

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
Kolkata

IA No. 905/KB/2018
in
CP(IB)No.110/KB/2018

Coram: Shri M.B. Gosavi Hon'ble Member(J)

In the Matter of:

An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the Matter of:

An application under Section 60(2) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2013 and section 12(2) of the Insolvency and Bankruptcy Code, 2016 read with regulation 40 of the Insolvency and Bankruptcy Board of India Regulations, 2016.

In the Matter of:

Affinity Finance Services Pvt. Ltd., having its registered office at Vikash Singh, Advocate, C/o- R. Singh & Associates, "Hastings Chambers", Room No. 15, 2nd Floor, Kolkata- 700001 and for correspondence E-253, Saraswati Kunj Apartment, 25, I.P. Extensions, Patparganj;

....**Operational Creditor**

-Versus-

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In the Matter of:

Kiev Finance Limited, having its registered office at Room No. 26, 133, Canning Street, Kolkata- 700001;

...**Corporate Debtor**

Counsels appeared:

Resolution Professional

1. Ms. Sonu Jain, Resolution Professional

For Committee of Creditors

1. Mr. Vikash Singh, Advocate
2. Mr. Sarathi Dasgupta, Advocate

For Corporate Debtor

1. Mr. Satish Kr. Sharma, Advocate

For Operational Creditor

1. Ms. Pallavi Ghosh, Advocate

Date of pronouncement of order: 20th December, 2018.

ORDER

Per Shri Madan B. Gosavi, Member (J):

1. This application is filed by the Liquidator under section 12(2) read with section 60(2) of the Insolvency and Bankruptcy Code, 2016 with a

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request to recall and revoke the order of liquidation of the Corporate Debtor passed by this Adjudicating Authority on 10/09/2018. This application is filed on the ground that after order of liquidation is passed, one prospective Resolution Applicant by name M/s Nigania Promotors Private Limited has approached the Resolution Professional and showed an interest to submit a resolution plan for the Corporate Debtor.

2. The following facts are not in dispute:-

- (i) CP(IB)No.110/KB/2018 is filed by M/s Affinity Finance Services Pvt. Ltd. against the Corporate Debtor M/s Kiev Finance Ltd. under Section 9 of the Insolvency and Bankruptcy Code. This Adjudicating Authority vide order dated 28.02.2018 admitted the Corporate Debtor in Corporate Insolvency Resolution Process. Ms. Sonu Jain, Pr. CA was appointed as Interim Resolution Professional.
- (ii) The IRP made public announcement of CIRP of the Corporate Debtor and called upon the creditors of the Corporate Debtor to submit their claims along with the proof. She formed the Committee of Creditors. The Committee of Creditors in first meeting dated 27.03.2018, confirmed the appointment of Interim Resolution Professional as the Resolution Professional.
- (iii) The RP issued public notice calling upon the expression of interest/resolution plan from the prospective Resolution Applicant. The RP held six meetings of the CoC but the CoC did not receive any resolution plan for the Corporate Debtor.

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(iv) CIRP period of 180 days was over on 26.08.2018. CoC in its meeting dated 29.08.2018, passed a resolution and instructed the RP to file an application for liquidation of the Corporate Debtor under Section 33 of Insolvency and Bankruptcy Code because no resolution plan was received.

(v) Accordingly, this Adjudicating Authority on 10.09.2018 passed the order of liquidation of the Corporate Debtor. The RP was appointed as the Liquidator.

3. The Liquidator filed this application under Section 12(2) of the Insolvency and Bankruptcy Code for extension of CIRP period for further 90 days and also to recall the order of liquidation of the Corporate Debtor. It is stated that after the CoC meeting dated 29.08.2018 and before this Adjudicating Authority passed order of liquidation dated 10.09.2018, on 04.09.2018 itself M/s Nigania Promoters Private Limited approached the RP and showed desire to submit a resolution plan for the Corporate Debtor. Immediately on 08.09.2018, the RP called a meeting of CoC to discuss the plan. The CoC instructed the RP to move an application before this Adjudicating Authority to get extension of CIRP period by 90 days. However, before the RP could approach this Adjudicating Authority, the order of liquidation of Corporate Debtor was already passed. Hence, this application is filed for recalling of that order.

4. I heard Ld. Resolution Professional in person and Ld. Counsel for Committee of Creditors. Both of them conceded to the fact that there is no provision in Insolvency and Bankruptcy Code conferring jurisdiction on this Adjudicating Authority to review or recall its own order. Ld. Counsel for the Committee of Creditors

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submitted that though there is no express provision in the Code or in National Company Law Tribunal Rules to allow this Adjudicating Authority to pass an order of recall of its earlier order but this Authority may invoke its inherent jurisdiction and recall the order. He further submitted that there is no provision to bar this Authority to pass such order and such order would be in the tune with the statement of object of the Insolvency and Bankruptcy Code i.e. resolution first and liquidation later.

5. He further submitted that even Rule 9 of the Companies (Court) Rules 1959 confers inherent power on Company Courts to pass such orders which are necessary for ends of justice. In this case, order of liquidation of the Corporate Debtor is not at all in the interest of any of the stakeholders.
6. In this case, on 27.08.2018, the RP submitted before this Authority that CIRP period of 180 days is over and she did not receive any resolution plan. She further submitted that the CoC has taken decision to recommend this Adjudicating Authority the order of liquidation of the Corporate Debtor. Upon this, this Authority directed the RP to file final progress report and the matter was adjourned on 04.09.2018. On 04.09.2018, the Authority heard submissions made by the RP and matter was reserved for order. On 10.09.2018, this Authority passed the order of liquidation of the Corporate Debtor.
7. It is stated by RP on 04.09.2018, M/s Nigania Promoters Private Limited had approached her with EOI. She conveyed meeting of CoC on 08.09.2018. Committee of Creditors directed the RP to file application for extension of CIRP period but the application was filed on 11.09.2018 i.e. after order of liquidation passed by

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this Authority. It was expected from the RP to approach this Authority on or before 10.09.2018 with request to reserve the order of liquidation. But the RP did not approach this Authority in time.

8. Be that as it may, on 10.09.2018, order of liquidation of the Corporate Debtor is already passed by this Authority. Real question is whether this Authority can recall, review and revoke its own order when the order of liquidation passed by this Authority is appealable order under section 61 of Insolvency and Bankruptcy Code.


9. Ld. Counsel for the Committee of Creditors submitted that this Authority may pass such order invoking its inherent power under Rule 9 of Companies (Court) Rules 1959 or under Rule 11 of NCLT Rules. I have considered these submissions. At the outset, it is made clear that when the appeal is provided against the order of this Authority, inherent powers could not be used to circumvent the procedure. Secondly, as the NCLT Rules are made applicable even to the Adjudicating Authority under Section 5(1) of the Insolvency and Bankruptcy Code, the Rules under Company (Court) Rules 1959 cannot be invoked because they are replaced by NCLT Rules. The order of liquidation of the Corporate Debtor passed by Authority cannot be reviewed or revoked as prayed by RP. It is also pointed out that the RP can sell the Corporate Debtor as a going concern as per Regulation 32 (c) of IBBI (Liquidation process) Regulation 2016. Since this Authority cannot review its own order, I hold that this application is not maintainable. I pass the following order.



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ORDER

1. IA No. 905/KB/2018 in CP(IB)No.110/KB/2018 stands rejected.
2. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


20/12/2018
(M.B. Gosavi)
Member (Judicial)

Signed on this, the 20th day of, December, 2018.

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