

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
MA 48/2018 in CP 720/2017
(Under Section 33 of IBC, 2016)

Amit Gupta, Resolution Professional... Applicant

In the matter of

Bank of India ... Petitioner

Vs

HDO Technologies Limited ... Respondent

Order delivered on 02.07.2018

Coram: Hon'ble Shri B. S. V. Prakash Kumar, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Applicant : Mr. Amit Gupta, Mr. Vishvas Deo, Advocates, i/b Phoenix Legal.

For the Financial Creditors: Adv. Sandhya Nambidi, i/b Law Focus.

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

Order pronounced on 25.06.2018

The Resolution Professional initially filed MA 48/2018 seeking approval of the resolution plan with consequent directions basing on the minutes of the combined meeting of the Committee of Creditors of the Corporate Debtor held on 15.01.2018 and on 16.01.2018 looking at in-principle approval alleged to have been given by the Financial Creditors of the Corporate Debtor.

2. On perusal of this application, one of the Financial Creditors, namely Bank of India has 70% of the voting share in the COC, another Financial Creditor namely Andhra Bank has almost 30% voting share in the COC. Looking at the minutes of this Committee of Creditors, Resolution plan submitted by Pennar Industries Ltd and Eight Finance Pvt Ltd was put for voting because the last date of CIRP for the Corporate Debtor (HDO Technologies Ltd) was 23.1.2018 by the Resolution Professional, upon which as the Financial Creditors mentioned that their managing committee meetings/competent authority meetings are scheduled to be held later in the month, they informed that for the decision on the resolution plan would be taken in the said meetings, they were not in the position to affirm their ascent

on the Resolution plan submitted by the Resolution applicant. The officers attended on behalf of the Financial Creditors namely, Bank of India and Andhra Bank made it clear that they are authorised by their competent authority to vote for in-principle approval and the final approval will be conveyed to the Resolution Professional once approved by their competent authority.

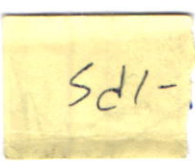
3. In addition to the above noting made in the minutes, the Resolution Professional mentioned in the same minutes that as per the Insolvency & Bankruptcy Code, 2016, the approval of Financial Creditors has to be unconditional and there is no provision of in-principle approval in the Code. The COC authorised the Resolution Professional to submit the resolution plan to the Adjudicating Authority with the said in-principle approval and support the same with the final approval once conveyed by the Financial Creditors. The Resolution Professional further conveyed in the minutes that among other provisions of the Code, the Adjudicating Authority may reject the plan based on the unconditional approval not in place.

4. Despite there is no unconditional approval from the financial creditors having 100% voting share in the COC, this Resolution Professional, on 18.1.2018, filed this application for approval of Resolution plan by this Authority. It is also pertinent to mention here that 270 days' timeline prescribed under the Code was expired on 23.1.2018

5. In the backdrop of it, the very Resolution Professional filed an Affidavit on 30.1.2018 stating that no sooner than the Resolution Professional filed this application on 18.1.2018, he had received an email from the Authorised Representative of Bank of India (constituent of COC) intimating him of the rejection of the resolution plan by the Bank of India, which has 70% of the voting share in terms of the Code based on its share of the admitted claim saying that their competent authority has declined to approve the resolution plan submitted by Resolution Applicant Pennar Industries Ltd, therefore submitted negative mandate to the Resolution plan of Pennar Industries Ltd., accordingly, requested him to withdraw the resolution proposal of Pennar Industries Ltd immediately. As to another bank having 30% voting share, i.e. Andhra Bank, has never communicated their final approval to this Resolution Professional in respect to the resolution plan pending for final approval of the Financial Creditors. In the light of the above developments, the Resolution Professional filed this affidavit seeking rejection of the application filed by him and also to pass such other orders as it may deem fit, proper and necessary for passing an order of liquidation on a going concern basis or otherwise.

6. On perusal of this Affidavit filed by the RP, this Bench having noticed that the Affidavit moved by the RP to get an order under Section 33(1) of IB Code, 2016 and the Regulations thereof, this Bench hereby orders as follows:
- a. This Bench hereby orders the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing a Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to RoC under which this Company has been registered.
 - b. As to appointment of Liquidator, the Resolution Professional i.e. the applicant herein is hereby directed to act as a Liquidator for the purpose of liquidation with all powers of the Board of Directors, key managerial persons and the partners of the Corporate Debtor shall cease to have effect and hereby vested in the Liquidator. The personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified under Regulation 4 of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.
 - c. Since this liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the Code.
 - d. This liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
7. The Registry is hereby directed to communicate this order to the parties, within seven days from the date order is made available.


RAVIKUMAR DURASAMY
Member(Technical)


B. S. V. PRAKASH KUMAR
Member (Judicial)