

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, DELHI
BENCH III**

IA-3806/2020 filed U/S. 33 of the IBC
In
CP (IB) – 564/ND/2019, 2016

In the matter of Globalite Industries Pvt. Ltd.

Mr. Kashi Viswanathan Sivaraman,

...Resolution Professional

... Applicant

Order delivered on 18 Nov., 2020

CORAM:

CH. MOHD SHARIEF TARIQ, HON'BLE MEMBER (JUDICIAL)

SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER

(TECHNICAL)

Parties / Counsels present

For Resolution Professional: Harsh Arora & Prateek Kushwaha

(Advocates)

Per: NARENDER KUMAR BHOLA, MEMBER (TECHNICAL).

ORDER

1. This relates to IA- 3806/2020 filed in CP (IB) – 564/ND/2019 by Mr. Kashi Viswanathan Sivaraman (hereinafter referred to as 'Resolution Professional') under Section 33(2) of the Insolvency and

Bankruptcy Code, 2016. The prayer made in the Application is to pass an order of liquidation pertaining to the Corporate Debtor (CD) viz., Globalite Industries Pvt. Ltd.

2. Originally CP (IB) – 564/ND/2019 was admitted by this Authority vide Order dated 21.10.2019, the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor and the resolution professional was appointed as Interim Resolution Professional vide the same order.
3. It is averred that pursuant to the Order of this Authority dated 21.10.2019, the applicant issued form A for invitation of claims from the creditors of the corporate debtor on 24.10.2019 in Financial Express (English) and Jansatta (Hindi).
4. It was submitted that during the first CoC meeting held on 21.11.2019 the applicant was confirmed as the resolution professional by the CoC members as per the provisions of section 22(3)(a) of the IBC, 2016. The report of the reconstitution of CoC was filed with this Hon'ble Tribunal on 17.12.2019. Oriental Bank of Commerce became a member of the CoC with 66.85% voting share.

5. The second meeting of CoC was convened by Resolution Professional on 23.12.2019. The members of CoC were apprised of the actions taken by the applicant in the capacity of RP, which are as follows:

- The Resolution Professional has prepared the information Memorandum within the time limit specified under Regulation 36(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- The Resolution Professional received quotations from registered valuers, which were presented to the members. The members ratified the appointment of the valuers suggested by the Resolution Professional.
- The Resolution Professional presented the quotations received from various transactional auditors. The members were of the opinion that the fee of the auditors shall be negotiated, and the appointment of transactional auditors was postponed to the next meeting of CoC.
- The Resolution Professional also informed the members that he had received the audited financial statements of FY 2016-2017, FY 2017-2018 and 2018-2019, the provisional financial

statements for the period of 01.04.2019 to 21.10.2019 and tally data of the corporate debtor.

6. The following resolutions were put for e-voting by the RP:
- i. To arrange funds for meeting the cost of CIRP. To raise interim finance which would be used to conduct CIRP, and such amount would have formed a part of the CIRP cost.
 - ii. To approve the estimated CIRP cost. To fix the expenses to be incurred by the RP. This would have also formed a part of the CIRP cost.
 - iii. To discuss and approve the eligibility criteria of prospective resolution applicant, to discuss and fix the financial criteria for prospective resolution applicants, for submission of expression of interest. Publication of Form G for invitation of prospective resolution applicants was also put to discussion.
 - iv. To approve the bid evaluation matrix and the request for resolution plan, to discuss the evaluation matrix to be fixed for the evaluation of eligibility of prospective resolution applicants.
 - v. To reduce the notice period to convene the subsequent

meetings of CoC, to reduce the notice period for convening the subsequent meetings of CoC.

7. The members rejected resolution no. i, resolution no. ii, resolution no. iii and resolution no. iv. However, the members resolved to pass resolution no. v with 83.15% majority. Thus, the members of CoC did not approve the interim finance for CoC, the parameters of bid evaluation matrix, the publication of the Form G for invitation of expression of Interest. In the light of the decision of the CoC, the applicant was duty bound not to publish Form-G of the Corporate Debtor.

8. The applicant also submitted that the resolution for payment of CIRP cost has not been approved by the CoC in the second CoC meeting. As a result, the members resolved to reject such resolution which were necessary for the smooth running of the Corporate debtor.

9. The third meeting of CoC was called by Resolution Professional on 20.01.2020. The members approved the resolution for remuneration of the RP by 83.15% majority. The CoC also

resolved to appoint the transactional auditor of the Corporate Debtor with 83.15%. In the third meeting, the Resolution Professional informed the members as follows; -

- The Resolution Professional visited the locations of the Corporate Debtor, wherein no business activities were going on.
- That the Corporate Debtor had only one asset, i.e., the land situated at G-88, Site V, Kasna Village, Surajpur. The land is on lease for 77 years from 13th July, 2010.

10. The members of CoC concluded that there were no inventories of the Corporate Debtor, and business activities or operations. Further, the debt receivable by the corporate debtor was from its subsidiary company, which did not have any assets of its own available. Therefore, the members did not see any chance of revival of the Corporate Debtor. In the light of the above facts and circumstances, the following resolution was put before the members:

Resolved that, the members of the Committee of Creditors ("COC") do hereby approve and authorize Mr. Kashi Viswanthan Sivaraman, an Insolvency Professional (IBBI

Registration No. IBBI/IPA-001/IP-P00900/2017-2018/11497) to file an Application for initiation of Liquidation under Section 33(2) of IBC, 2016 before NCLT, Delhi for seeking an order of liquidation of Corporate Debtor.”

11. The CoC resolved to initiate liquidation process against the corporate Debtor with 83.70% voting share. The CoC also ratified and approved the appointment of the applicant as the liquidator of the Corporate Debtor by passing the resolution with 66.85% voting share, which is as follows; -

*“**Resolved that, Mr. Kashi Vishwanathan Sivaraman, an Insolvency Professional (IBBI Registration No. IBBI/IPA-001/IP-P00900/2017-2018/11497) is hereby appointed as the liquidator in the matter of Liquidation process of Globalite Industries Private Limited and the fees will be computed as per Regulation 4 of Liquidation Process Regulation, 2016 in case of recovery of sale of any asset.”***

12. Since no Resolution Plan is received by this Authority under Sub-section (6) of Section 30 of the Insolvency & Bankruptcy Code, 2016, the Corporate Debtor has to go through liquidation process.

ORDER

13. In view of the facts and circumstances recorded by Resolution Professional in IA- 3806/2020 filed in CP (IB) – 564/ND/2019 and in exercise of powers conferred under Sub-Clauses (i) (ii) and (iii) of Clause (a) of Sub-Section (1) of Section 33 of the I&B Code, 2016, this Authority proceeds to pass Liquidation Order as follows: -

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- I. This Authority hereby orders for liquidation of the Corporate Debtor (CD) viz., M/s. Globalite Industries Pvt. Ltd., which shall be conducted in the manner as laid down in Chapter III of part II of the Insolvency & Bankruptcy Code, 2016;
 - II. This Authority hereby appoints Mr. Kashi Viswanathan Sivaraman as Liquidator who shall issue a public announcement stating therein that the Corporate Debtor is in liquidation;
 - III. The moratorium declared under Section 14 of the Insolvency & Bankruptcy Code, 2016, shall cease to have effect from the date of the order of liquidation;
 - IV. Subject to Section 52 of the Insolvency & Bankruptcy Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal

proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.

V. This Authority makes it clear that Para (IV) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

VI. This Order 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.

VII. All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the Liquidator viz., Mr. Kashi Viswanathan Sivaraman. In addition to it, the Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the Insolvency & Bankruptcy Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

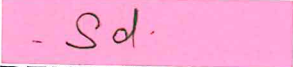
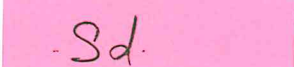
VIII. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

IX. The Liquidator shall be entitled to charge such fees for the conduct of the liquidation proceedings and in such a proportion to the value of the liquidation estate assets as specified under Regulation 4 (2) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

X. It is seen from the application that the Resolution Professional has sought directions with regard to approval of CIRP cost and estimated liquidation cost. In this connection, he is directed to place the matter before the erstwhile CoC for approval and in case of difficulty he may file separate application for seeking suitable directions.

XI. The liquidator is directed to communicate this order with immediate effect to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor for information and compliance.

13. In terms of the above, IA- 3806/2020 filed in CP (IB) – 564/ND/2019 by the Resolution Professional under Section 33(2) of the Insolvency & Bankruptcy Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor viz., M/s Globalite Industries Pvt. Ltd., is **allowed**.

 - Sd.  - Sd.
(NARENDER KUMAR BHOLA) (CH. MOHD SHARIEF TARIQ)
MEMBER (TECHNICAL) MEMBER (JUDICIAL)
