

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO.1, MUMBAI BENCH

MA 682/2020 in C.P. (IB) 1239/MB/2018
(Under Section 33 of the IBC, 2016)

Mr Sanjay Gupta

...Applicant /
Resolution Professional

In the matter of:
Bank of Baroda

...Financial Creditor

Versus

Topworth Pipes & Tubes Private Limited

...Corporate Debtor

Order delivered on 12.06.2020

Coram: Hon'ble Member (Judicial): Smt Suchitra Kanuparthi
Hon'ble Member (Technical): Shri V. Nallasenapathy

For the Applicant: Mr.Rahul Gaikwad a/w Ms.Nikita Abhyankar, Advocates

ORDER

(pronounced on 26.02.20)

Per: *V. Nallasenapathy ,Member (Technical)*

1. The Applicant/Resolution Professional is before us with the following prayers:-

- i. This Hon'ble Tribunal be pleased to pass an order under Section 33(1) of IBC 2016 to liquidate the assets of the corporate debtor.*
 - ii. This Hon'ble Tribunal be pleased to appoint the applicant as the liquidator of the corporate debtor.*
 - iii. This Hon'ble tribunal be pleased to pass any other or further orders as may be deemed proper in the fact and circumstances of the case*
 - iv. For cost*
2. The applicant submits that on a section 7 petition filed by Bank of Baroda, Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor by an order of this tribunal dated 11.12.2018 and consequently the applicant was appointed as Resolution Professional in the place of the Interim Resolution Professional Mr. Kishan Gopal Somani, by a decision of the Committee of Creditors with 100% voting on 25.01.2019 and the same was also approved by this Tribunal by an order dated 11.02.2019. The applicant published form G inviting expression of interest from the prospective Resolution Applicants by publication in newspapers and on the website of corporate debtor and IBBI, New Delhi and the EoI was to be submitted by 12.03.2019. It is submitted that on 01.03.2019 the Hon'ble Bombay High Court by an order dated 01.03.2019 in CA No. 102/2019 in CP 175/2015 discharged the provisional Liquidator appointed for the Corporate debtor and accordingly the official Liquidator handed over the charge of the CD to the Resolution Professional on 12.03.2019.
3. Since only two EoIs were received and also there was request for extension for last date of submission of EoI from Prospective Resolution Applicants, the CoC extended the last date of receipt of EoI till 05.04.2019, appointed Deloitte Touche Tohmatsu India LLP, as process advisor and ratified the appointment of Grant Thornton India

LLP for conducting transaction audit and also decided to conduct cost audit as required under section 148 of Companies Act, 2013 for the financial years 2016-17, 2017-18, 2018-19 and 2019-20. On the request from Tata Steel DSL Limited, a Prospective Resolution Applicant, the last date for submission of EoI was extended to 15.04.2019 and a revised Form G was published and the PRAs were permitted to submit Resolution Plans by 20.05.2019.

4. It is submitted that EoI's were received from the below mentioned ten parties: -

1. *S.C. Agrawal;*
2. *Amruta Constructions Pvt. Ltd.;*
3. *Asiant Tubes Pvt. Ltd.;*
4. *Ratnamani Metals and Tubes Ltd.;*
5. *Shree Bajarang Tower and Ispat Ltd.;*
6. *Man Industries Ltd;*
7. *APL Apollo Tubes Ltd;*
8. *Welspuman India Ltd;*
9. *Megha Engineering and Infrastructure Ltd.;*
10. *Tata Steel Limited.*

The applicant issued the final list of Prospective Resolution Applicants on 10.05.2019.

5. The Process Advisor presented the Request for Resolution Plan (RFRP) which was approved by the CoC. The COC also approved the evaluation matrix. Some of the Prospective Resolution Applicants requested the Resolution Professional to extend the deadline for Submission of Resolution Plan.

6. On the basis of CoC decision for extension of 180 days of CIRP as provided under section 12 of the Code, the CIRP period was extended by 90 days from 10.06.2019 by an order of this Tribunal dated 06.06.2019.

7. In view of the claim filed by one another financial creditor and the admission of the same, the CoC was reconstituted during July 2019. The CoC, on the request of M/s Tata Steel Limited and M/s Welsman Corporation Limited and on the advice of the Process advisor extended the timeline to submit Resolution Plan till 22.07.2019. Due to certain issues regarding the land owned by the Corporate Debtor and due to appointment of land surveyor to sort those issues raised, CoC decided to extend the time for submission of Resolution Plan till 14.08.2019. Even though Two Resolution Applicant i.e. M/s Welsman Corporation Limited and M/s Ratnamani Metals and Tubes Limited submitted the Resolution Plan in time, the same could not be taken up for consideration in view of non receipt of valuation reports from the valuers. After receiving the valuation reports from the valuers during August 2019, which shows the average liquidation value of Rs. 182 Crores, the CoC formed a representative committee consisting of four unsecured creditors vis. State Bank of India, Punjab National Bank, Union Bank of India and Canara Bank along with the one unsecured creditor to negotiate with the Resolution Applicants. M/s Welsman Corporation Limited informed the applicant that it is not possible to improve their Resolution Plan and M/s Ratnamani Metals and Tubes Limited remained non-committal on improving the plan.
8. Since the CIRP period of 270 days was coming to an end on 06.09.2019 and the negotiations with the prospective Resolution Applicants were going on, the applicant filed an application before this Tribunal on 06.08.2019 in MA No. 2979/2019 for exclusion of 89 days period spent on litigation and the same was rejected by this Tribunal on 01.10.2019 and an appeal was preferred against the rejection before the Hon'ble NCLAT in CA No. 1098/2019, wherein the Hon'ble NCLAT directed the CoC to continue the process of consideration of Resolution Plans pending before it and the CoC in the meeting held on 21.11.2019, after

deliberating upon the Resolution Plans and on the basis of evolution matrix presented by the process advisor found that the Resolution Plan submitted by M/s Ratnamani Metals and Tubes Limited was the highest evaluated compliant Resolution Plan and the same was put up for voting by the CoC in the meeting held on 03.12.2019 but the said plan was rejected by the CoC.

9. The applicant further submitted that he has received two EoIs from Indorama Synthetic (India) Limited and GDPR India Limited and after discussion the CoC has given further time to submit the Resolution Plan by these two applicants. However no Resolution Plan was forthcoming from them and the same was informed to the Hon'ble NCLAT and Hon'ble NCLAT directed the CoC to seek orders for the liquidation of the Corporate debtor from the adjudicating authority.
10. Accordingly the CoC in their meeting held on 11.02.2020 resolved to liquidate the Corporate Debtor and decided to appoint applicant as the liquidator of the Corporate Debtor and the fees payable to him shall be as per regulation 4(2) of IBBI (Liquidation Process) Regulations 2016 and the other expenses as per actual.
11. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, we are of the view that this case is fit to pass liquidation order under sub-section 1 of section 33 of the Code as no resolution plan has been submitted before the Adjudicating Authority by the Resolution Professional, and accordingly, this Bench orders;
 - a. that the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.

- b. that the Resolution Professional herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
 - c. all the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
 - d. that the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
 - e. that the Liquidator will charge fees for conduct of the liquidation proceedings as provided in Regulation 4(3) of the IBBI (Liquidation Process Regulations), 2016.
 - f. that on having liquidation process initiated, subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the corporate debtor with prior approval of this Adjudicating Authority.
 - 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 continued during the liquidation process by the Liquidator.
12. The Liquidator appointed in this case is directed to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

13. MA is disposed of with the above directions.

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V NALLASENAPATHY
Member (Technical)

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SUCHITRA KANUPARTHI
Member (Judicial)