

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

IA (IB) 932/KB/2020

and

IA (IB) 136/KB/2020

in

CP (IB) 1412/KB/2018

In the matter of

The Insolvency and Bankruptcy Code, 2016

In the matter of

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016

And

In the matter of

Punjab National Bank

...

Financial Creditor

Versus

Divine Alloys & Power Co Ltd

...

Corporate Debtor

IA (IB) 932/KB/2020

In the matter of

Sargam Vision Private Limited

...

Applicant

Versus

Rajesh Kumar Agrawal

(RP of Divine Alloys & Power Co Ltd) ...

Respondent

IA (IB) 136/KB/2020

In the matter of

Rajesh Kumar Agrawal

(RP of Divine Alloys & Power Co Ltd) ...

...Applicant

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Harish Chander Suri

: Member (Technical)

Appearances (through video conference):

For Applicant in IA (IB) 932/KB/2020 : 1. Mr. Joya Saha, Senior Advocate
: 2. Ms. Manju Bhuteria, Advocate
: 3. Mr. Aditya Kataria, Advocate
: 4. Ms. Tanvi Luhariwala, Advocate

For Applicant in IA (IB) 136/KB/2020 : 1. Mr. Rahul Auddy, Advocate
2. Ms. Chetna Gupta, PCS
3. Mr. Rajesh Kumar Agrawal
RP in person

Date of hearing: 19.02.2021

Date of pronouncement: 11.05.2021

COMMON ORDER

{Disposing of IA (IB) 932/KB/2020 and IA (IB) 136/KB/2020}

Per: Rajasekhar V.K., Member (Judicial)

1. This court convened *via* video conference today.
2. **IA (IB) 932/KB/2020** is an application filed by Sargam Vision Private Limited, one of the Resolution Applicants (RA) praying for direction upon the Resolution Professional (RP) to conduct revaluation of Divine Alloys & Power Co Ltd, the Corporate Debtor.
3. **IA (IB) 136/KB/2020** is an application made by the RP for liquidation of the Corporate Debtor on the ground that no Resolution Plan was approved by the Committee of Creditor (CoC).
4. This Adjudicating Authority *vide* order dated 07.03.2019 directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the corporate debtor and appointed the Applicant herein as the Interim Resolution Professional.
5. The RP issued a Request for Resolution Plan (RFRP) to the RA, the RA submitted their Resolution Plan on 20.08.2019. however, the CoC sought for

certain clarifications and wanted the offer amount be enhanced, the RA submitted its enhanced offer on 22.09.2019, the CoC further asked the RA to enhance its offer on various occasions and the RA enhanced its offers on 13.11.2019, 23.11.2019, 13.02.2020 and 19.03.2020. The final offer submitted before the CoC on 19.03.2020 was that of ₹102 crore.

6. Mr Joy Saha, learned Senior Counsel for the applicant, submits that the planet was hit by the Covid-19 pandemic, due to which the market scenario changed globally. Economies underwent drastic changes, therefore, the valuation of the Corporate Debtor done prior to March, 2020 would not reflect its true worth.
7. The Applicant has done its due diligence after March 2020 and it appeared to the Applicant that valuation of the Corporate Debtor has fallen considerably as sectors like automobile, construction etc., which require steel as a raw material, have suffered a huge setback and the chances of revival are quite bleak. Valuation of any unit depends on the current market scenario and demand for products, future growth prospects, availability of buyers and investors in the market.
8. By an email dated 10.09.2020, the CoC had given the RA fifteen days' time to file revised resolution plan, however, the applicant requires to make certain revisions to the Resolution Plan which would enable the Resolution Applicant to effectively implement and honour such resolution plan without financially crippling itself. Under such circumstances, the Applicant prays that the RP be directed to conduct revaluation of the Corporate Debtor.
9. The RP filed his affidavit in reply and submitted that the Applicant did not have any cause of action against the RP; the application should be dismissed *in limine*. He submitted that the valuation of assets of the Corporate Debtor are done in order to determine the fair value and liquidation value in accordance with regulation 35 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016

(“CIRP Regulation”), and not for determining the future income prospects of the resolution applicant.

10. The RP has relied on para 27 of the Supreme Court’s judgment in *Maharashtra Seamless Limited v. Padmanabhan Venkatesh & Ors.*¹ in order to buttress his argument that the object behind valuation process is to assist the CoC to take a decision on the resolution plan. He further submitted that the valuation report is only for the CoC members and the RA has nothing to do with the valuation of the assets of the Corporate Debtor for submission of the Resolution Plans. He reiterated that the Applicant had no *locus standi* to talk of the valuation.
11. He submitted that there is no provision in the Code for revaluation of the Corporate Debtor. The RA wants revaluation only so it can revise its Resolution Plan. The valuation is not done for prospective income scope of the Corporate Debtor after they take over the company.
12. We have heard both the parties and perused the records of both the applications. It appears from the record that the resolution of the present Corporate Debtor has been in lurch since the beginning. It appears from the record that the 180 days’ CIRP period had expired on 02.09.2019, upon application, this Adjudicating Authority *vide* its order dated 30.08.2019 approved the extension of the CIRP period for further ninety days which expired on 01.12.2019. This Adjudicating Authority extended the said period further by forty five days upon submission on behalf of the RA that they were desirous of substantially increasing their financial offer.
13. It is seen that the CoC had been repeatedly requesting the RA to increase the amount proposed and the RA had increased the said amount by a sum that was not acceptable to the CoC. The CoC had therefore decided to send the CoC in liquidation and an application was filed before this Adjudicating Authority.

¹ Civil Appeal Nos. 4967-4968 of 2019.

14. The application for liquidation was heard from time to time by this Adjudicating Authority. The Adjudicating Authority directed the Resolution Professional to place on record the reason for rejection of the Resolution Plan when the value offered was more than the liquidation value on 20.02.2020 and gave an opportunity to resolve the issue related to it on 04.03.2020.
15. It is also observed from the IA (IB) 136/KB/2020 that the RA submitted a revised resolution plan, again on 19.03.2020. However, on 21.04.2020, the RA through an email requested that the Resolution Plan be kept 'on hold' due to economic downside and that the RA would submit a fresh plan after the lockdown is over. The RA wrote again on 23.09.2020 requesting further extension of time for submission of the Resolution Plan. The CoC extended the last date of submission of the Resolution Plan till 15.10.2020.
16. On 07.12.2020, the RP received an email from the RA containing a Resolution Plan. After vetting the Resolution Plan and seeking clarifications thereupon, the RP share the Resolution Plan with the CoC on 06.01.2021 *via* email. Twenty-fourth CoC meeting was held on 11.01.2021 for discussion and voting on the Resolution Plan. The CoC discussed the Plan and decided that it need not be put up for voting and the same was rejected outrightly for the reasons, *inter alia*, that the amount offered was below the liquidation value and was much below the amount offered earlier. The same is recorded in the Minutes of meeting and annexed as Annexure 'C' at pages 18-25 of the supplementary affidavit dated 13.01.2021 filed in IA (IB) 136/KB/2020.
17. The CoC has at several occasions rejected the Resolution Plan submitted by the RA. The 180 days' period of CIRP had long expired. No other Resolution Plan is in sight.
18. This Adjudicating Authority has time and again granted opportunity to the Applicant/RA, the RP and the CoC, however, as has been observed by this Adjudicating Authority in the order dated 02.02.2021 in IA No. 1074/KB/2020, there has been no progress in the matter.

19. The Code has a two-pronged objective, viz., (i) resolution of the Corporate Debtor while maximising the value of its assets; (ii) in a time-bound manner. One cannot be sacrificed for the other. The Adjudicating Authority had passed the order initiating the CIRP on 07.03.2019. Over two years down the lane, there is still no resolution plan in sight. The time component in the object of the Code cannot be ignored for so long to achieve the resolution of the Corporate Debtor. Time is an essential but conveniently overlooked aspect of the resolution sought to be achieved under the IBC.
20. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor 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 CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has, by 97.21% votes, resolved to liquidate the Corporate Debtor.
21. In the light of aforementioned discussion, we are not inclined towards granting the prayer for revaluation of the Corporate Debtor.
22. Mr Rajesh Kumar Agrawal, RP, has filed his written consent to act as liquidator.
23. This Bench, therefore, hereby orders as follows: -
 - a. **IA (IB) 932/KB/2020 is dismissed as being devoid of merit.**
 - b. **IA (IB) 136/KB/2020** filed by Mr. Rajesh Kumar Agrawal, RP of Divine Alloys & Power Co Ltd (*the Corporate Debtor*), is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof.
 - c. Invoking the powers conferred by section 34(4)(c) of the Code, this Adjudicating Authority hereby appoints Mr. Rajesh Kumar Agrawal (Reg. No.IBBI/IPA-001/IP-P01023/2017-2018/11722), as the liquidator of the Corporate Debtor, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA)

of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.

- d. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., in 'Times of India' (English) and '*Prabhat Khabar*' (Hindi) of Jharkhand Edition and '*Ananda Bazar Patrika*' (Bengali) and the '*The Telegraph*' (English) of Kolkata edition of the said newspapers stating that the corporate debtor is in liquidation.
- f. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- g. The personnel of the corporate debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the corporate debtor.
- h. On initiation of the liquidation process but 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, as provided in section 33(5) of the Code read with its proviso.
- i. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a 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.
- j. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the corporate debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

IA (IB) 932/KB/2020 and IA (IB) 136/KB/2020
In CP (IB) 1412/KB/2018

24. **IA (IB) 932/KB/2020** and **IA (IB) 136/KB/2020** shall stand disposed of in accordance with the above directions.
25. **CP(IB) No. 1412/KB/2018** to come up for filing of periodical report on **03.08.2021**.
26. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their ld. Counsel for information and for taking necessary steps.
27. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)
11.05.2021

SR(LRA)