

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

MA/1251/2019
IN
CP/1022/IB/2018

Application filed under section 33(2) of the IBC, 2016

In the matter of Aqua Designs India Private Limited

C. Ramasubramaniam **...Applicant**
Resolution Professional
Representing Corporate Debtor
(Aqua Designs India Private Limited)

Order delivered on: 23.12.2019

CORAM:

B.S.V PRAKASH KUMAR, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Counsel for the Applicant: *Shri. C. Ramasubramaniam, RP*
Counsel for BOI : *Shri. S. Sathyanarayanan, Advocate*
Counsel for SBI : *Shri. M.L Ganesh, Advocate*
Counsel for RA : *Shri. Avinash Krishnan Ravi, Advocate*
Shri. Chandra Prakash Surana, Advocate

ORDER

Per: B.S.V PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in Open Court on: 16.12.2019

It is an MA filed u/s 33(2) of the Insolvency & Bankruptcy Code, 2016 (“the Code”) by the Resolution Professional (in Short “RP”) seeking for liquidation of the Company for the Corporate Debtor



failed to have any approved resolution plan by the CoC within the time frame of CIRP period, therefore sought for liquidation of this Corporate Debtor company.

2. On perusal of this application, it appears that this Company Petition was admitted on 17.10.2018 ever since several CoC meetings held. The liquidation of the company was determined as ₹15,39,17,700. The Promoter-Directors of the company claimed that this company is a MSME company, therefore Promoter-Directors are also permitted to file resolution plan, thereby, the Suspended-Directors were permitted to file resolution plan.

3. On receipt of the resolution plan filed by one prospective Resolution Applicant namely M/s.Shrisha Infra Private Limited along with Promoter/Suspended Director of the Corporate Debtor, being in compliance with Sec.13(2), it was placed before the CoC, but whereas in the CoC meetings, this prospective Resolution Applicant was asked to revise the plan for about seven times.

4. In the meanwhile, this Bench time and again extended time upto 330 days and thereafter again extended 90 days under 3rd

proviso Clause 12(3) of the Code expecting that at least at the fag end of the resolution period i.e. CIRP period, resolution plan would approved by the CoC.

5. Ultimately, when this resolution plan was put to voting on 31.10.2019, the Bank of India, having 22.40% (approx.) voting share in the CoC, voted against the plan, but whereas State Bank of India having 43.24% voting share abstained from voting and another Bank namely Syndicate Bank also abstained from voting, the only members voted in the meeting are Bank of India having 22.40% and IDBI Bank having 17.58% of voting share, voted over the resolution plan. Our consideration of the Creditors voted over the Resolution Plan, since Bank of India voted against the resolution, and IDBI Bank voted in favour of the Resolution Plan, the voting share that has come in favour of the Resolution did not attain requisite majority of 66%, it has attained only 43.97% in favour and 56.03% against the Resolution Plan.

6. While dictating this order, this Bench noticed that State Bank of India and Syndicate Bank, who were present in the meeting

consciously not voted either in favour of the resolution plan or against the resolution plan. When any person abstained from voting and knowing well that in case he does not vote, resolution plan will not get approved, then abstaining from voting cannot be construed as conceding for approval of the resolution plan i.e. the practice that has been followed whenever any issue is put to voting. That being so, in this case, this Bench cannot come to a different conclusion construing State Bank of India and Syndicate Bank abstaining from voting will amount to conceding for approval of the resolution plan. Since the resolution plan has not been approved with requisite majority then, CIRP period has come to an end on 03.11.2019, therefore the Resolution Professional has rightly filed this application before this Bench seeking an order for liquidation u/s.33(1) of the Code.

7. Now the case of State Bank of India is, that they held a Joint Lenders Forum Meet, subsequent to the completion of the CIRP period and held in that meeting for approval of the resolution plan. When no such procedure is contemplated under the Code, when

these Bankers, who were very much present in the meeting and wantonly not voted in favour of the resolution, were not expected to hold such kind of meeting and come before this Bench asking for approval of the resolution plan against the procedure set out under IBC. It is not only flouting the procedure under the Code but also, with regret to mention here that, it is nothing but dereliction of the duties on the part of the Officers attending the meeting.

8. The reason these abstained Bankers canvassed before this Bench for obtaining from voting, is that they did not vote in the meeting because by that time Forensic Audit Report was not received by the Resolution Professional.

9. We do not understand how this cause would become a reason to abstain from voting and then come out saying that they are in favour of the Resolution after CIRP period is over. If at all they have any reason for approval of the resolution plan by looking at the value of the resolution plan they ought to have voted in favour of it. Moreover, State Bank of India and Syndicate Bank have not even filed any application before this Bench against the application filed

u/s/33(1) of the Insolvency and Bankruptcy Code, 2016 filed by the Resolution Professional.

10. In between, State Bank of India and Syndicate Bank counsel has stated that they have already communicated their intention for approval to the Resolution Professional. To which, the Resolution Professional has categorically mentioned that he received an e-mail only by 27.11.2019 but whereas this application for liquidation has been filed by the Resolution Professional way back on 04.11.2019.

11. May be these Bankers are of the view that the procedure set out under the Code will not come their way in arguing for approval of the plan without any application before this Bench and without any timely action by them. However, since this bench is bound by the procedure set out under the Code and the Resolution Professional having followed the procedures in filing this application, we have not found any reason for approving the Resolution Plan closing our eyes to the end of CIRP period, and rejection of the Resolution Plan by the CoC in the CoC meeting held on 30.10.2019. Therefore we

hereby order for liquidation of this Corporate Debtor Company with the directions as follows:

- a) This Bench hereby orders the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing a public notice stating that the Corporate Debtor is in liquidation with a direction to the liquidator to send this order to ROC with which this company has been registered.

- b) The Resolution Professional viz Mr. C. Ramasubramaniam is hereby appointed to act as Liquidator for the purpose of liquidation of the corporate debtor, therefore all powers of the board of directors, Key managerial personnel and partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be hereby vested in the liquidator. The Personnel of the Corporate Debtor are directed to extend all co-operations to the liquidator as may be required in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as liquidator will charge fees for conduct of the liquidation proceedings in

proportion to the value of the liquidation estate assets as specified under regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under section 53 of the Code.

- c) Since this liquidation order has been passed, no suit or other legal proceedings shall be instituted by or against the Corporate debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of section 33 of the Code.
- d) This liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of the Corporate Debtor except to extent of the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

e) The liquidator is directed to carry the functions of the Liquidator as envisaged under the Insolvency and Bankruptcy Code, 2016 and also Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

12. The Registry is hereby directed to immediately communicate this order to the Liquidator, the Corporate Debtor and the IBBI & Concern ROC by way of E-Mail.

13. Accordingly, this MA/1251/2019 filed in CP/1022/IB/2018 is hereby allowed.

-Sd-
(S. VIJAYARAGHAVAN)
Member (Technical)

-Sd-
(B. S.V. PRAKASH KUMAR)
Member (Judicial)

SR/TJS