

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

MA 2161/2019 in CP(IB)2295(MB)/2018

(Under Section 33 of the IBC, 2016)

Mr. Ashish ArjunkerRathi

... Applicant/RP

In the matter of

American Express Banking Corporation. Financial Creditor

Vs

Sunil Hitech Engineers Ltd

... Corporate Debtor

Order delivered on 25.06.2019

Coram:

Hon'ble Member (Judicial) Shri V.P. Singh

Hon'ble Member (Technical) Shri RavikumarDuraismy

For the Applicant: Adv. Rajesh Dubey, RP Ashish ArjunkerRathi

Member(Judicial) Shri V.P. Singh

Member (Technical) Shri RavikumarDuraismy

ORDER

MA 2161/2019 has been filed under Section 33 (1) (a) of the Insolvency and Bankruptcy Code, 2016, seeking liquidation of the Corporate Debtor. Applicant Resolutions Professional, Mr Ashish ArjunkerRathi has filed this application stating that Petition filed under section 7 was admitted by order of this Bench dated on 10.9.2018. Subsequently, CoC, in its first meeting, appointed the applicant as a Resolution Professional of the Corporate Debtor.

2. It is further stated that during CIRP, eleven meetings of CoC took place on different dates, details of which are given below for ready reference:

| CoC Meeting | DATE | CONVENED BY |
|-------------|------------|-------------|
| First | 06.10.2018 | IRP |
| Second | 31.10.2018 | IRP |
| Third | 20.11.2018 | IRP |
| Fourth | 14.12.2018 | IRP |
| Fifth | 11.01.2019 | IRP |
| Sixth | 27.02.2019 | IRP |
| Seventh | 15.04.2019 | IRP |
| Eighth | 10.05.2019 | IRP |
| Ninth | 27.05.2019 | IRP |
| Tenth | 03.06.2019 | IRP |
| Eleventh | 06.06.2019 | IRP |

3. It is further stated that in the 10thCoC meeting held on 3.6.2019, the Resolution Professional apprised the CoC that the Employee Trust had come forward to put a resolution plan for the Corporate Debtor in the last CoC meeting, and the CoC Members could not consider the plan as the same was non-compliant. The RP further stated that after certain discussions and deliberations, the CoC members decided to discuss broad points and commercial points with the Employee Trust. Hence, the RP invited representatives of the Employee Trust to the meeting for discussion to understand their proposition. After that, the representatives of the Employee Trust presented their offer. Subsequently, it was pointed out to the Employee Trust that there are several infirmities in the resolution plan/offer submitted by them. The RP has pointed out that the resolution plan was unsigned, EMD of Rs. 1,00,00,000/- (Rupees One Crore) was not submitted, undertaking under Section 29A of the Code not being submitted, Plan stating that only a part of CIRP costs shall be paid and the resolution plan was not specified as to how the cause of default would be addressed.

4. It was further added that the resolution plan did not meet the net worth criteria specified in the expression of interest issued by the Applicant, and the source of funds was also not disclosed. The CoC pointed out certain commercial points, some key the offer was too low; tenure of repayment was long; interest payment was on simple interest; instruments of OCRPS required to be changed to NCDs; Bank Guarantee proposed to be protected required to be clearly defined clause for accelerated pre-payment of debt in case of surplus cash flows to be provided.

5. After that, in the 11thCoC meeting held on 06.06.2019, the applicant informed the CoC that no plan had been received till 269th day of the CIRP of the

Corporate Debtor. The statutory period of 270 days of ended on 7.6.2019. The applicant has filed the minutes of the 11thCoC meeting, which shows that Agenda Item No.4 was relating to the discussion of the steps about the resolution process of the company. It is stated that a summary of the entire process followed for the CIRP of the Corporate debtor was presented in the CoC meeting held on 3.6.2019. The RP informed the CoC members that as per discussion in the last CoC meeting held on 3.6.2019, members had given the prospective Resolution Applicant an opportunity to submit a legally compliant plan and also to incorporate the suggestions of the CoC members on the commercial points. However, no plan has been received till 269th day of the CIRP. As the 270th day was ending, RP stated that resolution for liquidation of the Corporate Debtor might be passed, however, the members of the CoC stated that as was discussed in the earlier CoC meeting, there is no need for separate resolution since as per the provisions, if as per the efflux of time no resolution plan is received then Corporate Debtor would go for liquidation, and upon the expiry of 270 days, the applicant shall file an application for liquidation. Consequently, no Resolution Plan compliant with the terms of Section 30 (6) of the Code has been submitted to the Applicant within 270 days.

6. It is pertinent to mention that within the statutory period of 270 days, no resolution plan has been approved. Therefore, the Applicant has filed this application for the liquidation of the Corporate Debtor in terms of Section 33(1)(a) of the Code. Given the provisions of Section 33(1)(a) of the Code, this application deserves to be allowed.

ORDER

7. MA 2161/2019 is allowed, and we at this moment pass the order of liquidation Section 33 of IBC as follows:

- a. That the Corporate Debtor is 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 the appointment of Liquidator, Mr. Anil Jerome Menezes is at this moment appointed to act as a Liquidator for the liquidation of Corporate Debtor company with all powers as envisaged in the Code.

- c. On such appointment under Section 34 of the Code, all powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor shall cease to affect and shall be vested in the Liquidator.
 - d. That the personnel of the Corporate Debtor shall extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
 - e. That the 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.
 - f. Since this liquidation order has been passed, subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, in the event of initiation of a suit or legal proceeding by the liquidator on the corporate debtor behalf, it may initiate such proceedings with prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the Code.
 - g. 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 continuing during the liquidation process by the Liquidator.
8. Moratorium declared vide Order dated 10.9.2018 in CP No.: 2295/2018 ceased to exist.
 9. The registry is directed to communicate this order to the Liquidator immediately even by way of e-mail.
 10. MA 2161/2019 is disposed of accordingly.

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-
V. P. SINGH
Member (Judicial)