

IN THE NATIONAL COMPANY LAW TRIBUNAL

BENCH IV, NEW DELHI

C.A. 126 /(ND)/2018, C.A. 516/ND/2019

IN

Company Petition No. (IB)- 493 (ND)/2018

IN THE MATTER OF:

SANJAY AGRAWAL (RP)

.... APPLICANT

AND

IN THE MATTER OF:

M/s STORE SUPPLY (INDIA) AGENCY

.... PETITIONER

Versus

M/s I.E TRADING COMPANY PRIVATE LIMITED

.... CORPORATE DEBTOR

*Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for
liquidation of the corporate debtor*

Coram:

DR. DEEPTI MUKESH

HON'BLE MEMBER (JUDICIAL)

SH. HEMANT K. SARANGI

HON'BLE MEMBER (TECHNICAL)

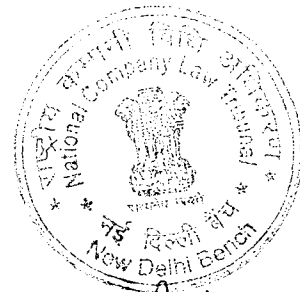
Presents:

For the petitioner -

For RP -

For the Respondent -

MEMO OF PARTIES



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21/11/18 1

M/s STORES SUPPLY (INDIA) AGENCY

Having registered office at:

705, Akash Deep Building,

26-A, Barakhamba Road,

New Delhi-110001

... Applicant / Financial Creditor

VERSUS

M/s I.E. TRADING COMPANY PRIVATE LIMITED

Having its registered office at:

A-119, Okhla Industrial Area,

Phase-II, New Delhi-110049

...Respondent/ Corporate Debtor

Judgment delivered on: 21.11.2019

JUDGMENT

PER- SH. HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

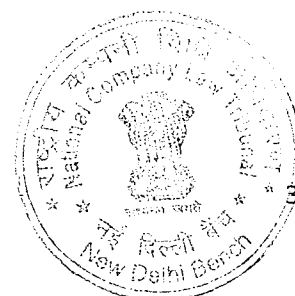
1. This is an application filed by the Resolution Professional under Section 33 (2) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for passing an order for liquidation of the corporate debtor, M/s I.E. Trading Company Private Limited.
2. Facts in brief are that the Operational Creditor, M/s Stores Supply (India) Agency had filed an application bearing no. IB-



493(ND)/2018 under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s I.E. Trading Company Private Limited. The said application was admitted by this tribunal vide order dated 13.07.2018 and Mr. Sanjay Agarwal was appointed as Interim Resolution Professional (IRP).

3. In terms of 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 24.07.2018. 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, which comprised of sole financial creditor, the applicant herein. In its first meeting held on 16.08.2018, Committee of Creditors appointed the IRP to act as Resolution Professional (RP).
5. The relevant portion of minutes of 3rd meeting of CoC dated 20.10.2018 has been reproduced below for ready reference:

"ITEM NO. 4



***To discuss and decide further Course of action(s)
to be taken by RP as per the IBC-2016 in relation
to ongoing CIRP against the Corporate Debtor***

... Chairman / RP informed the CoC that he has put forth before all the relevant facts & information available with him and now it is upto CoC to decide further course of action.

... Mr. S K Gupta & Mr. Pawan Chowdhary both the members who constitute CoC were of the opinion that looking to facts that there are no business operations, no tangible assets except one book debt which is disputed, there is no possibility of any resolution applicant who may come forward to take liabilities of corporate debtor. Thus, they were of the opinion that the issuance of 'expression of interest' is just wastage of time and money with no possibility of any positive outcome.

After due consideration, both the CoC members were of the view that there is no other option except to go for liquidation under the code. The chairman/RP then read out the provisions of section 33 (2) of the IBC-2016 and



informed the CoC that a resolution to liquidate the Corporate debtor needs to be passed with requisite 66% vote share of CoC.

.....

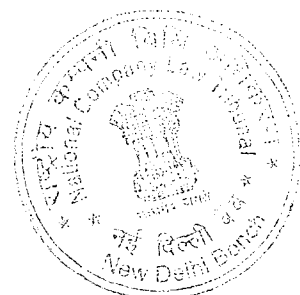
MATTERS TO BE VOTED UPON

RP proposed the following item for voting to the COC members: -

1. To discuss and decide further course of action(s) to be taken by RP as per the IBC-2016 in relation to ongoing CIRP against the Corporate debtor.

The matter was discussed in detail and after discussion the following resolution was passed unanimously:

"Thus both the members of CoC unanimously with 100% vote share resolved that Corporate debtor should be liquidated in accordance with the provisions of the IBC-2016 and authorized the 'Resolution Professional' (RP) to file the application before the AA u/s 33 (2) of IBC-2016."

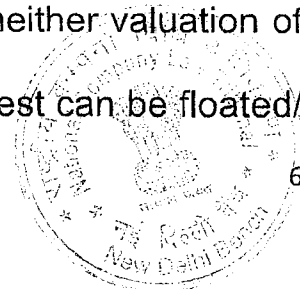


2. To take a note and approve the running cost incurred by RP so far based on time (no. of days) devoted by RP in relation to CIRP.

The matter was discussed in detail and after discussion the following resolution was passed unanimously:

“After the discussion, both the members of the CoC representing 100% vote share of CoC accepted the proposal of RP and approved fee to be paid to him on being appointed as liquidator @ Rs. 21000/- (Rupees Twenty One Thousand) per actual man day deployed subject to maximum of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousands) per calendar month plus taxes and all expenses to be incurred on or by him while carrying out his duties and obligations as a liquidator as per the provisions of the code.”

6. The Resolution Professional discloses that no further assets remain for realisation in the company and corporate debtor has no potential assets including intangible assets against which resolution process is to be carried out, hence neither valuation of the assets can be done nor expression of interest can be floated/



invited. There is practical impossibility to continue the resolution process against corporate debtor. The CoC in its third meeting dated 20.10.2018 after elaborate discussions and deliberations, passed the following resolution with 100% vote share:

- a) That the liquidation of the Corporate Debtor, is recommended;
- b) That the RP is requested to file application before the Adjudicating Authority under Section 33 of the Code;
- c) That the Mr. Sanjay Agrawal, the RP be recommended to be appointed as liquidator;
- d) that fees payable to the liquidator for the conduct of the liquidation proceedings shall be Rs. 21,000/- (Rupees Twenty One Thousand) per actual man day deployed subject to maximum Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) per calendar month plus taxes and all the expenses to be incurred on or by him while carrying out his duties and obligations as a liquidator as per the provisions of the code.



7. The Resolution Professional (RP) submitted the present application no. CA- 126(ND)/2018 highlighting that the financial & legal position of the company as follows:

- a. Corporate Debtor is not having business operations for last more than 5 years and there is no operating revenue. It also does not have any employee.
- b. There is no tangible asset except one trade receivable, recoverable from one related party to the tune of Rs. 131.79 lacs excluding interest and one trade payable to the tune of Rs. 141.06 lacs excluding claim of interest which constitute 98.93% of the total of two claims received by IRP.
- c. Debt (Trade receivable) due from related party namely 'D B Engineering private Limited' pertains to the various bills against which supply of goods were made during the period from 24.04.2013 to 04.06.2013.

However, last payment made by Company to Corporate Debtor was on 11.09.2015.

- d. Debt (Trade receivable) is disputed by the debtor of Corporate debtor on the grounds primarily that as per the section 11 (a) of IBC-2016 a Corporate Debtor undergoing



CIRP cannot initiate CIRP against its debtors and that the said debt is time barred under the limitation act.

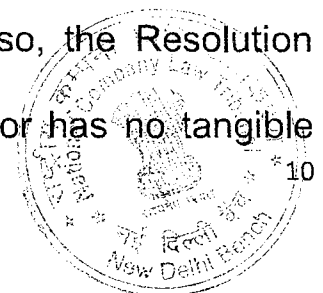
e. Trade receivable and payable is duly reflected and matched with each other in audited financial statements of both the Companies for the financial year ended as on 31.03.2015.

8. Mrs. Anuja Beri, ex-director of the corporate Debtor has filed her reply to the present CA under consideration, In her reply she raises objections stating that the present application suffers from lack of bona-fides, the present application has been preferred without making any sincere and serious efforts towards the resolution of the Corporate Debtor in as much as various mandatory provisions and regulations under IBC have not been complied with by the RP.

9. In its rejoinder the applicant, states that, it is specifically denied that the RP/ Applicant has preferred this application without making any sincere and serious efforts towards the resolution of the Corporate Debtor. It is denied that mandatory provision of the IBC has not been complied by RP/Applicant. The specific compliances have been made and status reports have been filed regularly by the RP/Applicant in relation to the said compliances.



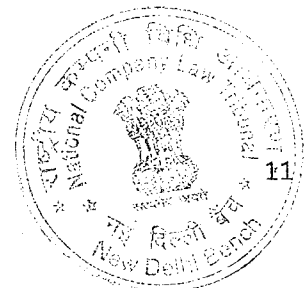
10. In compliance of the order dated 02.09.2019, passed by this bench, this bench had directed the RP to file the true copies of the affidavit of ex-director Mr. Karan Beri in support of liquidation application, served on him by the counsel of Mr. Karan Beri, Mr. Sachit Dhawan.
11. The voting sheet of the 3rd meeting of CoC held on 20.10.2018 is on record. The consent of liquidator in Form AA is also on record.
12. In the aforesaid factual background and in the absence of any resolution plan; there is no other alternative but to seek for liquidation of the corporate debtor under Section 33 of the Code.
13. During the pendency of present application, the Mrs. Anuja Beri, the Ex-director, of the Corporate Debtor has filed a CA No. 516/ND/2019, for setting aside the order dated 31.10.2019 passed by this bench for reserving order on the application filed by RP to initiate liquidation proceedings. However, the same is hereby, dismissed through this order, as the Applicant in CA No. 516/ND/2019 has not given any cogent reasoning as to why the said order should be set aside and also, the Resolution Professional states that the Corporate Debtor has no tangible



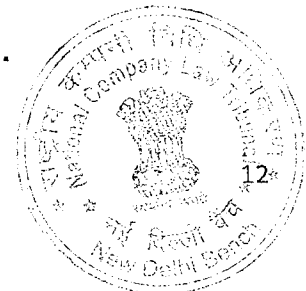
assets for realization, against which resolution process could be carried out.

14. As a sequel to above, the application is allowed, ordering liquidation of the corporate debtor, M/s. I.E. Trading Company Private Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

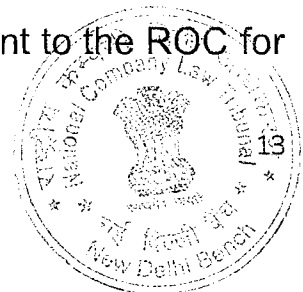
1. Mr. Sanjay Agrawal resolution professional holding registration no. IBBI/IPA-001/IP-P00494/2017-18/10882, is appointed as Liquidator in terms of Section 34(1) of the Code;
2. Mr. Sanjay Agrawal is directed to issue Public Announcement stating that the corporate debtor is in liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;



3. 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;
4. 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;
5. 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;
6. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.



7. He shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued and preferential transactions etc.
8. 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.
9. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.
15. C.A. 126(ND)/2018 filed in IB 493(ND)/2018 is disposed of in the aforesaid terms.
16. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today. A copy of this order be also sent to the ROC for



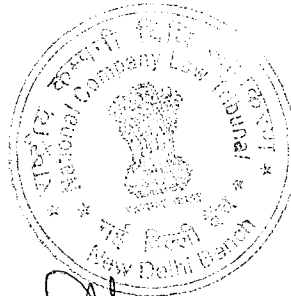
updating the Master Data. ROC shall send compliance report to
the Registrar, NCLT.

SD/-

(HEMANT K. SARANGI)
MEMBER (TECHNICAL)

SD/-

(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)



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21/11/19

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Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003

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