

**In the National Company Law Tribunal
Mumbai Bench**

MA 634/2019 in C.P. (IB)-1202/(MB)/2017

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

In the Application of

Mr. Mohan Lal Jain
.....Applicant/
Resolution Professional

In the matter of

M/s Ravi Infrastructure & Projects
...Operational Creditor

V/s

KSS Petron Private Limited
..... Corporate Debtor

Order delivered on: 27.12.2019

Coram: Hon'ble M.K. Shrawat, Member (Judicial)
Hon'ble Chandra Bhan Singh, Member (Technical)

For the Applicant: Jetendra Kumar for Resolution Professional, Rajeswari Mukherjee, i/b Khaitan & Co. for Operational Creditor in M.A. No. 1545 of 2018, Kunal Chheda i/b Utangale & Co. for Operational Creditor in M.A. No. 3670 of 2019

Per: M.K.SHRAWAT, Member (Judicial)

ORDER

1. This is an Application submitted on 07.02.2019 U/s.33 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") by Mr. Mohan Lal Jain, the Resolution Professional of the Corporate Debtor M/s. KSS Petron Private Limited, seeking an Order of '**Liquidation**' of the Corporate Debtor. It is informed that the Committee of Creditors' meeting held on 04.02.2019 has approved for "Liquidation".

Facts of the case:

2. In this case, the Petition/ Application U/s. 10 of the Insolvency and Bankruptcy Code, 2016 (the Code) filed by the 'Operational Creditor' M/s Ravi Infrastructure & Projects against 'KSS Petron Private Limited', (hereinafter as "Corporate Debtor"), which was Admitted vide an order dated 01.08.2017 (C.P.1202/IBC/MB/2017) by

this Bench and Mr. Vineet K. Chaudhary was appointed as Interim Resolution Professional (IRP) to conduct the CIRP of the Corporate Debtor.

3. After Admission of the Petition, the erstwhile IRP made a public announcement via form A, in respect of the initiation of the CIRP process. The Resolution Professional moved an Application for exclusion of period, hence vide an order dated 01.01.2019 in MA 1575 of 2018 of this Bench the period of 38 days was excluded for completion of CIRP process w.e.f. 31.12.2018, thus accordingly the CIRP period was to be ended on 07.02.2019.
4. The erstwhile IRP invited for Expression of Interest (EOI) by publishing the invitation in two newspapers namely Mint English Edition dated 13.12.2017 and Business Standard dated 14.12.2018. It is submitted that vide an Order dated 07.03.2018 by this Tribunal, the aforesaid IRP was substituted by the Applicant Mr. Mohan Lal Jain (IBBI Registration No: IBBI/IPA-002/IP- N00006/2016-17/10006) as the Resolution Professional (RP) and began the functions of RP from 14.03.2018.
5. It is submitted that the last extension for submission of EOI had been extended to 31.07.2018 to maximise the value of assets of the Corporate Debtor. Accordingly, the last date for submission of the Resolution Plan had been extended till 31.08.2018. It is then submitted that the Information Memorandum (IM) had been prepared on 21.09.2017 and was made available to the Prospective Resolution Applicants (PRA's). The IM was subsequently revised and the second version was published on 30.11.2017. An Evaluation Matrix had been prepared and the same was approved by the Committee of Creditors (CoC) in the 6th meeting held on 01.03.2018.
6. The RP submits that in response to the invitation for EOI, two Resolution Plans have been received from (i) Royale Partners Investment Funds Limited (RPIFL) and (ii) M/s BSL Engineering Services DMCC, Dubai. The Plans were opened in the 13th CoC meeting on 04.09.2018. The RP submits that the Resolution Plan submitted by M/s BSL Engineering Services DMCC, Dubai was not compliant and accordingly was rejected by the CoC in the 14th meeting held on 18.09.2018. The Resolution Plan submitted by RPIFL was discussed in the CoC meeting and was advised to modify the plan. Thereafter further a modified plan was submitted by RPIFL by e-mail on 03.01.2019 which was shared with the members of CoC. The Plan was received by the RP for its comments/observations and was again shared with RPIFL for their response and necessary modifications in the Resolution Plan and based thereon, RPIFL again submitted a modified Resolution Plan on 30.01.2019.

7. It is further submitted that in the 18th meeting of the CoC held on 31.01.2019 the signed copy of the modified version of the Resolution Plan was placed and thereupon the Resolution Plan was scored in respect of the Evaluation matrix. It was observed that there were no changes in the scoring of the Resolution Plan. The RP submits that a meeting was convened wherein the commercial aspects of the Plan was discussed/negotiated with the members of CoC.
8. The process of modifying of the Resolution Plan was running from 8 to 9 months and the offer given by the RPIFL seemed to be on a lower side. The **Resolution Plan was not commercially viable since the Fair value and the Liquidation value as stated in the valuation report were higher than the amount offered by RPIFL in the Plan.** The working capital and the liquidity to manage the operations of the Corporate Debtor were left missing in the plan and also RPIFL had not proposed any upfront capital infusion for improving and enhancing the revival prospects of the Corporate Debtor.
9. It is submitted that the revised Resolution Plan submitted by RPIFL was placed for e-voting for approval/disapproval from 02.02.2019 to 03.02.2019. In the 19th meeting of the CoC held on 04.02.2019 the result of e-voting was placed before the CoC for their deliberations. In view of the only Resolution Plan received in the CIRP of M/s KSS Petron Private Limited, the CoC had resolved to reject the Resolution Plan in the 19th CoC meeting held on 04.02.2019. As a consequence CoC unanimously voted for Liquidation of the Corporate Debtor.

The resolution was passed in the following manner:

“RESOLVED THAT pursuant to the provisions of Section 33, sub section (2) and Section 35 (1)(e) of the Insolvency and Bankruptcy Code, 2016 (including all the amendments and modifications for the time being in force) and rules and regulations made thereunder, approval of Committee of Creditors be and is hereby accorded to initiate liquidation proceedings in the matter of KSS Petron Private Ltd (the Corporate Debtor).

RESOLVED FURTHER THAT, Mr. Mohan Lal Jain, Resolution Professional shall continue to manage the operations of the Corporate Debtor after the expiry of the Corporate Insolvency Resolution Process period until an order of liquidation of the Corporate Debtor is passed by the Adjudicating Authority for the purposes of protecting and preserving the value of the property of the Corporate Debtor.

RESOLVED FURTHER THAT *Mr. Mohan Lal Jain, Resolution Professional is also authorized to continue defending the legal cases filed against the RP/Corporate Debtor in relation to the CIRP process of the Corporate Debtor. The committee be and hereby accords approval for the expenses to be incurred for defending such legal cases filed in any court against the RP/Corporate Debtor by any party in relation to the CIRP process of the Corporate Debtor. The said expenses to be incurred shall be treated, constituted and form part of Corporate Insolvency Resolution Process (CIRP) cost of KSS Petron Private Limited.*

RESOLVED FURTHER THAT *the committee hereby authorises the Resolution professional to engage an Advocate, as he deems appropriate, to file and prosecute the application for liquidation of Corporate Debtor before the hon'ble NCLT.*

RESOLVED FURTHER THAT *expenses for filing the application for liquidation be treated as Insolvency Resolution process Cost of KSS Petron Pvt. Ltd.*

RESOLVED FURTHER THAT *the Committee hereby authorizes Mr. Mohan Lal Jain, Resolution professional to undertake debit transactions of the said expenses and to do all acts, deeds and matters as may be necessary to give effect to this resolution”.*

10. Hence, in the meeting held on 04.02.2019, the CoC by 100% voting decided to liquidate the Corporate Debtor under section 33(2) of the I&B Code. The present RP Mr. Mohan Lal Jain expressed his unwillingness to act as a Liquidator of the Corporate Debtor. The **CoC decided that Mr Vineet Chaudhary** be appointed as **Liquidator** subject to approval of this Bench.
11. The Resolution Professional Mr Vineet Chaudhary has given his written consent to act as ‘Liquidator’ on 04.02.2019 under Regulation 3(1A) of the IBBI (Liquidation Process) Regulations, 2016.
12. The Resolution Professional appointed two valuers for the valuation of assets namely (i) M/s Mitcon Consultancy & Engineering Servises Ltd. where the average liquidation value of the corporate debtor was stated to be ₹ 152.38 crore and (ii) M/s RBSA valuation Advisors LLP where the average liquidation value of the corporate debtor was stated to be ₹ 160.42 crore. Thus, the liquidation value of all assets of the Corporate Debtor comes to ₹ 156.40 crore.

13. Considering above facts and circumstances, this Bench hereby Orders that:

- i. The Process of Liquidation shall commence as per the Chapter III of the Code from date of this Order.
- ii. Mr Vineet Chaudhary, (IBBI Registration No: IBBI/IPA-002/IP-N00103/2017-18/10246) is hereby appointed as a “Liquidator” as per the Provisions of S. 34 of the Code.
- iii. The RP 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.
- iv. Copy of this Order shall be forwarded to the Concerned Authority with which the Corporate Debtor is Registered.

14. The Liquidator is at liberty to seek any directions, if need be, from this Bench during the Liquidation Process.

15. The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.

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

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated: 27.12.2019

A.M.=