

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-202
IB-711/ND/2018
IA/824/2020

IN THE MATTER OF:

M/s. Puneet Steels & Alloys Pvt. Ltd.

Vs.

Ideal Printographics Pvt. Ltd

....Applicant

.....Respondent

SECTION

U/s 9 IBC Code 2016

Order delivered on 08.10.2020

CORAM:

SHRI ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (JUDICIAL)

SHRI K.K. VOHRA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : PCS S.S. Bhati, RP alongwith Shobhan Mohanti, Advocate

For the Respondent : CA Rajesh Kumar Parakh, RP and Mr. Sanjay Barnawal for Ex. Director

ORDER

Per Se :- Shri Abni Ranjan Kumar Sinha, Member (Judicial)
(Order dictated in Open Tribunal)

The present application has been filed on behalf of RP praying therein to pass an order for liquidation under section 33 of the IBC in view of the Resolution taken by the COC in the meeting dated 19.12.2019.

We have heard the Ld. Counsel appearing for the RP Mr. Soham Mohanti assisted by S.S. Bhatti as well as Mr. Sanjay B. suspended Board of Director. Ld. Counsel appearing for the RP submitted that the invitation for expression of interest in Form G was approved by the Committee of Corporate Debtor on 28.09.2019 and same was duly published in the Financial Express in English



language and Jansatta in Hindi language on 09.12.2019 but the CoC in its 5th meeting dated 19.12.2019 took note of the fact that no expression have been received by the Corporate Debtor after publication of invitation of expression of interest in Form - G. He further submitted that since there are no operations in the Corporate Debtor and the Corporate Debtor does not have fixed assets of the value drawn, goodwill, patent in its name. Therefore, the committee of creditors requested the Resolution Professional not to spend further time and resources in following CIRP process and instead to file an application with the Hon'ble NCLT for initiating liquidation proceeding of the Company. He further submitted that the CoC in the meeting dated 19.12.2019 approved the filing of an application before Hon'ble NCLT for initiating liquidation process of the Corporate Debtor by vote of 73.09 per cent of the total voting rights and in the light of that resolution, the present application has been filed. He further submitted that the CoC has also resolved to appoint the RP as liquidators and also approve the fee of the liquidators in the light of that facts, Ld. Counsel appearing for the RP submitted that an order for liquidation may be passed.

Mr. Sanjay Verma, Advocate appearing for suspended board of directors submitted that suspended board of directors have no objections, if the order under Section 33 of the IBC for the liquidation of the Corporate Debtor is passed.

Considering the submissions made on behalf of the parties and on perusal of the averments made in the application as well as the document filed by the Resolution Professional, we noticed that when the expression of invitation interest was invited on 09.10.2019 in the newspaper, then no expression of interest has been received. Thereafter, in the meeting dated 19.12.2019, the CoC



made a request to the Resolution Professional to file an application for liquidation before the NCLT and in view of that, the present application has been filed. We further noticed that the said Resolution is enclosed at page 32 of the application and the relevant portion of the resolution is at page 38 at item no. D2 *“discuss and approve initiation of the liquidation process of the Corporate Debtor. We further noticed that it was resolved by the COC “* resolve that the application sought initiation of the liquidation IDEL Printographic Private Limited Corporate Debtor undergoing Corporate Insolvency be filed before Hon’ble National Company Law Tribunal and accordingly, the members of the Committee of Creditors be and hereby approve the initiation of liquidation of the Corporate Debtor and the Resolution Professional is hereby authorised to file the necessary application under the provision of Section 33 (2) of the IBC 2016 before the NCLT and do all the compliance obtaining to the same. We further noticed that at page 42 of the minutes the resolution regarding the appointment of RP as liquidator is enclosed and as per the resolution of the COC it is resolved *“that the Resolution Professional of IDEL Printographic Pvt. Ltd. Mr. Rajesh Kumar, having IBBC registration no. IBBI/IPA/001/IP-P00272/2017-18/10516 to be appointed as a liquidator and his fee shall be payable as per the prescribed in fee table under Regulation 4(3) of IBBI Regulation (liquidation processes) is hereby ratified.*

In the light of that facts, when we shall examine the provision of law then we find, in view of section 33 (2) of the IBC, the resolution professional at any time during the Corporate Insolvency Resolution Process but before the confirmation of the resolution plan, intimates the adjudicating authority of the decision of the Committee of creditors (approved by not less than 66 per cent of the voting share) to liquidate the Corporate debtor, the Adjudicating Authority



shall pass a liquidation order as referred to sub Section i, ii, iii of clause b of sub section 1.

We further noticed that explanation attached to Section 33 sub Section 2 is inserted w.e.f. 16.08.2019 and it states that for the purpose of this sub-Section it is hereby declared that the CoC may take the decision to liquidate the CD, anytime 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 information memorandum.

In the light of that provision, when we shall consider the case in hand then we noticed that since no expression of interest has been received after the publication of Form G and that is the reason, the CoC has taken a decision. As per Section 33(2), the CoC can take the decision by not less than 66 per cent of the voting share, whereas in the case, the CoC has taken the decision by voting of 73.09 per cent. Therefore, we are of the considered view that it comes within the purview of Section 33 (2) of IBC. We further noticed that as per the explanation which was inserted w.e.f. 16.08.2019, the CoC can take the decision to liquidate the CD at 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 information memorandum and we further noticed that the Suspended Board of Directors has not raised any objection.

Under such circumstances, when we shall consider the case in hand then we are of the considered view since CoC has already approved the filing of an application before Hon'ble NCLT for initiating liquidation process of the Corporate Debtor by 73.09% of voting share, therefore, we think it proper to approve the



resolution and pass the order of liquidation. Accordingly, in view of the resolution passed by the CoC on 19.12.2019, the Corporate Debtor is hereby liquidated and the provision of Sub-Section (5), (6) and (7) of Section 33 of the IBC shall apply. Mr. Rajesh Kumar, having IBBC registration no. IBBI/IPA/001/IP-P00272/2017-18/10516, whose name has been approved by the COC and who has also given his consent is appointed as a liquidator and he shall exercise all its power vested under u/s 35, 36, 37, 38, 39, 40, 41, 43, 45 IBC

With this order the present application stands disposed off.

-Sd-

(K.K. VOHRA)
MEMBER (T)

-Sd-

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)