

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**CORAM: Shri Jinan K.R., Member (Judicial)
&
Shri Harish Chander Suri, Member (Technical)**

IA (IB)No...../KB/2020

In

C.P.(IB) No.1290/KB/2018

In the matter of:

An Application for initiation of corporate insolvency resolution process by an operational creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with applicable provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016.

And

In the matter of:

An application under section 33(2) of the Insolvency and Bankruptcy Code 2016.

In the matter of:

Punjab National Bank, having its head office at plot no.4, sector 10 Dwarka New Delhi 110075 and carrying on business, inter alia from its branch office known as Asset Recovery Management Branch Kolkata, situated at 18A, Brabourne Road, Mezzanine Floor, PS-Hazra Street , Kolkata-700001.

-----Financial Creditor

Versus

Jas Infrastructure And Power Limited , having Its Registered Office At Fe-83 Sector III Salt Lake City Ground Floor Kolkata-700106.

----Corporate Debtor

In the matter of:

Mr. Animesh Mukhopadhyay, Resolution Professional of Jas Infrastructure And Power Limited with Registration Number IBBI/IPA-001/IP-P00124/2017-18/10266.

...Applicant

Counsels on Record:

For the Resolution Professional (Applicant)

1. Mr. Animesh Mukhopadhyay, Resolution Professional
2. Mr. Utsav Mukherjee, Advocate

For Suspended Board of Director

1. Mr. Sandeep Bajaj, Advocate
2. Mr. Satish Shikhande, AR of the Erstwhile Management

Date of hearing : 17th July, 2020

Date of pronouncement of Order: 17th July, 2020.

ORDER

Per Shri Jinan K.R., Member(J)

1. Mr. Animesh Mukhopadhyay, Resolution Professional filed this unnumbered application under Section 33(2) of I & B Code, 2016 for passing an order requiring the corporate debtor (CD)/ M/s Jas Infrastructure and Power Limited to be liquidated in the manner laid down in Chapter III, Part II of the I&B code.

2. This application was filed requesting for urgent hearing in the matter since there has been much delay due to the country wide lockdown in the pandemic situation. Having been satisfied with the grounds set up for moving this application before lifting the lockdown, the application is admitted and listed for hearing on today (17.07.2020).

3. Brief Facts:

4. Corporate Debtor was admitted in Corporate Insolvency Resolution Process by order dated 16th October 2019 in an application filed by the Punjab National Bank/Financial Creditor for committing a default in paying the financial debt of Rs.689,19,83,028.19/- (Rs. Six Hundred Eighty Nine Crore Nineteen Lacs Eighty Three Thousand Twenty Eight and Nineteen paise only) which includes interest up to 31.08.2018 to be payable to the Financial Creditor, Punjab National Bank. The applicant Mr. Animesh Mukhopadhyay was appointed as the Interim Resolution Professional.IRP was later on confirmed by the CoC as the Resolution Professional ("RP").

5. The IRP made a public announcement of CIRP of the Corporate Debtor by publishing notice in Newspaper. He thereby called upon the creditors of the Corporate Debtor to submit claims with proof. He formed a Committee of Creditors consisting of about nine financial creditors.
6. It is submitted by the RP that despite several requests and reminders, the suspended board of directors of the Corporate Debtor or its employees or the accounting firm were not providing the documents sought for by the Resolution Professional in order to proceed with the CIRP and consequently, thus Resolution Professional was filed an application under Section 19(2) of the IBC, 2016 and accordingly orders directing the Corporate Debtor to cooperate with the Resolution Professional were passed.
7. The Resolution Professional made publication of Form G to invite expressions of interest on 28th January, 2020 and there was interest expressed by three groups i.e. Refex Industries Limited, Vedanta group and Karuna Greentech Private Limited.
8. It is submitted by the RP that five CoC meetings were convened till 26th February 2020. It is submitted by the applicant that no resolution plan received from any applicant within the given date and not foreseeing any possibility of resolution. In the last CoC meeting dated 26th February the Committee of Creditor with 98.45% voting share voted in favour of liquidation of the Company and also voted for appointing Mr. Sajjan Kumar Dokania as Liquidator of the Corporate Debtor and the following resolutions were passed: -

Resolution No. 1

"RESOLVED THAT since no resolution plan is received, the consent of CoC be and is hereby accorded for the Liquidation of Jas Infrastructure and Power Limited (Corporate Debtor) which is recommended as per section 33(2) of IBC, 2016." is approved by 98.45% of the CoC members."

Resolution No. 2

"RESOLVED THAT RP is authorized to file for liquidation of the Corporate Debtor before the Hon'ble Adjudicating Authority." is approved by 98.45% of the CoC members."

Resolution No. 3

"RESOLVED THAT the consent of CoC be and is hereby accorded for the appointment of Mr. Animesh Mukhopadhyay (RP) as the Liquidator for Jas Infrastructure and power Limited (Corporate Debtor)." is rejected by 98.45% of the CoC members."

Resolution No. 4

"RESOLVED THAT the consent of CoC be and is hereby accorded for the appointment of Mr. Sajjan Kumar Dokania as the Liquidator for Jas Infrastructure and power Limited (Corporate Debtor)." is approved by 98.45% of the CoC members.

Resolution No. 5

"RESOLVED THAT the consent of CoC be and is hereby accorded for the fee of the liquidator in terms of Regulation 4(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations read with Regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 less 40% in case of Animesh Mukhopadhyay" is rejected by 98.45% of the CoC members.

Resolution No.6

"RESOLVED THAT the consent of CoC be and is hereby accorded for the fee of the liquidator in terms of Regulation 4(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations read with Regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 less 65% in case of Sajjan Kumar Dokania." is approved by 98.45% of the CoC members.

9. Heard the Ld. RP Mr. Animesh Mukhopadhyay, and his Counsel , Mr. Utsav Mukherjee and Ld.Counsel Mr. Sandeep Bajaj, for directors of the suspended board of the CD.

10. Ld RP referring to the resolutions passed by the CoC in the meeting held on 26th February,2020, submitted that a final progress report was prepared and sent to the registry by separate mail and showed his unwillingness in continuing the Liquidation process as the liquidator. According to him although he is willing to continue, the CoC's demand for reducing his fees at about 65% from the agreed rate, he could not continue and that a new insolvency professional is proposed by the CoC who agreed to give consent at a reduced rate of fee as approved by the above referred resolution No.6.

11. No body represented on the side of the CoC. As in CIRP the financial creditors have no right to propose the name of the liquidator in case the RP who had initiated CIRP is unwilling to continue or the CoC voted against him for continuing as the liquidator. As per section 34 of the Code, the Adjudicating Authority (AA) has the power to appoint the very same RP if he is willing to continue upon submission of fresh written consent. In the case in hand the CoC has voted against him only for the reason of non acceptance of the reduced rate of fees by the RP. When he was asked to continue, he showed his

unwillingness because the CoC has decided to change him. Therefore, it is unfair on us to allow the RP to continue as the liquidator at a rate of fees proposed by the CoC. The CoC has proposed one Mr. Sajjan Kumar Dokania an insolvency professional as the Liquidator.

12. The recommendation of CoC for replacement of RP appears to us not in consistence with section 34 of the Code. The reason for change in professional is that the RP was unwilling to reduce the fees and proposing an insolvency professional at a rate fixed by the CoC, not at all inspire our confidence. The financial debt of the applicant who initiated the CIRP has come to Rs.689,19,83,028.19/- (Rs. Six Hundred Eighty Nine Crore Nineteen Lacs Eighty Three Thousand Twenty Eight and Nineteen paise only). The proposed liquidator is not from Kolkata where the registered office is situated. He is from Bhopal. So it appears to us a senior insolvency professional who proved his/her competency before us to be appointed in this case as the liquidator. Accordingly we appoint Mr. Kannan Tiruvengadam CA, from the list published by IBBI subject to submission of written consent by him within one week.

13. This application was objected to by the directors of the suspended board of the CD. The Ld. Counsel Mr. Sandeep Bajaj appeared on behalf of Sh. Manoj Kumar Jayaswal, member of the Suspended Board of Corporate Debtor submitted that the claim of the original Financial Creditor ('FC') was barred by the law of limitation as it declared the accounts of the Corporate Debtor as NPA on 15.06.2015 whereas the Application u/s 7 of the Code was filed on 11.09.2018 i.e. after a gap of more than 3 years. According to him admission of the application on relying upon Balance Sheet as an acknowledgment of a time barred debt is held illegal by the Hon'ble NCLAT in "Sh. G. Eswara Rao Vs. Stressed Assets Stabilisation Fund & Anr." and "C. Shivakumar Reddy Vs. Dena Bank & Anr." and in the matter of "V. Padmakumar Vs. Stressed Assets Stabilisation Fund (SASF) & Anr." and therefore the order of admission is liable to be set aside and prays for keeping the present application in abeyance for a period of 2 weeks for approaching the Hon'ble NCLAT. The Corporate Insolvency Resolution Process was passed in the instant case by an order dated 16th October 2019. The objector has not so far obtained any favourable order reversing the order of admission. So also no appeal preferred by the objector is pending before the Appellate Tribunal or before the Hon'ble supreme Court, brought to our notice. Therefore we are not inclined to keep the application in abeyance as prayed for.

14. The above said discussion leads to a conclusion that for want of a resolution plan the CoC took a decision by 98.45% vote share of the financial creditors in terms of section 33(2) of the I&B Code. In view of the matter, we have no option but to pass the order of liquidation of the Corporate Debtor in the manner as laid down in the Chapter III of Part II of the I&B Code. Accordingly, we pass an order of liquidation of the Corporate Debtor upon the following directions: -

ORDER

(i) Corporate Debtor M/s. Jas Infrastructure And Power Limited having its registered office at Sector III Salt Lake City Ground Floor Kolkata-700106, in the state of West Bengal, is ordered to be liquidated.

(ii) CA. Kannan Tiruvengadam having Registration Number : IBBI/IPA-001/IP-P00253/2017-18/10482, registered Office Address : Netaji Subhas Villa, Flat No. 3C, 3rd Floor, 18 Karunamoyee Ghat Road, Near Dharapara, Tollygunge area , Kolkata- 700082; Phone Number: 9836969699 (Mobile) Office Number : 033-2420-2487 (Landline); Email ID : kalkannan@gmail.com is appointed as the Liquidator.

(iii) The Liquidator is directed to issue public announcement stating that the Corporate Debtor is in liquidation, in one of the leading English newspaper as well as in one vernacular newspaper having wide circulation where the registered office of the corporate debtor is situated as per Section 33(1) (b) (ii) of the Code read with Reg. 12 (1) of IBBI (Liquidation Process) Regulations, 2016.

iv) The Order of Moratorium passed under Section 14 of the I&B Code, 2016 shall cease to have effects and a fresh moratorium under Section 33 (5) shall commence.

(v) This order is deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33 (7) of I&B Code, 2016.

(vi) Since the Corporate Debtor company is a going concern, the liquidator is at the liberty to sell the Corporate Debtor company as a going concern as per the provisions of the Code and regulation.

(vii) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of the Insolvency and Bankruptcy Code, 2016.

(viii) Upon proceeding with the liquidation the Liquidator shall file a preliminary report as per regulation 5 read with Reg.13 of the IBBI (Liquidation) Regulations, 2016 at the registry within 75 days from the liquidation commencement date and continue to file progress reports as per Reg.15(1) within 15 days after the end of the quarter in which he is appointed.

(ix) The fee payable to the Liquidator shall form part of the liquidation cost as provided under Reg. 4(1) of the IBBI (Liquidation Process) Regulations, 2016.

(x) The free copy of this order is to be sent to the RP/Liquidator, Operational Creditor and the Corporate Debtor by email for information and for taking necessary steps.

(i) Unnumbered Application IA(IB)No...../KB/2020 in CP(IB)No.1290/KB/2018 stands allowed and disposed of. CP(IB)No.1290/KB/2018 stands disposed of as order of liquidation is passed.

(ii) Registry is directed to serve e-mail copy of the order to the concerned parties forthwith.

(iii) The Registry is directed to communicate this order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi.

(Harish Chander Suri)
Member(T)

(Jinan K.R.)
Member(J)

Signed on this, the 17th July, 2020.

Deeksha(steno)