

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

IA No. 2/KB/2021
in
CP (IB) No. 1573/KB/2019

Under section 33 read with section 60 (2) of Insolvency & Bankruptcy
Code, 2016

In the matter of

Vinod Kumar Agarwal

...Operational Creditor

Versus

Quantum Concrete LLP
[LLPIN: AAH-0001]

...Corporate Debtor

And

Satish Patodia
IRP of Quantum Concrete LLP

... Applicant

Order reserved on: 18.01.2021

Order pronounced on: 22.01.2021

Coram:

Shri Rajasekhar V.K.	:	Member (Judicial)
Shri Harish Chander Suri	:	Member (Technical)

Appearances (through video conferencing):

For the Applicant	:	Mr. Satish Patodia, IRP in person
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ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This court convened *via* video conference today.
2. This is an application filed by the Interim Resolution Professional (IRP) seeking liquidation of the corporate debtor, *viz.*, Quantum Concrete LLP, on the ground that no Resolution Plan was received.
3. This Adjudicating Authority *vide* its order dated 01.01.2020 on a Petition filed by Vinod Kumar Agarwal (operational creditor) under section 9 of the Insolvency and Bankruptcy Code, 2016 ('the Code') directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the corporate debtor and appointed the Applicant herein as the Interim Resolution Professional.
4. In terms of section 15 of the Code, on 07.01.2020 the IRP made public announcement in Form 'A' in *Business Standard* (English) and *Aajkal* (Bengali) of Kolkata edition fixing the last date of receipt of claim as 20.01.2020. This public announcement was also sent to the Insolvency and Bankruptcy Board of India (IBBI) that hosted it on its website on 07.01.2020.¹ Copies of said publications are annexed to the application and marked as Annexure 'A' at pages 18 & 19.
5. Pursuant to the said public announcement, claims only from two operational creditors were received as on the last date prescribed in the public announcement. The applicant – operational creditor i.e., Vinod Kumar Agarwal did not lodge his claim with the IRP.
6. Initially, the Committee of Creditors (CoC) was constituted with two creditors. Later, the CoC was reconstituted thrice with six, seven and nine operational creditors respectively on 21.02.2020,

¹<https://ibbi.gov.in/uploads/announcement/6df942d621ca53e9a4bb33b1aa4f4836.pdf>

28.02.2020 and 25.11.2020 respectively after the IRP received more claims from various other creditors. The Reports certifying the constitution of the CoC are annexed to the application as Annexure 'B' at pages 20-33.

7. The first meeting of CoC was held on 05.02.2020. The IRP was not confirmed as the RP, neither did the CoC appoint anyone as the RP. No action with respect of either confirmation of the IRP as RP or appointment of any other insolvency professional as the RP has been taken by the CoC in the second, third, fourth, fifth and sixth CoC meeting despite it being on the agenda of each meeting. Therefore, the IRP appointed by this Adjudicating Authority is still functioning in the capacity of IRP.
8. In the fifth CoC meeting held on 04.11.2020, the CoC approved the proposal of publication of Form G. Invitation for Expression of Interest (EoI) was published in Form 'G' on 09.11.2020 in *Business Standard* (English) and *Aajkal* (Bengali) newspapers of Kolkata edition fixing the last date of, fixing the last date for receipt of EoI as 25.11.2020. Copies of said publications are annexed to the application and marked as Annexure 'I' at pages 91 & 92.
9. No EoI was received by the IRP in response to the publications made. On 07.12.2020, in sixth CoC meeting, the members of CoC did not approve either the republication of Form G or extension of period of CIRP. The CoC unanimously decided to send the LLP into liquidation.
10. The IRP submitted that he does not wish to continue as the liquidator of the said LLP.

11. We have considered the submission made by the IRP and perused the record.
12. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating authority of the decision of the CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 100% voting share to liquidate the Corporate Debtor.
13. This Bench, therefore, hereby orders as follows: -
 - a. IA No. 2/KB/2021 filed by Mr Satish Patodia, IRP of Quantum Concrete LLP, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof.
 - b. Mr. Sushil Agarwal [Reg. No. IBBI/IPA-001/IP-P00965/2017-2018/11586], is hereby appointed as liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.
 - c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
 - d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., in *Business Standard*

(English) and *Aajkal* (Bengali) of Kolkata edition of the said newspapers stating that the corporate debtor is in liquidation.

- e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
 - f. The personnel of the corporate debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the corporate debtor.
 - g. On initiation of the liquidation process but 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, as provided in section 33(5) of the Code read with its proviso.
 - h. In accordance with section 33(7) of the Code, 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.
 - i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the corporate debtor is been registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.
14. The application bearing **IA (IB) No. 2/KB/2021** shall stand disposed of in accordance with the above directions.
15. **CP (IB) No. 1573/KB/2019** to come up for filing of periodical report on **27.04.2021**.

16. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their ld. Counsel for information and for taking necessary steps.
17. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

22.01.2021

SR (LRA)