

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP. (IB).No.173/10/HDB/2017

U/s.19 (2) of IBC, 2016& Regulation 60(5) of IBBI
(Insolvency Resolution Process for Corporate Person)
Regulations, 2016

In the matter of

M/s Sri Vinayaka Paper & Board Limited
406, 7-1-58, Concourse,
Greenland Road, Ameerpet,
Hyderabad, Telangana- 500016

... Applicant/
Corporate Debtor

Versus

1. Union Bank
2. State Bank of India
3. Indian Bank
4. Bank of India
5. Andhra Bank

...Respondents/Financial Creditors/
Committee of Creditors

Date of order: 19.01.2018

CORAM

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

Counsels/Parties Present:

For IRP : Mr. G.Madhusudhan Rao, RP in person
For the Corporate Debtor : Shri Sandeep Reddy Sama, Advocate

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The present Company Application bearing CA. No. 04 of 2018 in CP. (IB).No.173/10/HDB/2017 is filed by M/s. Sri Vinayaka



Paper & Board Limited under section U/s.19 (2) of Insolvency Bankruptcy Code, 2016 & Regulation 60(5) of (IBBI) Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 by inter-alia seeking to direct or instruct to M/s. P.Murali & Co., Statutory Auditors of the Company for acceptance of financial statements which are signed by the Suspended Board of Directors along with Resolution Professional and complete the Audit and submit the audited financials for the financial year 2016-17 along with Audit Report at the earliest towards smooth completion of the Corporate Insolvency Resolution Process (CIRP), Survival of the Company, to attract the good Investors in the company, etc.

2. Brief facts, leading to filing of the present CA, are as follows:-

- (a) M/s. Sri Vinayaka Paper and Boards Limited (Corporate Debtor/CD) is a limited company incorporated on 24/02/1995 and it has its Registered Office at 404A, 4th Floor, Concourse 7-1-58, Greenlands Road, Ameerpet, Hyderabad TG 500016 which inter alia is engaged in the business of manufacturing of Paper.
- (b) It is stated that, the captioned Company Petition bearing No.CP (IB). No. 173/10/HDB/2017, is filed by Corporate Debtor, to initiate a Corporate Insolvency Resolution Process (CIRP) in terms of Section 10 of the Insolvency and Bankruptcy Code, read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (c) This Adjudicating Authority after hearing the parties and perusing all the documents, admitted the case on 22.09.2017 and initiated Corporate Insolvency Resolution Process (CIRP).



- (d) It is further submitted that, subsequently in the first meeting of Committee of Creditors (herein after referred to as CoC) of the Corporate Debtor, which was held on 20.10.2017 had unanimously decided for replacement of the Interim Resolution Professional with new Resolution Professional. After considering the facts on records and documents filed, the Adjudicating Authority appointed Mr.G. Madhusudhan Rao as Resolution Professional vide order dated 02.11.2017.
- (e) It is further stated that, the Financials of the company for the Financial Year 2016-17 have not been audited by the statutory auditors of the Company as on date (i.e 22nd Sep 2017) of commencement of Corporate Insolvency Resolution Process (CIRP). The CoC members advised the Company officials to pursue and obtain the Audited Financial Statements at the earliest in Ist COC which was held on 20th Oct 2017 and also in IInd COC which was held on 29th Nov 2017. As per the decision taken in CoC meeting both company officials and also Madhusudhan Rao, Resolution Professional pursued with M/s.P.Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad- 500 082 for completion of Audit of the financial statements for the financial year 2016-17.
- (f) **On 29th Nov 2017:** Resolution Professional along with CoC Members requested the management to get the Audited financials for Financials Year 2016-17 at the earliest.
- (g) **On 1st Dec 2017:** Resolution Professional has written a letter to Statutory Auditor i.e M/s.P.Murali & Co for Audited Financials stating that as per the provisions of Sec 17(b) of the Insolvency and Bankruptcy Code, 2016, “the powers of the board of directors shall stand suspended and be exercised by the interim resolution professional or resolution professional”. However as per the best of knowledge and prevailing practices, the



financial statements should be signed by both Directors (suspended) and also the interim resolution professional or resolution professional as the case may be. Resolution Professional attached the M/s.NICCO Financial Statements where the same has been signed by MD & CEO, CFO, Company Secretary & Resolution Professional in addition to Statutory Auditors of the Company.

- (h) It is further stated that, in this letter dated 1st Dec 2017, Resolution Professional further informed that the Board of Directors are authorized by resolution Professional to sign and submit the financial statements which were also signed by the Resolution Professional for audit purpose. In this letter Resolution Professional requested auditor to consider the financial statements submitted and issue the Audit Report as soon as possible. **On 5th Dec 2017:** Resolution Professional along with Mr.Naresh Chanda, Practicing Company Secretary who is consultant to the company met the auditor at 0.15AM at Auditor's office and discussed the various importance's of audited financials such as for adoption of Audited Accounts for the financial year 2016-17 on or before the extended date of 31st Dec 2017, for the purpose of completion of Information memorandum (IM) as per the Section 29 of the Insolvency and Bankruptcy Code, 2016 and also as per Regulation 36(2C) of Insolvency and bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, etc, **On 7th Dec 2017:** He has sent the AGM Notices to all including statutory Auditors of the Company without attachment of Audited financials. **On 9th Dec 2017:** Resolution Professional again wrote another letter to Auditors requesting him to indicate his willingness to sign the financials. The



same sent by way of a. Email, and b. Hand delivery (however not given acknowledgement) and c. register post. **On 14th Dec 2017: Resolution Professional sent the following email to the M/s.P.Murali & Co, Statutory Auditors of the Company:**

“As per the sec 29 of the IBC, 2016, I need to prepare Information Memorandum in accordance with Regulation 36 (2C) of the IBBI (Insolvency Resolution Process for Corporate Persons), Regulations, 2016. This regulation is as under:

Information memorandum should contain "Audited Financial Statements of Corporate Debtor for last two financial years and provisional financial statements for the Current Financial year made up to a date not earlier than fourteen days from the date of application"

According to the above, Current financial year cannot be interpreted as all the financial years for which audit not happened.

- (i) In view of the above he has requested for early completion of Audited financials for FY 17 to ensure smooth completion of process of CIRP to attract good investors which will protect survival of the Company, continuation of Employment of many people, discharge of your duties, timely filing and compliances under Companies Act, IBC, etc.,” Mr.Murali Mohan Rao, Chartered Accountant told that M/s. Sri Vinayaka Paper and Boards Limited is under Corporate Insolvency Resolution process and Board of Directors also suspended with effect from 22nd Sep 2017 as per the Insolvency and Bankruptcy Code, 2016. He further stated that in view of the Board of Director’s suspension, no possibility of having a Board of Directors meeting for approval of financial statements and also signing the financial statements by the Directors cannot be possible.



- (j) It is further stated that, Mr.Murali Mohan Rao, Chartered Accountant in the absence of amendment to the section 134(1) of the Companies Act 2013, even though the Interim Resolution Professional (IRP) or Resolution Professional (RP) have all the powers of the Board of Directors, he cannot complete and sign the financial Statements of the company for the financial year 2016-2017.
3. The case was listed on various dates viz., 31.08.2017, 13.09.2017, 20.09.2017, 22.09.2017, 24.10.2017, 02.11.2017, 09.01.2018, 17.01.2018 and today.

4. Heard Mr.G.Madhusudhan Rao Learned RP and Mr.Sandeep Reddy Sama learned counsel for Corporate Debtor.

5. When the case was taken up today, the Learned Resolution Professional submitted a memo dated 12.01.2018, which reads as under:

“It is humbly submitted that I, resolution professional, have filed company application on 02nd January 2018 under Section 19 (2) of insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 to get the proper directions/instruction/order to Statutory Auditors of the Company towards applicability of Sec 134 of the Companies Act 2013.

It is humbly submitted that I have received Notarized Affidavit from Mr.Srujan Garapati, Managing Director (suspended), M/s.Sri Vinayaka Paper and Boards Ltd stating that Auditor agreed with Mr. Srujan Garapati for completion of auditing and to provide us the audited financial statements for financial year 2016-17 including audit Report on or before 31st January 2018. (Copy of Notarized Affidavit attached).

It is humbly submitted that in view of the above, I, Resolution Professional, filed this memo to withdraw the company



application filed on 02nd January 2018 under Section 19 (2) of Insolvency Bankruptcy Code 2016 R/w Regulation 60 (5) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 to get the proper directions/instructions/order to Statutory Auditors of the Company towards applicability of Sec.134 of the Companies Act 2013. It is humbly submitted that your good selves may please consider this withdrawal Memo.”



6. In view of the facts and circumstances mentioned above and aforesaid memo submitted by the Learned RP, the CA No.4 of 2018 in CP (IB). 173/10/HDB/2017 is disposed of as withdrawn. No order as to costs.

Sd/-
RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-
RAJESHWARA RAO VITTANALA
MEMBER (JUDICIAL)

G. Anantha Kumar
For Dy. Regr./Asst. Regr/Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY

केस संख्या
CASE NUMBER *CP (IB) No. 173/10/HDB/2017*
निर्णय का तारीख
DATE OF JUDGEMENT *19.1.2018*
प्रति तैयार किया गया तारीख
COPY MADE READY ON *1.2.2018*