

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

MA 403/2018
in
CP No. 1584/IBC/NCLT/MB/MAH/2017

Under Section 33 (2) of the Insolvency and
Bankruptcy Code, 2016

In the matter of

Mr. Sanjay Kumar Ruia
..... Applicant
(Resolution Professional)

In

M/s. Auspice Trading Private Limited
..... Operational Creditor

v.

M/s. Global Proserv Limited
..... Corporate Debtor
(Respondent)

Order pronounced on : 29.08.2018 *ms*

Coram :

Hon'ble M. K. Shrawat, Member (J)

For the Applicant / Resolution Professional :

Mr. Sanjay Kumar Ruia – Applicant / Resolution Professional in-Person.

Per: M. K. Shrawat, Member (J)

ORDER

1. In this case, the Petition / Application U/s. 9 of the Insolvency and Bankruptcy Code, 2016 (**the Code**) filed by the 'Operational Creditor' viz. 'M/s. Auspice Trading Private Limited' against 'M/s. Global Proserv Limited' (hereinafter as **Corporate Debtor**) was Admitted vide an order dated 23.02.2018 by this Bench wherein 'Mr. Sanjay Kumar Ruia (IBBI/IPA-001/IP-00353/2017-18/10654)' was appointed as Interim Resolution Professional (**IRP**) and also confirmed as Resolution Professional (**RP**) by the Committee of Creditors (**CoC**) in its First Meeting held on 11.04.2018.
2. After the Admission of the Petition / Application, the Public Announcement to that effect had been done on 14.03.2018 in two newspapers viz. 'Free Press Journal

(English) and Navshakti (Marathi) wherein the claims were invited against the Corporate Debtor. Consequently, 'M/s. Auspice Trading Private Limited, M/s. Spruce Trading Private Limited, M/s. Network Telelink Private Limited, M/s. Infro Alliance Trading Private Limited and M/s. GTL Limited' had filed their claims for an amount of ₹ 9,02,01,328/- ₹ 6,01,80,287/-, ₹ 4,13,53,131/-, ₹ 2,64,00,000/-, ₹ 2,56,62,132/-' respectively. All these claims were filed in the capacity of the Operational Creditors. Beside these Creditors no other Creditors had filed claim with the IRP or RP.

3. Consequently, as there were no Financial Creditors of the Corporate Debtor the IRP has formed the CoC consisting only Operational Creditors except the GTL Limited as it is admittedly a related party of the Corporate Debtor. Hence, the members of the CoC are as follows :

Sr. No.	Name	Voting Percentage
1	M/s. Auspice Trading Private Limited	41.35 %
2	M/s. Spruce Trading Private Limited	27.59 %
3	M/s. Network Telelink Private Limited	18.96 %
4	M/s. Infro Alliance Trading Private Limited	12.10 %
Total		100 %

4. After the Commencement of the CIRP there was a meeting of the CoC conducted and it was noticed therein that the Corporate Debtor neither has any running business nor there are trade receivables, hence the revival of the Corporate Debtor is not viable.
5. Consequently, the CoC in its first meeting itself decided to Liquidate the Corporate Debtor and the necessary Resolution was also passed unanimously.
6. On careful perusal of the Application and the Progress Reports on record it is noticed that neither there are Assets left with the Corporate Debtor nor any trade receivables. Further it is also noticed that the Corporate Debtor was not carrying on any business since last few Financial Years. As a consequence the decision taken by the CoC seems to be appropriate.
7. But before passing concluding remarks it is appropriate to place certain facts on record. During hearing it is noticed that pursuant to S. 34 (1) of the Code the Learned RP shall become Liquidator until and unless replaced by the Adjudicating Authority pursuant to S. 34 (4) of the Code. For replacement of the RP by the Adjudicating

Authority the provisions provided U/s. 34 (4) (b) are worth to be reproduced as under
:

“34. Appointment of liquidator and fee to be paid.

.....

(4)

(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing.”

8. Here in this case it is noticed that the Insolvency and Bankruptcy Board of India vide its letter dated 28.07.2018 bearing no. IBBI/IP/GCHP/2018/54/32/379 has informed to this Tribunal that IBBI has issued a Show Cause Notice to Mr. Sanjay Kumar Ruia, i.e. RP herein, on 28.07.2018 and pursuant to the said Notice Mr. Ruia is now not entitled to act as IRP / RP / Liquidator in any case, until the issue involved in the said Show Cause Notice is resolved. However, members of the CoC can consider to ratify a reasonable amount of cost of CIRP to the out-going RP as per the provisions of the Code; if not paid so far.
9. Accordingly, this Bench by exercising the powers provided U/s. 34 (4) (b) hereby orders to substitute the Liquidator. Accordingly, the CoC shall convene a meeting latest by 15th September, 2018 to be chaired by the Representative of the Operational Creditor who is having highest voting share (i.e. M/s. Auspice Trading Private Limited having 41.35 %) to decide the name of the Liquidator. On obtaining the consent of the Liquidator so appointed directions be obtained from this Bench by filing an Praceipe / Application.
10. Considering above facts and circumstances, this Bench hereby further Orders that :
 - a) The Process of Liquidation shall commence as per the Chapter III of the Code from date of this Order.
 - b) The Liquidator so appointed shall advertise in two Newspapers, one in English language and one in Vernacular Language i.e. Marathi, about the Liquidation of the Corporate Debtor as per the provisions of the Code.
 - c) Copy of this Order shall be forwarded to the Concerned Authority with which the Corporate Debtor is Registered.

- d) The Liquidator so appointed is at liberty to seek any directions, if need be, from this Bench during the Liquidation Process.
- e) The Liquidator so appointed is hereby Authorised to represent the Corporate Debtor before the Government Authorities, if need be.

11. Ordered Accordingly. Application for U/s. 33 (2) is Allowed.

Dated : 29.08.2018

Avinash

**M. K. SHRAWAT
MEMBER (JUDICIAL)**

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..... Corporate Debtor
(Respondent)

Order pronounced on : 04.09.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)

For the Applicant / Resolution Professional :

Mr. Chandrakant Mhadeshwar, Advocate – Advocate for the Petitioner / Operational Creditor.

Per: M. K. Shrawat, Member (J)

ADDENDUM ORDER

1. A mention has been made vide a Praceipe dated 04.09.2018 by the Authorised Representative of the Petitioner to pass further Order in consonance to the directions issued by this Bench vide an Order dated 29.08.2018.
2. In this case this Bench, vide an Order dated 29.08.2018, had commenced the Liquidation Process against the Corporate Debtor / Respondent viz. M/s. Global Proserv Limited.
3. In the said Order vide Para 9 it is ordered as follows :

“9. Accordingly, this Bench by exercising the powers provided U/s. 34 (4) (b) hereby orders to substitute the Liquidator. Accordingly, the CoC shall convene a meeting latest by 15th September, 2018 to be chaired by the Representative of the Operational Creditor who is having highest voting share (i.e. M/s. Auspice Trading Private Limited having 41.35 %) to decide the name of the Liquidator. On obtaining the consent of the Liquidator so appointed directions be obtained from this Bench by filing an Praceipe / Application.”

4. Pursuant to the said Order the meeting of the CoC was convened on **30.08.2018 at 4 PM at Room 66, 5th Floor, Alli Chambers, Tamarind Lane, Fort, Mumbai, Maharashtra – 400001** under the chairmanship of the M/s. Auspice Trading Private Limited. In the said meeting the Members have unanimously approved an appointment of ‘Mrs. Dipti Mehta’ as Liquidator. The relevant portion of the minutes is worth to place on record as follows :

“RESOLVED THAT Mrs. Dipti Mehta, be and is hereby appointed as Official Liquidator of the Operational Debtor and her remuneration fixed not more than Rs. 5,00,000/- (Rs. Five Lacs Only.)”

5. Pursuant to the said resolution a Form – 2 i.e. Written Consent of the proposed Liquidator is also placed on record. Consequently, this Bench hereby **appoints ‘Mrs. Dipti Mehta (IBBI/IPA-002/IB-N00134/2017-18/10350)** to act as Liquidator of the Corporate Debtor namely, M/s. Global Proserv Limited.
6. The directions given vide Para 10 of the Order dated 29.08.2018 shall remain unaltered.

Dated : 04.09.2018

Avinash

SD/-

**M. K. SHRAWAT
MEMBER (JUDICIAL)**