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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III

M.A. No. 4058 of 2019
In
C.P. No. 1237/IB/2019

Under Section 30(1) r.w. Section 60(5)(C)
of Insolvency & Bankruptcy Code, 2016

In the matter of
Mrs. Lata Ajit Shah
... Operational Creditor

V/s.
Panama Systems Pvt. Ltd.
... Corporate Debtor

M.A. No. 4058/2019

Mr. Hemant Raykumar Khinvasara
... Applicant
v/s.

1. Mrs. Vaishali Patrikar, Resolution Professional of M/s. Panama Systems Pvt. Ltd.
2. The Committee of Creditors
... Respondents

Order delivered on 10.12.2020

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance (through video conferencing):

For the Applicant : Mr. Avinash R. Khanolkar, Advocate

For the Respondent : Ms. Prachi Wazalwar, Advocate

Per Shri H. V. Subba Rao, Member (Judicial)

ORDER

1. It is an application filed by the Applicant seeking an order under Section 30(1) r. w. Section 60(5)(C) Insolvency and Bankruptcy Code, 2016, praying following reliefs:

- a. *To direct R-1 to scrutinize and validate the Resolution plan being submitted by the Applicant.*

- b. *To direct the R-1, after due scrutiny of the Per Resolution plan, to place the same before the CoC for its consideration.*
 - c. *To direct the R2 to consider and vote upon the Resolution Plan being submitted by the Applicant.*
2. The Applicant aggrieved and pleaded in the application that the first EOI was published by the R-1 on 23.10.2020, but as per the Regulations the publication for inviting EOI was to be published not later than 75 days from the date of the commencement of CIRP. According, to the Applicant in this case CIRP commenced on 10.07.2019 and the notice inviting the interest for submitting a Resolution Plan was to be published on or before 25.09.2019. However, the notice for EOI was published on 103rd day after the commencement of the CIRP. The Applicant stated that the Applicant was under reasonable belief that someone will definitely come forward to submit a Resolution plan for the Corporate Debtor. However, the CoC has resolved for the Liquidation of the Corporate Debtor before completing the CIRP period and therefore, the applicant felt this is the right time to intervene in the Application for liquidation of the Corporate Debtor.
 3. The Applicant also states that the Applicant is truly interested in the revival of the Corporate Debtor since the applicant has taken lot of efforts in setting up and building the business. The Applicant has invested huge sums of money without any outside borrowing. This is evident from the fact that only one claim is received by the RP which is of the original petitioner. The Applicant has goodwill in the market and corporate debtor has earned reputation. If the corporate debtor is put into liquidation, all the efforts taken by the Applicant and the employees will go in vain. The Corporate Debtor has earned good customers owing to its unique products developed by the Applicant and the Applicant foresees a very bright future for the Corporate Debtor.
 4. The Adjudicating Authority vide its order dated 10.07.2019 on a Petition filed by the Operational Creditor under Section 9 of the Code directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely M/s. Panama Systems Pvt. Ltd., wherein Ms. Neelima Anil Bhate, was appointed as Interim Resolution Professional (IRP). Thereafter, in the 1st Committee of Creditors (CoC) meeting held on 14.08.2019, Ms. Vaishali A. Patrikar, was resolved to

be appointed as Resolution Professional (RP) and the same was approved by this Bench.

5. The Form-A, public announcement was made on 18.07.2019, in “Financial Express” in English and in regional language in Marathi in “Navrashtra”.
6. It is further an advertisement, inviting Expression of Interest (EoI) in Form G was published on 25.10.2019 in “Financial Express” in English and in regional language in Marathi in “Loksatta” therein mentioning 07.11.2019 as the last date for receipt of expression of interest and 22.12.2019 being the last date for submission of Resolution plan. Thereafter, no extension has been sought and no EoI was invited and no Resolution plan was received.
7. Hence, the CoC in its 4th meeting held on 20.11.2019, unanimously passed a resolution for liquidating the company. Accordingly, the Resolution Professional filed application for liquidation of the Company as provided u/s. 33 of the Insolvency & Bankruptcy Code, 2016 (Code). It is not out of place to mention here that as per Section 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;”
8. Therefore, it is very clear from the above legal position that an application for liquidation can be moved before Adjudicating Authority even before expiry of the insolvency resolution period if no resolution plan is received. Since no resolution plan has been received by Resolution Professional in this case, the CoC in its commercial wisdom thought it fit to liquidate the Company with required majority of voting and such decision of the CoC cannot be find fault with by the Adjudicating Authority. Even otherwise, the above MA is pending before this Adjudicating Authority even though it was filed long before and no resolution applicant came forward even at this juncture. Therefore, the entire argument of the applicant that the Resolution Professional and

CoC prematurely resolved to liquidate the Corporate Debtor has no force.

9. Upon hearing the submissions of the Applicant and on careful reading of the Application and the documents enclosed therein it is found, that the Applicant has not even enclosed copy of proposed Resolution plan and value thereof and therefore, the question of granting the above reliefs does not arise.
10. In view of the aforesaid facts and circumstances, this Tribunal is of the considered opinion that the above application is nothing but a ploy on the suspended Director to stall the liquidation proceedings. Accordingly, the Miscellaneous application filed by the Applicant is hereby disposed of making it clear that the last date for receipt of expression of interest is already expired.
11. M.A. No. 4058 of 2019 filed by the Applicant is hereby dismissed as misconceived.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-

H. V. SUBBA RAO
MEMBER (JUDICIAL)

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**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III**

**M.A. No. 3893 of 2019
In
C.P. No. 1237/IB/2019**

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

In the matter of
Mrs. Lata Ajit Shah
... Operational Creditor

V/s.
Panama Systems Pvt. Ltd.
... Corporate Debtor

M.A. No. 3893/2019

Ms. Vaishali Arun Patrikar
... Applicant/
Resolution Professional

Order delivered on 10.12.2020

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Ms. Prachi Wazalwar, Advocate

Per Shri H. V. Subba Rao, Member (Judicial)

ORDER

1. It is an application filed by the Resolution professional seeking liquidation of the Corporate Debtor namely (M/s. Panama Systems Pvt. Ltd.) on the ground that no resolution plan has been received by him, hence this application under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016, praying following reliefs:

- a. *To pass an order under Section 33(1)(a) of the Code commencing the liquidation of Panama Systems Pvt. Ltd., Corporate Debtor;*
- b. *To appoint the Applicant as the Liquidator of M/s. Panama Systems Pvt. Ltd. Corporate Debtor as per the provisions of Section 34 of the Code;*

2. The Adjudicating Authority vide its order dated 10.07.2019 on a Petition filed by the Operational Creditor under Section 9 of the Code directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely M/s. Panama Systems Pvt. Ltd., wherein Ms. Neelima Anil Bhate, was appointed as Interim Resolution Professional (IRP). Thereafter, in the 1st Committee of Creditors (CoC) meeting held on 14.08.2019, Ms. Vaishali A. Patrikar, was resolved to be appointed as Resolution Professional (RP). and the same was approved by this Bench.
3. The RP submits that the public announcement was made on 18.07.2019, in "Financial Express" in English and in regional language in Marathi.
4. It is further submitted that an advertisement, inviting Expression of Interest (EoI) in Form G was published on 25.10.2019. Thereafter, no extension has been sought and no EoI was invited and no Resolution plan was received.
5. The CoC in its 3rd meeting held on 05.10.2019 decided to appoint a Valuer. The RP accordingly appointed two registered valuers as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016 and the Information Memorandum was prepared as provided under Regulation 36(1) of the said regulation.
6. The RP submits that the 4th CoC meeting held on 20.11.2019, in response to the publication of invitation for Expression of Interest on 25.10.2019 in form G, only one Expression of Interest was received from Birla Capital and Financial Service Ltd. Thereafter, the prospective resolution applicant was provided with the information, evaluation matrix and others necessary documents, but the PRA had net worth of Rs. 18.20 Lakhs as on 31st March, 2019 and did not satisfy the eligibility criteria of net worth of Rs. 5 Crores.
7. The CoC in the 4th CoC meeting held on 20.11.2019, it was informed in the meeting that there are no chance of revival of the Corporate debtor Company. The following Resolution was passed;

“Resolved that, an application be filed before the Hon’ble NCLT, Mumbai Bench, for liquidation of the corporate debtor in terms of the provisions of Section 33(1) and applicable Regulations of the Code.”

8. Hence, the CoC in its 4th meeting held on 20.11.2019, unanimously passed a resolution for liquidating the company. Accordingly, the Resolution Professional filed this application for liquidation of the Company as provided u/s. 33 of the Insolvency & Bankruptcy Code, 2016 (Code).
9. The Applicant/ Resolution Professional Ms. Vaishali Arun Patrikar, has agreed to act as liquidator to carry on the process of liquidation.
10. Upon hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein it is found, the RP has complied with the procedure laid down under the Code; Regulations made thereunder. On verification, we are of the considered view that this is a fit case to pass liquidation order under sub-section 1 of section 33 of the Code for liquidation in the absence of any resolution plan. Hence ordered;

ORDER

- a. The Miscellaneous Application is hereby allowed.
- b. Ms. Vaishali Arun Patrikar, Registration No. IBBI/IPA-002/IP-N00812/2019-2020/12566, herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- d. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- e. The Liquidator appointed under section 34(1) of the Code. Will have all 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.
- f. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- g. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- h. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- i. That on having liquidation process initiated, 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.
- j. 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.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-

H. V. SUBBA RAO
MEMBER (JUDICIAL)