NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA-3934/ND/2020
IN
Company Petition No. (IB)-1028(ND)2018

IN THE MATTER OF :

M/s ESSPEE Hitech Pvt. Ltd ....Operational Creditor

Versus

M/s Ablaze Info Solutions Private Limited. ....Corporate Debtor

AND IN THE MATTER OF :

Mr. Rajiv Bhatnagar
C-51, First Floor, Corporation Bank Building,
Awas Vikas, Nainital Road Rudrapur
Uttrakhand-263153 ...Resolution Professional/Applicant

Versus

1. **Mr. Anubhav Mittal**
   Suspended Director
   835, Krishanganj-3 Pilkhuva,
   Hapur Ghaziabad-245101 ...Respondent No.1

2. **Ms. Ayushi Agarwal**
   Suspended Director
   86 A, Harjindar Nagar-2
   Babu Lal Ka Hata, Kanpur Sadar
   208007 ...Respondent No. 2

Order Delivered on: 18.01.2021

Under Section: 33(2) of the IBC, 2016.

CORAM:

SH. ABNI RANJAN KUMAR SINHA, MEMBER (J)
SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mansij Arya, Advocate

ORDER

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

The present Application is preferred by Mr. Rajiv Bhatnagar, the Resolution Professional of M/s Ablaze Info Solutions Private Limited (hereinafter referred to as 'Applicant") under Section 33(1)(a), 33(2) and 34(1) of the Insolvency and Bankruptcy Code, 2016, seeking the following main reliefs:

> "1. *Allow the present application or 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.*
>
> 2. *Relieve the Applicant, Rajiv Bhatnagar from the present assignment as resolution professional of the Corporate Debtor on passing the liquidation order.*
>
> 3. *Permit the Applicant/Resolution Professional to continue to manage the affairs of the Corporate Debtor till the liquidation order is passed.*
>
> 4. *Appoint the Applicant Rajiv Bhatnagar, an insolvency professional, IBBI registration Number (IBBI/IPA-001/IP-P00075/2017-18/10160) as the liquidator under Section 34(1)...."*

2. Facts of the case in brief are that the Operational Creditor, M/s ESSPEE Hitech Pvt. Ltd. had filed an Application bearing No. (IB)-1028/(ND)/2018 under Section 9 of the IBC, 2016 for initiating the Corporate Insolvency Resolution Process (CIRP) against M/s Ablaze Info Solutions Pvt Ltd. The said Application was admitted by this Tribunal vide Order dated 30.11.2018 and Mr. Subramanian Dorairanjan was appointed as the 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 the Form-A, which was published in the newspapers namely, the Times of India (English) and Jansatta (Hindi) on 06.12.2018. The said public announcement was uploaded on the website of the Insolvency and Bankruptcy Board of India (IBBI).

4. That it has been submitted that in the first meeting of CoC held on 3rd January,2019, the Applicant was appointed as Resolution Professional (RP), as the IRP Mr. Subramanian Dorairanjan expressed his unwillingness to continue and he was relieved of his duties vide order dated 11.01.2019 passed by this Tribunal. This Adjudicating Authority had confirmed the appointment of the Applicant of Mr. Rajiv Bhatnagar as Resolution Professional (RP) of the Corporate Debtor vide its order dated 23.01.2019.

5. That it is further submitted by the Applicant that on the last date of filing of the claims i.e. 18.12.2018, the IRP received over 28,386 claims and accordingly, the CoC was constituted based on the claims received by IRP.

6. It is averred by the Applicant in the Application that :

> *"9. That after being appointed as the Resolution Professional (hereinafter called the "RP"), the Resolution Professional learnt about the state of affairs of the Corporate Debtor and non-availability of the documents pertaining to the affairs of the Corporate Debtor in the light of the ED proceedings pending against the Corporate Debtor and its directors. Upon further due diligence conducted by the RP, he came to know about STF raid at the Corporate Debtor's office whereby all the aforementioned documents had been seized. Therefore, in order to gain access to the aforementioned documents, the Applicant/RP communicated with Enforcement Directorate, Lucknow along with other investigating agencies seeking access to the books of accounts and other relevant documents of the Corporate Debtor which had been sized by them pursuant to an enquiry under the PML Act, 2002 so as to enable the RP to verify the claims and discharge his duties as are envisaged under the IB Code, 2016.*
>
> *10. That upon receiving no response from the aforementioned agencies to his communications, the Resolution Professional went and personally met the Assistant Director, Enforcement Directorate, Lucknow, on 30.01.2019 seeking access to the Book of Accounts of the Corporate Debtor and seeking de-attachment of the assets of the Corporate Debtor so as to*

meet the expenses of the resolution process in order to carry out his obligations as the RP. However, it was orally communicated to the Resolution Professional that proceedings under the PMLA are pending against the Corporate Debtor and in light of the same, the Enforcement Directorate is not under any legal obligation to provide the concerned documents as sought by the Applicant.

11. *That the operations of corporate debtor had been suspended/put in abeyance since February 2017 pursuant to a pending enquiry under the Prevention of Money Laundering Act, 2002 and all documents and assets of the Corporate Debtor had been confiscated by the Enforcement Directorate, Lucknow. Due to non- availability of the books of accounts, Statutory records, papers and documents of the Corporate Debtor, the applicant was not able to verify a single claim which has been received and the entire CIR process has come to a standstill due to non-availability of records and assets of the Corporate Debtor."*

7. It is stated by the Applicant that the CoC in its 4th Meeting held on 13.05.2019 upon realizing the impossibility of continuing the Corporate Debtor's business as 'a going concern' on account of the pending proceedings under the Prevention of Money Laundering Act, 2002 against the Corporate Debtor and due to non-availability of any documents, information and books of accounts, resolved to move an Application for Liquidation to the Adjudicating Authority under Section 33(2) of IBC 2016.

8. It is informed by the Applicant that thereafter, in the sixth meeting of the CoC held on 02.03.2020, the following resolutions were considered and put to vote before the CoC :

> ***"RESOLVED THAT*** *COC affirm that resolution passed in the fourth meeting of COC held on 13.05.2019 for liquidation of the corporate debtor and filing an application to Hon'ble NCLT U/s 33 (2) of the Insolvency and Bankruptcy Code, 2016 for praying the liquidation of the company."*
>
> ***"FURTHER RESOLVED THAT*** *the liquidator appointed shall take approval u/s 33(5) of the IBC from the Hon'ble NCLT for filing all suits and other legal proceedings in all the Courts, Tribunals and Appellate Tribunals and Courts in respect of de attachment of the assets of the corportate decbtor or in the interest of all the stakeholders of the corporate debtor by the Liquidator because the entire assets of the corporate debtor have been attached by the Enforcement Directorate."*

9. It is further submitted by the Applicant that the aforesaid Resolutions were passed by 100% voting share as evident from the voting sheet reproduced below :

Under Corporate Insolvency Resolution Process
CIN U72900DL2010PTC207909

Day and Date: **Monday, 02nd March 2020**

Time : **04.30 PAM**

Venue : **106, Indira Prakash Building, Barakhamba Road, New Delhi - 110001**

Voting Sheet for items considered and approved in the Sixth Meeting of Committee of Creditors of Ablaze Indo Solutions Private Limited

Item No	Resolution	Approved by – %age of votes	Signature of the Creditor
1	**RESOLUTION NO 1** "Resolved that Rajiv Bhatnagar, Resolution professional be and is hereby appointed as Chairman of the Committee of Creditors of Ablaze Info Solutions Private Limited"	100%	
2	**RESOLUTION NO 2** "Resolved that the Quorum is present at the meeting of the CoC of Ablaze Info Solutions Private Limited in its meeting held on March 02, 2020 based of the members present."	100%	
3-	**RESOLUTION NO. 3** " Resolved that COC affirm the resolution passed in the forth meeting of COC hold on 13.05.2019 for liquidation of the corporate debtor and filling an application to Hon'ble NCLT U/s 33 (2) of the insolvency and Bankruptcy code, 2016 for praying for liquidation of the company" " Further resolved that the liquidator appointed shall take approval u/s 33(5) of the IBC from the Hon'ble NCLT for filling all suits and other legal proceedings in all the Courts , Tribunals and Appellate Tribunals and Courts in respect of de attachment of the assets of the corporate	100%.	

	debtor or in the interest of all the stakeholders of the corporate debtor by the Liquidator because the entire assets of the corporate debtor have been attached by the Enforcement Directorate"		
4	**Resolution No. 4** " Resolved that COC affirm the resolution passed in the forth meeting of COC hold on 13.05.2019 for the appointment of Mr. Rajiv Bhatnagar, Resolution professional as liquidator of the corporate debtor whose appointment has already been confirmed in the fourth COC meeting held on 13.05.2019." "Further resolved that the liquidator shall manage all the liquidation expenses including Advertisement in newspaper, Advocates Fees, court fees , Claims verification, from the liquidation estate , interim Finance or their own arrangements and none of the COC member shall bear any cost of the liquidation expenses in any circumstances."	100%	

10. That the RP has also filed his consent through his Written Communication in Form 2 to act as Liquidator of the corporate debtor as required under Section 34(1) of the IBC, 2016.

11. In the circumstances and there being no other alternative, this Bench is inclined to accept the recommendation / Resolution of the COC and order Liquidation of the Corporate Debtor.

12. In sequel to the above, the Application is allowed, ordering Liquidation of the Corporate Debtor, M/s. Ablaze Info Solutions Private Limited in the manner as 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. Rajiv Bhatnagar, having IBBI Registration No. IBBI registration Number (IBBI/IPA-001/IP-P00075/2017-18/10160, is appointed as Liquidator, who has given his written consent to act as Liquidator in terms of Section 34 (1) of IBC 2016;

b. The Liquidator, is directed to issue public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

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. Liquidator is also allowed to institute suit or other legal proceeding on behalf of the corporate debtor under any other law including PMLA, 2002.

g. The order of Liquidation shall not stand as an obstacle before any investigation initiated against the Corporate Debtor by ED under the Prevention of Money Laundering Act, 2002.

h. Further, if any of the asset(s) is/are recovered due to de-attachment / release of the assets during any of the investigations or otherwise, which belongs to the Corporate Debtor, the same shall form part of the Liquidation Estate of the Corporate Debtor.

i. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

j. The Registry is directed to communicate a copy of the Order to the Financial Creditor, the Corporate Debtor and Liquidator Mr. Rajiv Bhatnagar at the earliest but not later than seven days from today.

k. A copy of this Order be sent by the Registry as well as Liquidator to the Registrar of Companies (RoC), NCT of Delhi & Haryana for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT within a period of 30 days;

l. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India or any other authority required under law for their record.

13. IA-3934/ND/2020 filed in IB-1028(ND)/2018 is **allowed** in the aforesaid terms.

Sd/-

(L. N. GUPTA)
MEMBER (T)

Sd/-

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)