

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
MA 1614/2018 & MA 1037/2019 in
CP (IB) 1833/MB/2017
Under Section 33 of I&B Code, 2016**

In the matter of

JM Financial Asset Reconstruction
Company Limited

...Applicant/
Financial Creditor

vs

Jejani Pulp and Paper Private Limited
...Corporate Debtor

And in the matter of

Mr. Prasad Kamlakar Dharap
Resolution Professional

...Applicant

Order dated 18.10.2019

**Coram: Hon'ble Member (Judicial) Mr V.P. Singh,
Hon'ble Member (Technical) Mr. Rajesh Sharma**

For the Petitioner: Adv. Shyam Kapadia and Adv. Harshad B.

For Resolution Professional: Adv. Rubina Khan;

For Corporate Debtor: Adv. Radhe Agarwal

*Per V.P. Singh, Member (Judicial)
Rajesh Sharma, Member (T)*

ORDER

1. The present application bearing MA no 1614/2018 in CP 1833/2017 is filed by the Resolution Professional of the Corporate Debtor under section 33(2) of the Insolvency and Bankruptcy Code, 2016 (**I&B Code**) seeking an order for liquidation of the Corporate Debtor.
2. A summary of the Corporate Insolvency Resolution Process (**CIRP**) conducted so far in respect of the Corporate Debtor is set out here for convenience. The application under section 7 of I&B Code filed by Financial Creditor of the Corporate Debtor was admitted by this Tribunal vide order dated 22.06.2018 also appointing the present applicant as Interim Resolution Professional to conduct the CIRP. The Committee of Creditors (**COC**) was constituted, and its first meeting



- was conducted on 20.07.2018 wherein the applicant was appointed as Resolution Professional (RP).
3. The RP appointed two valuers to determine the liquidation value of the Corporate Debtor and the report of the said valuers was submitted on 09.08.2018 and 10.08.2018. The RP had admitted an amount of ₹16,99,74,205/- out the total claim of ₹17,22,14,403/- submitted by the Financial Creditors of the Corporate Debtor.
 4. As per the valuation report of the A.C. Belekar, liquidation value is ₹12,00,00,000/- and fair market value are ₹15,00,00,000/-. As per the valuation report of the B.K.C. Advisors Private Limited, liquidation value is ₹14,57,14,000/- and fair market value is ₹22,69,23,000/-
 5. The RP invited Expression of Interest from prospective resolution applicants under which he received 6 Expression of Interests of which three were rejected as not in compliance with the criteria laid down in the invitation for EOI. The Resolution Professional placed the eligible Resolution Plan before the COC for discussion.
 6. The COC in its sixth meeting held on 12.12.2018 opined that the offer received from the only eligible Resolution Applicant is far away from the expectation and also from the liquidation value of the Corporate Debtor. The COC further opined that there is no hope of any potential buyer bidding for the Corporate Debtor and thus there is no point in seeking an extension of CIRP period. Therefore, the COC decided not to seek extension of CIRP period and instead resolved to seek liquidation of the Corporate Debtor and further appoint the Resolution Professional as liquidator.
 7. The proposed liquidator CA Prasad Dharap, a registered insolvency professional having registration number IBBI/IPA-001/IP-P00702/2017-2018/11228 has submitted its Form AA giving consent to be appointed as liquidator.
 8. The suspended director of the Corporate Debtor has filed an application bearing MA no. 1037/2019 seeking permission to submit a resolution plan for the Corporate Debtor. It is submitted in the application that the applicant submitted his Expression of Interest which was rejected by the Resolution Professional without assigning any reason for rejection. It is also submitted that an application of another suspended director of the Corporate Debtor is pending on similar grounds and prayers and that either of these applications be



allowed. It is stated that the present applicant falls under exception of MSME under section 240A and hence eligible to file the resolution plan for the Corporate Debtor. It is also alleged in the said application that the net worth criteria for the resolution applicants as set by the resolution professional is very high and difficult to meet for any prospective applicant.

9. The resolution professional has filed his affidavit in reply against the MA no. 1037/2019 on 12.06.2019 stating therein that the suspended Director of the Corporate Debtor submitted a two-page document, one day after the last date for submission, with a covering letter on 05.11.2018, purporting to be a resolution plan. This according to the Resolution Applicant could not be placed before the COC as it does not qualify as a Resolution Plan.
10. We have heard the Ld. Counsels for the parties and perused the record.
11. The RP on 05.11.2018, received a two page document, purported as resolution plan of the suspended directors of the Corporate Debtor. The last date for submission of resolution plan was 04.11.2019. Therefore the RP contended that the purported resolution plan was submitted after the last date for submission of resolution plan. The RP rejected the purported resolution plan on the grounds that it failed to fulfil basic eligibility criteria laid down by the COC such as net worth of the resolution applicant. Subsequently, the suspended Director of the Corporate Debtor has filed an affidavit on 16.07.2019 for filing a detailed resolution plan.
12. Thus, the rejection of the resolution plan by RP is based on the ineligibility of the resolution plan as per the eligibility criteria set by the COC. Further, the resolution plan is a mere two-page document detailing the amount to be paid to stakeholders of the Corporate Debtor. This is not in compliance with the provisions of the I&B Code and the Regulations made thereunder. In the facts and circumstances, we do not find any illegality in the decision of RP to reject the proposal as the document submitted by the suspended directors of the Corporate Debtor cannot be said to be a resolution plan under the I&B Code.
13. In light of the law laid down by the Hon'ble Supreme Court in **K. Sashidhar vs Indian Overseas Bank &Ors. In CIVIL APPEAL NO.10673 OF 2018** order dated 05.02.2019 the role of the



Adjudicating Authority in matters challenging the decision of CoC, accepting or rejecting the resolution plan is limited to the grounds mentioned in section 30(2) and the purely commercial decisions of CoC cannot be adjudicated by the Adjudicating Authority as they are non-justiciable. The relevant portion of the said judgement is reproduced below:

"...

30. Thus understood, no fault can be found with the NCLAT or having recorded the fact that the proposed resolution plan in respect of both the corporate debtors was approved by a vote of "less than 75%" of voting share of the financial creditors or deemed to have been rejected. In that event, the inevitable corollary is to initiate liquidation process relating to the concerned corporate debtor, as per Section 33 of the I&B Code.

31. Indeed, in terms of Section 31 of the I&B Code, the adjudicating authority (NCLT) is expected to deal with two situations. The first is when it does not receive a resolution plan under sub-section (6) of Section 30 or when the resolution plan has been rejected by the resolution professional for non-compliance of Section 30(2) of the I&B Code or also when the resolution plan fails to garner approval of not less than seventy-five per cent of voting share of the financial creditors, as the case may be; and there is no alternate plan mooted before the expiry of the statutory period. The second is when a resolution plan duly approved by the CoC by not less than 75% of voting share of the financial creditors is submitted before it by the resolution professional under Section 30(6) of the Code, for its approval.

...

33. As aforesaid, upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could



indefinitely continue to enjoy the protection given under Section 22 of Sick Industrial Companies Act, 1985 or under other such enactments which have now been forsaken. Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act based on thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made nonjusticiable."

14. An application under section 7 of I&B Code against the Corporate Debtor was admitted by this Tribunal vide order dated 22.06.2018. Under the invitation for Expression of Interest, the RP received 6 Expression of Interests of which three were rejected as not in compliance with the criteria laid down in the invitation for EOI. The Resolution Professional placed the eligible Resolution Plan before the COC for discussion.
15. The COC in its sixth meeting held on 12.12.2018 rejected the offer received from the only eligible Resolution Applicant, it being far away from the expectation of COC and the liquidation value of the Corporate Debtor. The COC further opined that there is no hope of any potential buyer bidding for the Corporate Debtor and thus there is no point in seeking extension of CIRP period. Therefore, the COC decided not to seek extension of CIRP period and instead resolved to seek liquidation of the Corporate Debtor and further appoint the Resolution Professional as liquidator.
16. The proposed liquidator CA Prasad Dharap, a registered insolvency professional having registration number IBBI/IPA-001/IP-P00702/2017-2018/11228 has submitted its Form AA giving consent to be appointed as liquidator.
17. As per sub-section (2) of section 33 of the I&B Code, the Adjudicating Authority has to pass an order of liquidation if the RP intimate the decision of the COC approved by not less than 66% of the vote share to liquidate the Corporate Debtor. Further, the newly



added explanation to the sub-section (2) of section 33 of the I&B Code provides that the COC can decide to liquidate the Corporate Debtor at any time after its constitution under sub-section (1) of section 21 of the I&B Code. The relevant provision is reproduced below for reference:

"(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six percent. of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum."

18. On perusal of the entire CIRP process carried out by the RP, this Bench has noticed that the RP proceeded in compliance with the provisions of the I&B Code and Regulations thereof. Requisite steps were taken, as per the I&B Code, to find a resolution applicant with whom a resolution plan could be agreed upon by the COC. However, despite all the efforts, a resolution plan could not be finalised, and in light of the resolution of the COC, dated 12.12.2018, to liquidate the Corporate Debtor, the RP has filed this MA 1614/2018 seeking direction to liquidate the Corporate Debtor.
19. In light of the facts and circumstances of the present application and the observations above, this Bench at this moment orders that:
- The Corporate Debtor be liquidated as per provisions of Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016 in the manner as laid down in Chapter III under Part II of I&B Code, 2016.
 - the Corporate Debtor to be liquidated in the manner as laid down in Chapter III of the I&B Code by issuing a Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to Registrar of Companies under which this Company has been registered.
 - The Resolution Professional, in his application for liquidation of the Corporate Debtor, has expressed his willingness to act as



Liquidator and has submitted Form giving consent to be appointed as liquidator. This Bench at this moment appoints CA Prasad Dharap, a registered insolvency professional having registration number IBBI/IPA-001/IP-P00702/2017-2018/11228 as Liquidator for liquidation with all powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor shall cease to have an effect and hereby vested in the Liquidator. The personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as may be required by him 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 Insolvency and Bankruptcy (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 I&B Code.

- d. 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 IBC.
- e. This liquidation order shall be deemed to be notice of discharge to the officers, employees and workers of the Corporate Debtor except to the extent of the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
20. The moratorium declared vide order of this Tribunal dated 22.06.2018 shall cease to exist.
21. The MA 1614/2018 is rejected in terms of the above order.
22. The MA 1037/2019 filed by the suspended Directors of the Corporate Debtor is at this moment rejected in light of the decision above. However, the liquidator is directed to act by law in terms of the decision of Hon'ble Appellate Tribunal in **North East Centre for Technology Application and Reach vs Sri Vari Metal Works Pvt. Ltd. & Anr., Company Appeal (AT) (Insolvency) No. 330 of 2019, order dated 16.04.2019.**

Sd/-

RAJESH SHARMA
Member (Technical)

18th October, 2019

Sd/-

V.P. SINGH
Member (Judicial)



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Assistant Registrar
National Company Law Tribunal Mumbai Bench