

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM

Shri V. P. Singh,
Member (J)
&
Shri Jinan K. R.,
Member (J)

COMPANY PETITION (I. B.) NO. 186/KB/2017

In the matter of:

The Insolvency and Bankruptcy Code, 2016

-And-

In the matter of:

Section 7(1) 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:

M/s. Naviplast Traders Private Limited and Others

....Applicants/Petitioners

-Versus-

M/s. R G Shaw & Sons Pvt Ltd

....Corporate Debtor/Respondent

Counsels present on 07/12/2017:

For the Petitioners:] Mr. Kanishk Khetan, Advocate

Resolution Professional:] Mr. Sumit Binani

Date of pronouncement of order: 15-12-2017

ORDER

Per Shri V.P.Singh, Member(J):

An application for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, was filed against R G Shaw & Sons Private Limited (hereinafter referred to as "Corporate Debtor") by Naviplast Traders Private limited & Others (hereinafter referred to as "Petitioners"), which was admitted by our order dated 12th April 2017. Shri Sumit Binani was appointed as the Interim Resolution Professional, who was later confirmed as the Resolution Professional (from now on referred to as "RP") by our order dated 26th July 2017.

Upon admission of the application, the IRP made a public announcement regarding Section 13(2) and 15 of the I & B Code, 2016 read with Regulation 6 of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016 (in short "CIRP Regulations"). The IRP filed his First Progress Report on 28th April 2017, wherein, he stated that the Corporate Debtor had not been regularly functioning for the past two years and the last financial

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audit of the annual accounts of the Corporate Debtor was conducted from 1st April 2013 to 31st March 2014. After that, the accounts of the Corporate Debtor have not been audited. It is further stated that corporate debtor has failed to provide its books of accounts and other financial information sought by the IRP. As per the First Progress Report, the IRP had repeatedly asked information from the Promoter/Directors of the Corporate Debtor, but he had not been able to provide such information to the IRP.

The IRP constituted the Committee of Creditors (from now on referred to as "CoC") on 5th May 2017 and submitted the Report certifying the CoC and the List of Creditors on 9th May 2017.

Shri Sumit Binani has conducted nine meetings of the CoC during the Resolution Process and filed minutes of all such meeting with the Hon'ble Bench under eight Progress Reports.

As per the Reports of the RP, the Promoter/Directors have shown total non-cooperation to the RP in providing the relevant information and have made false representations before the CoC. Due to the lack of information, the IRP was not able to appoint Registered Valuers and was also not able to prepare the Information Memorandum.

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Upon the above submissions by the RP, we had also directed to issue notice against the Promoter/Directors of the Corporate Debtor by our order dated 3rd July 2017. We had also directed the Promoter/Directors to provide relevant information to the RP in our orders dated 28th April 2017 and 13th July 2017, but as submitted by the RP, they have not complied with the Court's order.

The Resolution Process of the Corporate Debtor was to be completed by 8th October 2017. By recommendation of the CoC and an application filed by the RP, we extended the period of the CIRP by 60 days, which ended on 7th December 2017. The extension was granted on the basis that the existing Promoter/Directors of the Corporate Debtor had expressed their interest in the submission of Resolution Plan. However, as per the Minutes of the Seventh CoC meeting held on 6th November 2017, the RP submitted that extension sought by the RP by the interest of the Promoter/Directors to submit the Resolution Plan was also a false representation of the Promoter/Directors.

Given the above, on the recommendation of the CoC, the RP also applied for the Insolvency and Bankruptcy Board of India (IBBI) requesting IBBI to file a complaint against the Promoter/Directors of the Corporate Debtor under Section 236 of the I & B Code, 2016. A copy of this application has also been submitted to us in the Seventh Progress Report filed by the RP on 29th November 2017.

In the Minutes of the Ninth CoC Meeting held on 6th December, 2017, the RP has stated that due to the recent ordinance which has amended the I & B Code, 2016, the existing Promoters and the guarantors of the Company who had earlier promised to submit a resolution plan are now also ineligible to present the resolution plan in view of the newly introduced provisions of Section 29A of the I & B Code, 2016. Furthermore, since the extended resolution process period of the Corporate Debtor is expiring on 7th December 2017, there is hardly any time left for inviting expressions of interest from any other potential resolution applicants.

He stated that liquidation of the Corporate Debtor was deliberated in such meeting and all the members of the CoC with 100% voting share were of the unanimous view that considering the above mentioned situation, the Adjudicating Authority might be approached by the Resolution Professional for passing a liquidation order of the Corporate Debtor.

It was also unanimously decided with 100% voting share by the CoC members that the Resolution Professional be appointed as the Liquidator to carry the liquidation process of the Corporate Debtor.

Since statutory time limit of 180 days plus 60 days for submission of Resolution Plan has expired, therefore corporate Debtor shall go under liquidation as per provision Chapter III of

Insolvency & Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Liquidation Process Regulation), 2016.

ORDER

Given the above, we hereby order the liquidation of the Corporate Debtor with effect from 8th December 2017 in the manner as laid down in Chapter III of the I & B Code, 2016 with the following further orders:

1. Shri Sumit Binani is appointed as the Liquidator.
2. Shri Sumit Binani is directed to issue Public Announcement as per Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016.
3. The registry is directed to communicate this order to the Registrar of Companies, West Bengal and Insolvency and Bankruptcy Board of India.
4. The order of moratorium passed under Section 14 of the I & B Code, 2016 shall cease to affect, and a new moratorium under Section 33(5) shall commence.
5. This order is deemed to be a notice of discharge to the officers, employees and workers of the Corporate Debtor as per Section 33(7) of the I & B Code, 2016.
6. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of the I & B Code, 2016.

Copy of this order be sent to the Liquidator for taking necessary steps.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

List the matter on .. 5-01-2018

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(Jinan K.R.)
Member (J)

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(V.P Singh)
Member (J)

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Dated, this the 15th day of December, 2017