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NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH-II

C.A. 1473/C-II/ND/2019

IN

Company Petition No. (IB)-479(ND)/2019

IN THE MATTER OF :

M/s. Oriental Bank of Commerce

...Financial Creditor

Versus

M/s Yamuna Infradevelopers Private Limited

...Corporate Debtor

AND IN THE MATTER OF :

Rakesh Takyar

M/s. Yamuna Infradevelopers Private Limited

C-7 2nd Floor, Amar Colony,

Lajpat Nagar-4, New Delhi - 110024

...Resolution Professional/Applicant

Versus

1. Mr. Inder Pal Singh

Suspended Director of Yamuna Infradevelopers Private Limited

111 Santpura Road, Model Town

Yamuna Nagar, Haryana - 135001

...Respondent No.1

2. Mr. Rajinder Kumar

Suspended Director of Yamuna Infradevelopers Private Limited

111 Santpura Road, Model Town

Yamuna Nagar, Haryana - 135001

...Respondent No.2



Order Delivered on: 18.12.2019

Section: 33(1)(a) and 33(2) of the IBC, 2016.

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Dushyant Tiwari, Advocate
For the Respondent : Ms. Usha Singh & Ms. Nidhi Saini, Advs.

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

This is an application filed by the Resolution Professional under Sections 33(1)(a) and 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for seeking following reliefs :

"(i) Allow the present application for liquidation of the Corporate Debtor and pass orders for its liquidation under Section 33(1)(a) and 33(2) of Insolvency and Bankruptcy Code, 2016."

"(ii) Relieve the Applicant Rakesh Takyar from the present assignment as Resolution Professional of the CD on passing the liquidation order....."



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2. Facts in brief are that the Financial Creditor, Oriental Bank of Commerce filed an application bearing No. IB-479/(ND)/2019 under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s. Yamuna Infradevelopers Private Limited. The said application was admitted by this Tribunal vide Order dated 01.05.2019 and Mr. Rakesh Takyar was appointed as Interim Resolution Professional (IRP).

3. In terms of the Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a public announcement in FORM-A on 07.05.2019. The Public announcement was also uploaded on the website of Insolvency and Bankruptcy Board of India (IBBI).

4. The Interim Resolution Professional constituted a Committee of Creditors (CoC), which comprised of the Oriental Bank of Commerce having claim of Rs.2,81,10,951. The first meeting of the CoC was held on 27.05.2019. That the IRP appointed by this Tribunal was authorised to act as RP in the first meeting of the CoC held on 27.05.2019.

5. It is submitted by the Ld. RP that :

"15. The 2nd COC also approved on 10.07.2019 with 100% voting Form G, Evaluation Matrix, Expression of Interest and Request for Resolution Plan. That RP released and FORM G

CD



on 11.07.2019 which was published in Financial Express and Jansatta on 12.07.2019.”

“24. The applicant during CIRP period has invited prospective resolution applicant in accordance with sec 25(2)(h) of IBC, 2016 to submit the resolution plan(s). That no resolution plan was received against the aforesaid invitation.

“25. Third meeting of the CoC was held on 03.10.2019 in which the Resolution Professional informed that the CIRP Period under section 12 of the Insolvency and Bankruptcy Code, 2016 is coming to an end on 28.10.2019. So far no resolution plan has come as per sub-section 6 of section 30 of IBC ,2016 and thus the liquidation is the default option before the CoC unless and until CoC decides for extension of time for one more cycle involving FORM G etc. The CoC deliberated the issue in detail, and decided to go for liquidation. It was decided to conduct another meeting of the CoC as soon as possible so that the necessary statutory/ regulatory compliances related with liquidation process, are also completed.

6. That having received no resolution plans, the Ld. RP placed the proposal of the liquidation of the Corporate Debtor before the CoC in its third meeting held on 03.10.2019. After discussion, the following resolution that was passed by the CoC is reproduced below :

“CoC RESOLVED with 100% voting share, to recommend the liquidation proceeding of the Corporate Debtor to the Hon’ble Adjudicating Authority.”





7. The Ld. RP in his Application has averred the following :

“26. The RP has offered himself to be appointed as Liquidator on the basis of the existing level of fees i.e Rs. 10.80 Lakhs for the estimated Liquidation period for 12 months.”

“27. The aforesaid resolutions as mentioned in para 26(a), (b), (c), (d) and (e) were discussed, proposed and passed in the 04th meeting of the CoC held on 18.10.2019 and the minutes pf the meetings were circulated to all participants on 19.10.2019.”

8. However, on perusal of the minutes of the 4th meeting of CoC dated 18.10.2019 annexed in the application, it was observed that the Agenda Item No. 5 proposing appointment of Liquidator and fixing of his fee was not passed by the CoC.

9. That in view of the abovementioned contradictions noticed between the averments made by the Ld. RP and the relevant resolution adopted by the CoC regarding appointment of the Liquidator, on 10.12.2019 this Bench had asked certain clarifications from the Applicant.

10. That the Ld. RP in response filed an Affidavit dated 12.12.2019 and clarified the following :

“3. That in para 27 of the liquidation application, it has been averred by the Resolution Professional that: “the aforesaid resolutions as mentioned in para 26 (a), (b), (c), (d) and (e)

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were discussed, proposed and passed in the 04th meeting of the COC held on 18.10.2019 and the minutes of the meeting were circulated to all participants on 19.10.2019”.

In the above para the averment should have been..... para 26 (a), (b), (c), (d) and (e) were discussed.....

However, during the flow of direction the words proposed and passed were inadvertently mentioned, for which the deponent/ applicant renders unqualified apologies. The applicant/ Resolution Professional had acted in a bonafide manner and it is respectfully mentioned that there was neither any attempt nor any intention to either conceal or mislead the Hon'ble Bench. In para 26 (e) of the liquidation application the actual position and facts have been explained in detail.”

11. It is further submitted by the Ld. RP :

“That in view of the position mentioned in para 4 of this affidavit, there was no agreement on the liquidator fees and thus the recommendation/proposal for appointment of liquidator was not confirmed in the CoC meeting.”

12. In the aforesaid background and there being no other alternative, the Ld. RP with the approval of CoC has proposed for initiation of this liquidation proceedings of the Corporate Debtor under Section 33 of the Code.



13. Since the CoC has neither approved the name of the RP nor proposed name of any other professional as Liquidator, this Bench based on the list furnished by IBBI, appoints Ms. Rita Gupta having Registration No. IBBI/IPA-001/IP-P00149/2017-18/10313 (Email Id: ritaca_1996@yahoo.co.in and Mobile No. 9811652355) at the fee prescribed per table specified under regulation 4(2)(b) of Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 subject to the condition that no disciplinary proceedings are pending against her and disclosures as required under IBBI Regulations, 2016 are made within a period of one week from this Order.

14. In sequel to the above, the Application is allowed, ordering Liquidation of the Corporate Debtor, M/s. Yamuna Infradevelopers Private Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant Rules and Regulations along with the following directions:

- a. Mr. Rakesh Takyar resolution professional is discharged from his duties.
- b. Ms. Rita Gupta, appointed as Liquidator, is directed to issue 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;



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- c. The Order of Moratorium passed 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;
- d. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- e. Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued and preferential transactions etc., if any.
- f. The Liquidator shall 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.
- g. The Registry is directed to communicate a copy of the Order to the Financial Creditor, the Corporate Debtor and Liquidator at the earliest but not later than seven days from today. A copy of this Order be also sent to the ROC for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT.




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h. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;

15. C.A.1473ND)/2019 filed in IB 479(ND)/2019 is disposed-off in the aforesaid terms.


(L. N. Gupta)
Member (T)


(Ina Malhotra)
Member (J)




Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110