

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH III
NEW DELHI**

**CA -87/C-III/ND/2018
In
CP No.IB/195/ND/2017**

In the matter of:

**IndusInd Bank Limited,
2401, Gen.Thimmayya Road,
Camp., Pune-411001**

Financial Creditor/Petitioner

**Gallium Industries Limited,
At 3488, Gali No.81, Block E-2,
Molar Bank Ext.Badarpur,
New Delhi-110044**

Corporate Debtor/Responder

Coram:

**R.VARADHARAJAN,
Hon'ble Member (JUDICIAL)**

**Dr.V.K.SUBBURAJ
Hon'ble Member (TECHNICAL)**

**Counsel for the Petitioners : Mr. Pradeep Dahiya, Ms. Priyanka
Agarwal, Advocate**

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CA:87/C-III/ND/2018 IndusInd Bank Limited v. Gallium
Industries Limited

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Counsel for Respondent : **Mr. Rajesh Meena,
Mr.Rakesh, Advocate**

Resolution Professional : **Mr. Vijender Sharma**

Order delivered On: 17.12.2018

ORDER

The above application has been moved seeking for the liquidation of the Corporate Debtor (CD) by the Resolution Professional based on the recommendations of Committee of Creditors (CoC) in their meeting held on 11.04.2018. Prior to going into the merits of the application seeking for liquidation of the CD, it is incumbent on this Tribunal to first consider as to how the Corporate Insolvency Resolution Process (CIRP) initiated by this Tribunal based on the application filed by the Financial Creditor, namely, IndusInd Bank Limited against the CD has progressed and as to whether it is in consonance with the provisions of Insolvency and Bankruptcy Code, 2016 (IBC,2016) as well as



attendant regulations. This has become necessary, more so, in view of the observations of Hon'ble Supreme Court in the case of Arcelormittal India Private Limited vs. Satish Kumar Gupta & Ors. wherein the Hon'ble Supreme Court has specifically observed that every effort should be made during the CIRP process to resolve the insolvency of the CD and that its liquidation should be the last resort. In view of all the above, from the records it is seen that CIRP was initiated against the CD by this Tribunal vide order dated 21.7.2017 and upon receipt of the certified copy of the order on 9.8.2017 as averred by Ld. Counsel for RP, RP entered into the Resolution Process on and from 16th August, 2017. The first CoC meeting it is stated was held on 15.9.2017 wherein it was decided by the CoC to extend the term of Resolution Professional for a month and in the second CoC meeting which was held on 12.10.2017 the appointment of the Resolution Professional was further extended for the balance CIRP period. It is averred by the Resolution Professional that in all, prior to the final status report being filed on 20.4.2018 vide diary



No.226/2018, five status reports have been filed reporting about the happenings during the CIRP of the CD and that the said status reports were filed on 31.10.2017, 12.12.2017, 9.1.2018, 23.3.2018 and the penultimate report on 9.4.2018. Further, it is also stated in the final report filed by Ld. RP on 20.4.2018 that in all 6 CoC meetings were conducted commencing from 15.9.2017 and in the last of the CoC meeting which was held on 11.4.2018 the recommendation for liquidation of the CD was made by the CoC.

2. As per the statement in the report, namely, final report of the Resolution Professional, it is represented that claims were received from 4 Financial Creditors and at the conclusion of CIRP period out of 26 claims of Operational Creditors filed, 15 claims made by the Operational Creditors to the extent of Rs.2,87,32,332.90/- and one claim of employee to the extent of Rs.3,66,271/- were admitted and that rest of the claims were rejected in view of non compliance of filing the relevant documents. It is also represented by Ld. RP in his report that a



list of final claims towards operational creditors, financial creditors and workman and employees have been enclosed as Annexure F to the typed set filed along with the final status report. From the final status report it is also evident that the CIRP period was extended from 180 days to 270 days upon an application being moved under Section 12(1) of IBC,2016 before this Tribunal prior to which the CoC had unanimously approved for seeking an extension before this Tribunal, of the CIRP period, and this Tribunal on 15.1.2018 had also granted extension in view of the circumstances stated in the said order. It is also represented in the report that there has been no co-operation on the part of Key Managerial Personnel (KMP) and that even the fixed assets details as on the date of initiation of CIRP process, namely, 21.7.2017 was not provided which hampered preparation of Information Memoranda (IM), as contemplated under the provisions of IBC,2016 as well as regulations framed there under.

3. Efforts were also made it is stated by Ld. Resolution Professional and as reported in the final status report, to collect monies from sundry debtors of the CD and that during the period of CIRP, summons were also received from the Directorate of Enforcement for hearing on 18.12.2017 in relation to certain violations pertaining to foreign payments. Further, it is also represented that notices to show cause from Land and Revenue Department for depositing the tax as well as a notice from the Office of Development Commissioner, Noida Special Economic Zone based on a complaint filed by a worker of the CD were also received. In addition, a notice it is represented has also been received from the Office of Deputy Director General / Director & Statistics Officer, National Sample Survey Office regarding submission of certain returns. In relation to all of the above notices it is represented by Ld. RP that Key Managerial Personnel of CD had been asked to attend and report about the progress of proceedings, but no information has been received from them. Even though statutory audit for the period ended 31.3.2017 has



been completed, however, the Statutory Auditor has chosen to file an adverse report dated 25.5.2017 bringing to light certain serious observations and also questioning the majority of the systems of the CD. Audit objections/observations were passed onto the Key Managerial Personnel in view of the serious adverse comments of the Statutory Auditor however management's comments in relation to the same has not been produced. It is also brought forth in the report that certain avoidable transactions were also noticed. Further in this connection a sum of Rs. 10.44 lakhs withdrawn from the account of Yes Bank was deposited out of a total of Rs.31.44 lakhs and that a sum of Rs.21.00 lakhs is required to be remitted as yet and that despite directions given vide order dated 13.4.2018 for the remittance, a sum of Rs.21.00 lakhs is yet to be remitted by the Key Managerial Personnel Mr. Rajesh Meena.

4. It is also brought to the notice of this Tribunal that public notice calling for Expression of Interest (EoI) was published on 05.12.2017 in the Business Standard in Delhi and Chandigarh

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editions and in response to the same on 8.12.2017 an undertaking along with affidavits and documents were received from Resolution Applicants ,namely, Mr. Rajender Choudhary and Mr. Sanjay Malik jointly and that their resolution plan was also received on 14.12.2017 which was placed before the 4th meeting of CoC i.e. after the date of the amendment of IBC,2016 which came into effect retrospectively on and from 22.11.2017. Resolution plan was duly circulated to all the members of the CoC for further consideration keeping in view the criteria prescribed by the CoC and it was expressed by the members of the CoC that the CoC was not convinced about the resolution plan submitted by the above said Resolution Applicants and in the circumstances calling for re-submission of the Resolution Plan. It was also duly communicated to the Resolution Applicants vide communication dated 12.1.2018. As per the decision of the 4th CoC meeting and taking into consideration the extension of CIRP period as already narrated in the earlier paragraph from 180 days to 270 days, it is represented by Ld. RP that another notice calling for EoI was



published in the Business Standard on 22.1.2018 which elicited a response by an e-mail received from one Ms. Surabhi Srivastava dated 30.1.2018 expressing her interest to submit EoI. However, no response came from the proposed Resolution Applicant thereafter. Once again, the Resolution Plan which was obtained earlier from Mr. Rajender Choudhary and Mr. Sanjay Malik (jointly) was taken up for reconsideration in the 5th meeting of CoC held on 14.3.2018 and the Resolution Applicants were given an opportunity to present details of the Resolution Plan already submitted by them and during the said meeting it was also apprised to the Resolution Applicants to incorporate few changes and suggestions within a period of 3 days. Even though suggestions were duly incorporated however, the CoC decided to reject the Resolution Plan by 100% voting share in the 6th meeting of the CoC held on 11.4.2018. In view of no Resolution Plan having been approved by the CoC within the period of CIRP of 180 days as well as the extended period of 90 days, recourse is to only press the liquidation mode as provided under the



provisions of Section 33 of IBC,2016 of which the relevant sub-section 1 of Section 33 is reproduced hereunder :

33. (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.

5. Ld. RP has filed a detailed status report, as already narrated in the earlier portion of the order and it is also seen from the report that six meetings of the CoC were convened and the dates of which have also been mentioned in the earlier portion of the order and for the sake of brevity the same is not repeated. Even though two notices inviting Expression of Interest have been published by Ld. RP on 5.12.2017 and thereafter on 22.1.2018 and even though one Resolution Applicant jointly had shown interest and submitted a Resolution Plan, however, the COC has

decided to reject the Resolution Plan and we find from the records that no application has been filed before this Tribunal seeking to challenge the said decision of the CoC in relation to rejection of the Resolution Plan which necessarily connotes that the Resolution Applicants are not aggrieved by the rejection of their Resolution Plan by the CoC or in the alternative are not interested to take over the CD as a going concern and resolve its insolvency for reasons best known only to them. Further, we also find that no application has been moved by any of the creditors who have lodged their claims with the RP/IRP during the CIRP period, aggrieved by his rejection of the claims made by them or in relation to the classification, be it as a Financial Creditor or Operational Creditor or otherwise.

6. Ld. RP represents that valuation report as required to be obtained under the provisions of IBC,2016 from the registered valuer in relation to the fair value of the assets of the CD as well as its liquidation value has been duly done by one M/s Adroit Technical Services Pvt. Ltd. The fair value of assets and

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liquidation value has been arrived at Rs.10,75,83,816/- and Rs.14,70,37,934/- respectively as against which the liabilities / claims admitted stands at Rs.85.19 cores being that of Financial Creditors, Operational Creditors and Government dues by way of taxes and others.

7. As observed by Hon'ble Supreme Court in M/s. Innoventive Industries Ltd. vs. ICICI Bank & Anr. upon insolvency the business and assets of the CD shift from the hands of the promoters/shareholders of the CD to Creditors of the CD and the Creditors have taken a call that in the fitness of things, in view of lack of any Resolution Plan meeting the criteria fixed being received, the scope of resolving the insolvency is not in existence and in the circumstances taking into consideration the provisions under Section 33(1) of IBC,2016, as extracted above, the only recourse available is liquidating the CD in view of the CoC in their meeting having unanimously rejected the only Resolution Plan available before it thereby effectively approved for the liquidation of the Corporate Debtor and there being no Resolution Plan being



placed before it, this Tribunal orders for liquidation of the Corporate Debtor and in the circumstances the CD stands liquidated and the incidence of liquidation to follow, on and from the date of this order in terms of provisions of IBC,2016 and more particularly as given in Chapter-III of IBC,2016 and also in terms of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017. Further in terms of the said Regulations, the Liquidator shall file his report to this Tribunal as mandated therein.

8. The present RP, namely Mr. Vijender Sharma shall act as the liquidator based upon his consent expressed, as the liquidator of the CD. He shall issue the public announcement that the CD is in liquidation. In relation to officers/employees and workmen of the CD, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge. The Liquidator appointed being the Resolution Professional during the CIRP period shall follow up and continue to investigate the financial affairs of the CD particularly, in relation to preferential



transactions/under valued transactions and such other like transactions including fraudulent preferences. The Liquidator shall also submit report by way of preliminary report to this Tribunal within 75 days from the liquidation commencement date in accordance with the regulations. Further, a copy of this order shall be also communicated to the Registrar of Companies, NCT of Delhi and Haryana. The Liquidator shall intimate the Registrar of Companies forthwith in relation to the Liquidation Process of the Corporate Debtor being set in motion. 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 governs the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

9. The Corporate Resolution Process of the Corporate Debtor comes to a close and moratorium granted under Section 14 of



IBC,2016 at the time of admission is also lifted but the provisions of Section 33(5) & 33(6) shall apply.

—Sd—

17/12/2018

(Dr.V.K.SUBBURAJ)
MEMBER (TECHNICAL)

U.D.Mehta
17/12/2018

—Sd—

17/12/18

(R.VARADHARAJAN)
MEMBER (JUDICIAL)