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18.07.2023

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IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-II

IA No./745/NCLT/AHM/2021
In
CP (IB) No./ 138/NCLT/AHM/2020

[Under Section 33(1)(b) and 34(1) of the Insolvency and Bankruptcy Code, 2016]

In the Matter of:

Keyur J. Shah, Resolution Professional of

M/s. Vivek Steelco Private Limited,

Office of Resolution Professional :

1007, Sun Avenue One,

Near Shreyas Foundation,

Manekbaug Society, Ambawadi,

Ahmedabad, Gujarat – 380015.

....Applicant

In the Matter of:

Mr. Sanjay S. Jaiswal

(Proprietor of Trigun Enterprise)

...Operational Creditor

Versus

M/s. Vivek Steelco Private Limited

...Corporate Debtor

Order Pronounced on: 11 /07 /2023

Coram: SHAMMI KHAN,
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)



Appearance:

For the Applicant: Ms. Noopur K. Dalal, Advocate

For the Suspended Management: Mr. Meet Pansuriya, Advocate

ORDER

1. The present application is filed by Mr. Keyur J. Shah - the Resolution Professional/Applicant of the Corporate Debtor under section 33(1)(b) read with section 34(1) of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") for passing an order of liquidation of the Corporate Debtor- M/s. Vivek Steelco Private Limited and to appoint RP as liquidator.

2. The facts as narrated in the application and explained by the Ld. Counsel for the Applicant/RP are summarized hereunder :

I. This Adjudicating Authority by its order dated 08.10.2020 admitted the Corporate Debtor in the Corporate Insolvency Resolution Process ("CIRP") in an application filed by the Operational Creditor - Mr. Sanjay S. Jaiswal, Proprietor of Trigun Enterprise, under section 9 of the IBC, 2016 and Mr. Trupalkumar Patel was appointed as Interim Resolution Professional ("IRP").

II. The IRP made public announcement in Form A as required under Regulation 6 of the IBBI on 16.10.2020

III. The IRP had admitted the claims of the creditors pursuant to the public announcement and accordingly constituted a Committee of Creditors (hereinafter referred to as the "COC") and submitted the report on the constitution of COC on 19.07.2022 before this Adjudicating Authority (AA). The COC consists of two Financial creditors, i.e., Rajkot Nagrik Sahakari Bank Ltd. with 92.32% voting share and MAS Financial Services Ltd. with 7.68% voting share. Thereafter, the 1st COC meeting was held on



11.11.2020 wherein the Members of the COC took note of the actions taken by the IRP.

- IV. In the second meeting of the COC held on 08.12.2022, resolution was passed by the COC for replacement of IRP and to appoint Mr. Keyur J. Shah as the RP and the same was approved by this AA vide order dated 05.01.2021.
- V. In the third meeting of the COC held on 24.12.2020, the erstwhile IRP apprised the Members that pursuant to Regulation 36A of IBBI, a publication for invitation for Expression of Interest (EoI) in Form G is required to be made and the COC members unanimously agreed to invite EoI from the interested and eligible applicants to submit Resolution Plan. The COC also approved the draft of EoI.
- VI. In the fourth meeting of the COC held on 04.02.2021, the COC was apprised of developments in the CIRP of the Corporate Debtor and receipt of EoI from two prospective Resolution Applicants, i.e., M/s. Shree Yash Stainless Pvt. Ltd. and M/s. Grance Castings Limited and discussion was held on approval and ratification of factory lease-out option.
- VII. In the fifth meeting of the COC held on 09.03.2021, the COC members discussed and evaluated the Resolution Plan submitted by the Resolution Applicant, i.e., Shree Yash Stainless Steel Private Limited and further decided to reconsider the Resolution Plan after observations stated by the RP are implemented and revised plan is submitted.
- VIII. In the sixth meeting of the COC held on 05.04.2021, the Resolution Plan was rejected by the COC and RP was authorised to file an application under section 12(2) of the IB Code, 2016 for extension of CIRP for a further period of 90 days, as the time period of 180 days of CIRP was completing on 11.04.2021. The COC further authorized Resolution Professional to re-issue Invitation of Expression of Interest in Form G pursuant to Regulation 36A of IBBI Regulation, 2016. In view of the



resolution passed by the COC the RP had filed an application u/s 12(2) of the IBC for extension of CIRP period for a further 90 days beyond 180 days and the same was allowed by this AA vide order dated 21.04.2021.

- IX. In the eighth meeting of the COC held on 21.05.2021, the RP apprised the members that pursuant to Regulation 36A of IBBI Regulations, 2016, publication of Form G inviting EoI was carried out on 28.04.2021 in two newspapers, i.e., Business Standard (English Newspaper) and Jai Hind (Gujarati Newspaper) and took note of the EoI received from two Prospective Resolution Applicants, i.e., M/s. Shree Yash Stainless Pvt. Ltd. and M/s. Sponge Sales India Pvt. Ltd.
- X. In the ninth meeting of the COC held on 02.07.2021, the members of the COC discussed and evaluated the Plans submitted by the Resolution Applicant, i.e., M/s. Shree Yash Stainless Private Limited and further decided to reconsider and rediscuss the Plan after due changes are made and observations are implemented and the revised plan is received.
- XI. In the tenth meeting of the COC held on 10.07.2021, the RP apprised the members that in the absence of receipt of the revised plan from the resolution applicant, i.e., M/s. Shree Yash Stainless Pvt. Ltd. and with the consent of the members, the agenda for discussion of the plan be deferred till the next meeting of COC. In the same meeting, the COC passed the resolution for seeking a further extension of CIRP period by 60 days for consideration of the revised Resolution Plan, which was allowed by this AA on 19.07.2021.
- XII. In the thirteenth meeting of the COC held on 02.09.2021, the COC Members informed the Resolution Professional to file an application for extension for a further period of 15-20 days, considering the fact that the Members are in negotiation with the Resolution Applicant, i.e., Shree Yash Stainless Pvt. Ltd. to modify the Resolution Plan to suit commercial expectations of the COC and the final decision on the Resolution Plan will



be taken after receipt of the revised proposal from Resolution Applicant. The COC after considering the positive chances of revival of the Corporate Debtor, which was a going concern having factory and workers, passed a Resolution for filing an application under Section 12(2) of the IB Code, 2016 for further extension of 20 days beyond 330 days for consideration of the revised Resolution Plan.

XIII. In the 14th COC Meeting held and convened on 06.09.2021, the Resolution Professional apprised the COC Members regarding the extension application filed for extension beyond 330 days and further, the COC Members deferred the discussion of the Resolution Plan till the next COC Meeting as per the request placed by the Resolution Applicant, i.e., Shree Yash Stainless Private Limited. In the same COC meeting, the RP informed the members that the Corporate Debtor has one asset, i.e., Hydraulic Mobile Crane bearing Vehicle No. GJ-01-LQ-5563 & Chasis No.193A851915 owned and registered in the name of M/s. Vivek Steelco Private Limited (Corporate Debtor), which is in the custody and possession of Mr. Rishabh Chand Lodha – Resolution Professional of Agarwal Mittal Concast Private Limited, before the initiation of CIRP. The said asset is under dispute before this Adjudicating Authority and the denovo hearing was held on 02.08.2021 and the next date of hearing was scheduled on 05.10.2021.

XIV. In the sixteenth COC meeting held on 28.09.2021, the Resolution Professional informed the COC Members that in the hearing scheduled on 21.09.2021 in the matter for seeking extension of CIRP, the Hon'ble NCLT, Ahmedabad Bench orally directed the Resolution Professional to continue CIRP and to decide and finalize on the Resolution Plan till the next date of hearing, i.e., 25.10.2021 by filing the relevant application either for Resolution Plan or Liquidation.



08.09.2021. However, as the COC resolved to liquidate the Corporate debtor hence the present application of liquidation is made in time. A copy of the consent to act as a Liquidator and Form H are annexed with the application.

3. Objections to liquidation was received from the suspended management. However, in the hearing on 05.06.2023, as recorded in the daily order, the Suspended Management concurred that corporate debtor is to be liquidated, as there is no resolution plan.

4. Considering the documents and submission made, since the COC in its commercial wisdom has decided to take the Corporate Debtor in liquidation, we are of the opinion that the decision of the COC should not be interfered with. The present application seeking liquidation of the Corporate Debtor M/s. Vivek Steelco Pvt. Ltd, in the manner laid down in Chapter III of Part II of the Code, is allowed.

5. We appoint RP/Applicant Mr. Keyur J. Shah, who has also consented to act as a Liquidator and filed his written consent in Form AA, having registration no. (IBBI/IPA-002/IP-N00244/2017-18/10729), having an address at 1007, Sun Avenue One, Near Shreyas Foundation, Manekbaug Society, Ambawadi, Ahmedabad (Gujarat)-380015, as liquidator in terms of Section 34(1) of the Code with the following directions:

- a) The liquidator to issue a 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 liquidator to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.



XV. In the seventeenth meeting of the COC held on 11.10.2021, the RP informed the COC members about the time requested by the Resolution Applicant for submission of the Resolution Plan and after due discussion between the COC Members and the Resolution Applicant, the Resolution Applicant agreed to provide revised Resolution Plan as per the commercial expectations of the COC members and the COC meeting was deferred to 13.10.2021.

XVI. In the eighteenth COC meeting held on 13.10.2021, the COC members informed the RP to conduct the COC meeting on 18.10.2021 for the final decision on the Plan.

XVII. In the nineteenth COC meeting held on 18.10.2021, the Resolution Professional apprised the COC members regarding filing the petition under Sections 43 and 66 of the IB Code, 2016. The COC Members requested the Resolution Professional to put the Resolution for voting on rejection of the Resolution Plan on the grounds of conduct of Resolution Applicant in submitting the Resolution Plan with delay and in not revising commercial proposal in the Resolution Plan as agreed between the COC members and the Resolution Applicant. The COC directed the Resolution Professional to proceed with the liquidation proceedings in view of the rejection of the Resolution Plan and it was expressed by the COC Members that the Corporate Debtor can fetch more value in liquidation than the proposed amount in the Resolution Plan. The COC also recommended the sale of the corporate debtor/business of the corporate debtor as a going concern pursuant to Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In the same meeting, the resolution was passed with 100% voting for the liquidation of the Corporate Debtor and the appointment of a liquidator along with his fee.

XVIII. It is further submitted by the applicant that the CIRP was initiated on 08.10.2020 and the period of CIRP shall end after 330 days, i.e., by



- c) The liquidator to follow up and continue to investigate the financial affairs of the corporate debtor to determine any undervalued and preferential transactions, etc.
- d) This order is deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016.
- e) The Liquidator to 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.

5. As a consequence of the application being allowed, the moratorium as envisaged 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.

6. A copy of the order shall be communicated to the applicant RP and the corporate debtor as well as to the liquidator above named. The liquidator is to be informed of his said appointment by the Registry. In addition, a copy of the said order shall also be forwarded to IBBI for its records.

S/d-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

S/d-

SHAMMI KHAN
MEMBER (JUDICIAL)

Rahul/LRA



Prepared by _____
Signature *[Handwritten Signature]*
Date 18.07.2023

