure A-24 at pages 258 to 261 of the application

above resolutions and the same were taken as approved and ratified.

13. Accordingly an application being IA(IBC)/938(KB)2023 was filed praying for exclusion of 60 days in total, i.e., 35 days from 17/03/2023 till 21/04/2023 and additional 25 days as requested by the SBI for voting on Resolution Plan of the Corporate Debtor. Vide order dated 02/08/2023 passed in IA(IBC)/938(KB)2023, this Adjudicating Authority had excluded the time from 13/05/2023 till 02/08/2023 during which time the application was under judicial consideration and enlarged the time period of CIRP by 60 days, thereby the 270 days CIRP would ended on 30/09/2023.

14. Soon after the e-voting facility for the 13th CoC meeting was concluded, the applicant herein called the 15th CoC meeting on 12/06/2023 for informing the results of e-voting, since the Resolution Plan submitted by Rishikunj Vincom Private Limited was not approved by the CoC since it secured only 38.92% of voting share of the members of the CoC as against minimum requirement of 75% as stipulated under section 30(4) of the IBC. A copy of the minutes of the 15th CoC meeting held on 12/06/2023 as well as summary of e-voting forms **Annexure A-26[20].**

15. The RP has submitted u/s. 34 of the Code his written consent[21] in Form AA along with Authorisation for Assignment (AFA) to act as the Liquidator of the Corporate Debtor.

16. It is to be noted here that the CIRP period after taking into consideration of extension, exclusion and enlargement has ended on 30/09/2023.

17. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass an order of liquidation where no resolution plan is received before the expiry of the CIRP. Sub-section (2) thereof requires the Adjudicating Authority to pass the liquidation order where the Resolution Professional intimates to the Adjudicating Authority the decision of the Committee of Creditors approved by not less than 66% of the voting share to liquidate the Corporate Debtor.

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[20] At pages 263 to 275 of the application
[21] Annexure A-27 at pages 276 to 277 of the application

18. However, here in this case the resolution plan of the successful resolution applicant has not been approved by the members of the CoC, as stipulated u/s. 30(4) of the IBC, which is reproduced below: -

> *"The committee of creditors may approve a resolution plan by a vote of not less than seventy five per cent of voting share of the financial creditors."*

19. Section 30(6) of the IBC stipulates that "*the resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority"* for its approval.

20. A conjoint reading of these provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor since the only resolution plan received by the RP was not approved by the CoC.

21. This Bench, therefore, hereby orders as follows: -

    a. IA(IBC)/1107(KB)2023 filed by Mr. Ram Ratan Modi, RP of Kaushik Global Logistics Limited, the Corporate Debtor, is allowed. Consequently, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;

    b. Though the RP has given his consent to act as the Liquidator of the Corporate Debtor but in view of directions contained in the IBBI Circular vide no. Liq-12011/214/2023-IBBI/840 dated 18/07/2023 for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the Code, we are appointing **Mr. Swarup Ghosh,** (Reg. No. IBBI/IPA-003/IP-N00438/C01/2017-2018/11661) having e-mail i.d. swarupghosh1@yahoo.co.in mobile no. 91430 91430. as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Auithorisation 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. The Liquidator is directed to submit his consent to act as Liquidator within **10**

days of receipt of this order. The erstwhile RP shall handover all papers and documents in his possession concerning the Corporate Debtor to the Liquidator appointed in this matter within **10 days**.

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., in "*Financial Express*" (English) and "*Aajkal*" (Bengali) 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**, within whose jurisdiction the Corporate Debtor is registered. Additionally, the **Registry** shall also forward a copy of this Order to the **Registrar of Companies, West Bengal.**

22. The application bearing **IA(IBC)/1107(KB)2023** shall stand disposed of in accordance with the above directions.

23. **CP(IB)/1180(KB)2020** is to come up for filing of Periodical Progress Report on **09/01/2024.**

24. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

25. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 21st day of November, 2023.

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