



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT - II)

Item No. 319
(IB)-108(PB)/2022
New IA-04/2024

IN THE MATTER OF:

CFM Asset Reconstruction Pvt Ltd

... Applicant/Petitioner

Versus

Micro Stock Holdings Pvt Ltd.

... Respondent

Under Section: 7 of IBC, 2016 (CIRP)

Order delivered on 04.03.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Sandeep Bajaj, Adv. Devansh Jain, Adv. Vasudha Chadha

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IA-04/2024: The prayer made in the captioned application reads thus:-

- a) "Pass directions for the Liquidation of the Corporate Debtor in terms with Section 33(2) of the Code;
- b) Pass an order for appointment of the Liquidator proposed by the CoC as mentioned in Paragraph IV. (w) of the present Application;
- c) Pass an order directing the members of the CoC to pay the pending CIRP costs and bear the CIRP costs till the pendency of the present Liquidation Application;"

It is the case of the Ld. Counsel appearing for the RP, despite repeated efforts, he could not receive any PRA for being considered by the CoC to revive the corporate debtor. According to him, in 12th meeting of CoC held on 17.10.2023 the Applicant (RP) informed the members of CoC as well as the PRA i.e. M/s Ocean Capital Market Limited that resolution plan submitted by M/s Ocean Capital Market Limited was non-compliant of some of the provisions stipulated in IBC, 2016 read with extant Regulations. According



to him, the Applicant vide e-mail dated 18.10.2023 asked the PRA to submit addendum plan as discussed in the aforementioned meeting (12th meeting). However, the PRA did not submit the required addendum to the resolution plan despite several reminders sent vide e-mail dated 25.10.2023, 31.10.2023, 06.11.2023, 07.11.2023, 08.11.2023. Para (s) of the application reads thus:-

S. "That in the 12th meeting of the CoC held on 17.10.2023, the Applicant informed the members of the CoC as well as the PRA i.e., Ocean Capital Market Limited, that the abovementioned Resolution Plan submitted by M/s Ocean Capital Market Limited was non-compliant of some of the provisions stipulated under the Code and the Regulations thereunder. Thus, the Applicant vide email dated 18.10.2023 asked the PRA to submit the addendum to the Resolution Plan as discussed in the aforementioned meeting. However, the PRA did not submit the said addendum to the resolution plan despite several reminders vide emails dated 25.10.2023, 31.10.2023 06.11.2023, 07.11.2023 and 08.11.2023. Copy of the Minutes of 12th CoC Meeting held on 17.10.2023 are annexed herewith and marked as ANNEXURE A-14. Copy of the emails dated 18.10.2023, 25.10.2023, 31.10.2023, 06.11.2023, 07.11.2023 and 08.11.2023 are annexed herewith and marked as ANNEXURE A-15."

2. In terms of the averments made in the application, the resolution plan being deficient and incomplete could be finally nixed by the CoC and was withdrawn by the PRA i.e. Mr. Vikash Agarwal, the authorized representative of M/s Ocean Capital Market Limited on 22.12.2023, in 14th meeting of CoC. Paras t and u of the application reads thus:-

t. "That in view of the incomplete and non-compliant Resolution Plan as per the provisions of the Code, the same was liable to be rejected by the members of the CoC as per Clause 5.3, 7(a)(iv) and 7(c)(i) of the Request for Resolution Plan ("RFRP"); however the members of the CoC in the 13th CoC meeting held on 15.12.2023, gave yet another opportunity to the PRA to rectify the shortcomings in the Resolution Plan and deferred the discussion on the said Resolution Plan to the next meeting. Copy of the Minutes of 13th Meeting of the CoC held on 15.12.2023 is annexed herewith and marked as ANNEXURE A-16."



u. "However, in the 14th Meeting of the CoC held on 22.12.2023, Mr. Vikash Agarwal, the Authorised Representative of M/s Ocean Capital Market Limited withdrew the Resolution Plan submitted for the Corporate Debtor. In light of no other Resolution Plan submitted for the Corporate Debtor and the completion of the CIRP period on 25.01.2024, the members of the CoC proposed to file an Application for Liquidation of the Corporate Debtor before this Hon'ble Tribunal and submitted to provide the name of the Liquidator in next two working days. Copy of the Minutes of 14th Meeting of the CoC held on 22.12.2023 is annexed herewith and marked as ANNEXURE A-17."

3. As can be seen from the averments made in para t to v of the application, the CoC decided that the corporate debtor need to be liquidated. The relevant excerpt of the 16th meeting of CoC reads thus:-

"Item No. 4

To file an application for extension of the CIRP process or Liquidation under section 33 of the Insolvency and Bankruptcy Code, 2016 with the Hon'ble NCLT.

Chairperson submitted that the meeting that, the CIRP period is going to expire on January 25, 2024, and no resolution plan has been approved till date. In view of the same, members are requested to take decision on either to approve the resolution for extension of CIRP period or to file application for liquidation of CD.

It was submitted that, M/s Ocean Capital Market Limited has already withdrawn its resolution plan dated April 29, 2023 and no other resolution applicant is in pipeline as on date.

Mr. Dhaval Vador on behalf of CFM ARC submitted that, there is no requirement to file an application for extension of the CIRP period and proposed to liquidate the Corporate Debtor.

He proposed to appoint Mr. Aditya Kumar Tibrewal, an insolvency professional having registration No. IBBI/IPA-001/IP-P00743/2017-2018/11249 as Liquidator of the Corporate debtor at monthly fee of Rs. 1,00,000/- per month plus other out of pocket expenses.

Minutes of the 16th COC meeting of the Micro Stock Holding Private Limited under CIRP



The consent of Mr. Aditya Kumar Tibrewal, insolvency professional having registration No. IBBI/IPA-001/IP-P00743/2017-2018/11249 (having valid APA) was also placed before the meeting.

After discussion, following resolution was passed by the member of COC having 97.56% voting rights at the meeting:

"RESOLVED THAT the Committee of Creditors of M/s Micro Stock Holding Private Limited be and is hereby decides to initiate Liquidation in the matter of the Corporate Debtor."

"FURTHER RESOLVED, Committee of Creditors of M/s Micro Stock Holding Pvt Ltd hereby nominates Mr. Aditya Kumar Tibrewal, an insolvency professional having registration No. IBBI/IPA-001/IP-P00743/2017-2018/11249 as the liquidator of the Corporate Debtor, who shall act as Liquidator of the corporate Debtor, subject to the approval by the Adjudicating Authority."

"FURTHER RESOLVED that the Resolution Professional be and is hereby authorise to file the application of Liquidation under section 33 of IBC with the Adjudicating Authority."

RESOLVED FURTHER that the cost as may be incurred by the RP in relation to submission of the above decision with Hon'ble Adjudicating Authority, be and is hereby approved."

[Matter was approved by COC members representing 97.56% vote share]"

4. As can be seen from the Section 33(1) of IBC, 2016, where the Adjudicating Authority, before the expiry of the Insolvency Resolution Process Period or the maximum committed period for completion of CIRP under Section 12 or the Fast Track Corporate Insolvency Resolution Process under Section 56 as the case may does not receive a resolution plan under sub-Section (6) of Section 30, it may pass an order requiring corporate debtor to be liquidated in the manner as laid down in chapter III of IBC, 2016. Section 33 of IBC, 2016, reads thus:-



“Section 33 **-Initiation of liquidation.** (1) Where the Adjudicating Authority,--

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall—

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors ¹[approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

²[Explanation.-- For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

(3) Where the resolution plan approved by the Adjudicating Authority ³[under section 31 or under sub-section (1) of section 54L] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a



liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.”

5. In the present case the extended CIRP period expired on 25.01.2024 and no application for extension of the period has been filed by the RP. Besides, as has been noted hereinabove, in its 16th meeting the CoC has passed the specific resolution deciding to liquidate the corporate debtor.

6. It is seen from Section 33(2) of IBC, 2016, where the resolution professional at any time during the CIRP but before confirmation of the resolution plan intimates the Adjudicating Authority of the decision of the committee of creditors (approved by not less than 66% of the voting share) to liquidate the corporate debtor the Adjudicating Authority could pass the liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) of Section 33(1) of IBC, 2016.

In the present case the CoC has taken a decision for liquidation of CD with 97.56% vote share. The relevant excerpt of the minutes of the meeting of CoC indicating the vote share reads thus:-

“After discussion, following resolution was passed by the member of COC having 97.56% voting rights at the meeting:



"RESOLVED THAT the Committee of Creditors of M/s Micro Stock Holding Private Limited be and is hereby decides to initiate Liquidation in the matter of the Corporate Debtor."

"FURTHER RESOLVED, Committee of Creditors of M/s Micro Stock Holding Pvt Ltd hereby nominates Mr. Aditya Kumar Tibrewal, an insolvency professional having registration No. IBBI/IPA-001/IP-P00743/2017-2018/11249 as the liquidator of the Corporate Debtor, who shall act as Liquidator of the corporate Debtor, subject to the approval by the Adjudicating Authority."

"FURTHER RESOLVED that the Resolution Professional be and is hereby authorise to file the application of Liquidation under section 33 of IBC with the Adjudicating Authority."

RESOLVED FURTHER that the cost as may be incurred by the RP in relation to submission of the above decision with Hon'ble Adjudicating Authority, be and is hereby approved."

[Matter was approved by COC members representing 97.56% vote share]"

In the wake, of the aforementioned, we have no option but to order liquidation of the CD. Ordered accordingly.

Accordingly, **Mr. Gaurav Katiyar** with **Reg.No: [IBBI/IPA-001/IP-P00209/2017-2018/10409]** (e-mail ID: cagauravkatiyar@gmail.com) (Phone No. 9818949966) so appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions inter alia:

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 (viz. Sections 35, 36, 37, 38, 39 and 41 thereof) and other relevant rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date enjoined upon him.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees



and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file a suitable application before this Adjudicating Authority.
- d) The Registry is directed to communicate this order to the Registrar of Companies, having jurisdiction over the Corporate Debtor and the Insolvency and Bankruptcy Board of India;
- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company applications during the process of liquidation.
- i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation. 13 of the Insolvency and Bankruptcy (Liquidation



Process) Regulations, 2016. Further such other or further reports as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

j) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary cooperation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

It goes without saying that fee of the Liquidator would be payable in terms of the provisions of Section 34 (7) of the IBC, 2016 read with Regulation 4 of IBBI (Liquidation Process) Regulation 2016.

Sd/-

(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-

(ASHOK KUMAR BHARDWAJ)
MEMBER (J)