NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

MA/233/IB/2018
In
CP/620/IB/CB/2017

Under Section 52 of the IBC, 2016

(Liquidation of Promoter Collateral held with Financial Creditor)

In the matter of

M/s.Kasturi and Sons Limited

...Operational Creditor

Vs.

M/s.Kavya Advertising and Marketing Private Limited

... Corporate Debtor

Order delivered on: 30.08.2018

CORAM

K. ANANTHA PADMANABHA SWAMY, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the RP : Shri.Radhakrishnan Dharmarajan

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

The Tribunal vide its earlier order dated 31.05.2018 had directed that since no records of the Corporate Debtor are available and it has been stated that the business of the Corporate Debtor was remaining closed for over 4 years, there is no possibility of obtaining any records for the purpose of preparing a Information Memorandum for inviting a EOI (Expression of Interest) or Resolution Plan. In this case, the sole Financial Creditor (Kotak Mahindra) has recommended for the liquidation of the Corporate Debtor u/s 33 of the IBC, 2016. In view of the facts mentioned in the minutes of the meeting of the COC and the application made by the RP, the application for liquidation u/s 33 IBC, 2016 stands approved.

i. We order for liquidation of the Corporate Debtor viz., M/s.Kavya Advertising and Marketing Private Limited, which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;

ii. The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of liquidation;

iii. Copy of this Order shall be sent to the Registrar of Companies, RD, OL and the Registered Office of the Corporate Debtor.

iv. As stated in Section 33(5) of the I&B Code 2016, subject to Section 52, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.

v. We make it clear that para (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

vi. In terms of Section 33(7) of the I&B Code 2016 this Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

vii. The Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

viii. The Liquidator shall be entitled to charge such fee for the conduct of the liquidation proceedings in such a proportion to the value of the liquidation estate assets as may be specified by the Board. Accordingly, the fees of the conduct of the liquidation proceedings shall be paid to the Liquidator from the proceeds of the liquidation estate.

In this case, the financial creditor being the sole member of the COC has sought to relinquish its security interest to the liquidation estate as specified u/s 52(1)(a) of the IBC, 2016. This may be put up before the liquidator to be appointed under this order, especially in view of the fact that no asset or other information pertaining to the Corporate Debtor had been made available to the RP. Since no liquidator has not been appointed in this case the Adjudicating Authority hereby directs the RP to function as the liquidator as per the provisions of the IBC, 2016 subject to his willingness or until such

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time a liquidator is proposed by the sole financial creditor and approved by the Adjudicating Authority. The remuneration of the liquidator is to be mutually decided between the sole financial creditor and the proposed liquidator.

Since the CIRP has come to a closure with the appointment of this liquidation plan the financial creditor is at the liberty to proceed against the promoter guarantor of the Corporate Debtor which in any way is available during the period of the CIRP in terms of the amendment to the section 14 introduced from 06.06.2018 onwards.

If any proceeds are realised by enforcing the security interest against the promoter's personal assets the same may be intimated to the liquidator. Any amount received in excess to the claim made by the sole financial creditor will be paid to the credit of the liquidation estate to be distributed in accordance with section 53 of the IBC, 2016.

The Tribunal directs the liquidator to submit progress reports before this Tribunal as per Rule 15 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. As per the said rule, the liquidator is directed to submit the 1st progress report within 15 days after the end of the quarter in which he is appointed and subsequent progress reports within 15 days after the end of every quarter during which he acts as a liquidator.

With the above directions the Application **MA/233/IB/2018 In CP/620/IB/CB/2017** stands **disposed of.**

(S.VIJAYARAGHAVAN)	**(K.ANANTHA PADMANABHA SWAMY)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

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