

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

MA/989/2019
IN
CP/759/IB/2018

Application filed under section 33(2) of the IBC, 2016

In the matter of M/s. St. John Freight Systems Limited

Mr. R. Venkatakrisnan ...Applicant
Resolution Professional
Representing Corporate Debtor
(M/s. St. John Freight Systems Limited)

Order delivered on: 26.11.2019

CORAM:

B.S.V PRAKASH KUMAR, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Counsel for the Applicant: *Shri. T.K Bhaskar, Advocate*
Shri. Vikram Jain, Advocate
Ms. Shwetha Vasudevan, Advocate

ORDER

Per: **B.S.V PRAKASH KUMAR, MEMBER (JUDICIAL)**

Heard and dictated in Open Court on: 21.11.2019

It is an MA filed u/s 33(1) of the Insolvency & Bankruptcy Code, 2016 ("the Code") by the Resolution Professional (in Short "RP") seeking direction for liquidation of the Corporate Debtor on the ground that the CoC within the period of CIRP rejected the

Resolution Plan on 28.09.2019, thereafter, the CoC has not approved any other plan before CIRP period was over by 06.09.2019.

2. On perusal of this application, it appears that CIRP was initiated against the Corporate Debtor on 10.12.2018 pursuant to the application filed under Section 7 of the Code required by the Financial Creditor M/s. Phoenix ARC Private Limited. In pursuance thereof, public announcement was given on 13.12.2018 in the newspapers having wide circulation within the vicinity the Corporate Debtor situated mentioning the last date for submission of claims as 24.12.2018. In furtherance of it, 369 claims were received aggregating to ₹326,06,05,519, out of which, the total admitted claim as on the date of filing of this application is ₹296,73,59,259. On collation of claims of the Financial Creditors, CoC was constituted, thereafter, in the 1st meeting held on 08.01.2019, the IRP was appointed by the RP.

3. In the meanwhile, the RP says that the Promoter-Directors of the Corporate Debtor had applied for MSME Registration for the Corporate Debtor on 23.01.2019.

4. The RP on looking at the books of the company and other information available prepared an Information Memorandum in terms of Regulations 36 and placed the same before CoC on 20.02.2019. As the 3rd CoC, in the meeting held on 20.02.2019, approved the invitation for Expression of Interest (EOI), the RP issued Form-G on 23.02.2019, in response to the same, ten Resolution Applicants gave their EOI, out of them, two Resolution Applicants were classified as eligible but not deposited EMD (Earnest Money Deposit). For EMD was not received, on 02.05.2019, CIRP period was further extended for another 90 days based on the approval given by the CoC.

5. Since no prospective Resolution Applicants came forward even on the reduced EMD on 27.05.2019, another invitation for EOI was issued on the reduced EMD at ₹5 Crores whereupon, on 25.08.2019, Mr. T. Johnson and Mr. Samuel Jeffson (Suspended-Directors) submitted Resolution Plan without enclosing EMD sought by the CoC. As no other Applicants came forward except the application filed by Mr. T. Johnson & Mr. Samuel Jeffson, who

happened to be the Promoter-Directors of the Corporate Debtor, the RP placed Resolution Plan as well as the eligibility of these Resolution Applicants under Section 29(A) of the Code before the CoC for its consideration, over which, the CoC held a discussion, and then put the plan to voting. In the said voting, the plan was voted upon 55.66% in favour of the plan, 37.17% voted against the plan and 7.17% abstained from voting.

6. As there was no requisite approval from the CoC to the Resolution Plan submitted by the Promoter-Directors, the RP filed this application for liquidation, as no plan was approved by the CoC within the CIRP period which has come to an end on 06.09.2019.

7. Subsequent to filing this application, it appears that these Promoter-Directors appealed to the CoC to reconsider its plan by saying that they would place EMD and other requisites which are required for approval of the plan but these Promoter-Directors having failed to deposit EMD as stated in the invitation for EOI, at the time of reconsideration of the plan of these Promoter-Directors,

the CoC voted against the plan on 28.09.2019 as mentioned in the table below:

S. No.	Name of the Financial Creditor	Voted For In %	Voted Against in %	Abstained from Voting / Not Voted in %
1	Phoenix ARC Private Limited trustee of Phoenix Trust-FT 16-26	27.77		
2	State Bank of India		16.52	
3	Indian Overseas Bank	12.69		
4	Axis Bank Limited		8.54	
5	SREI Infrastructure Finance Limited	8.35		
6	City Union Bank Limited	5.95		
7	L&T Finance Limited		5.39	
8	IDBI Bank Limited		5.14	
9	Small Industries Development Bank of India			3.50
10	Corporation Bank			3.47
11	KarurVysya Bank Limited		0.90	
12	Lakshmi Vilas Bank		0.68	
13	Canara Bank	0.68		
14	SREI Equipment Finance Limited			0.20
15	IndusInd Bank Limited	0.05		
16	Shriram Transport Finance Company Limited			
17	Cholamandalam Investment and Finance Company Limited			
	Total	55.66	37.17	7.17

8. As to the liquidation value of the Corporate Debtor, the RP has determined the average liquidation value as Rs.161.25 Crores.

9. Looking at the events taken place, it is evident that the CoC did not take any extension from 06.09.2019 to reconsider this Resolution Plan on 28.09.2019. However, when no Resolution Plan has been approved by the CoC within the CIRP period as mentioned under the Code, this Adjudicating Authority is bound to initiate liquidation as envisaged under Section 33(1) of the Code notwithstanding the fact as to whether extension has been taken from 06.09.2019 as contemplated under 2nd proviso of Section 12(3) of the Code or not, therefore we hereby order for liquidation of this Corporate Debtor with the following directions:

- a) This Bench hereby orders the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing a public notice stating that the Corporate Debtor is in liquidation with a direction to the liquidator to send this order to ROC with which this company has been registered.
- b) The Resolution Professional viz Mr R. Venkatakrishnan is hereby appointed to act as Liquidator for the purpose of

liquidation of the corporate debtor, therefore all powers of the board of directors, Key managerial personnel and partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be hereby vested in the liquidator. The Personnel of the Corporate Debtor are directed to extend all co-operations to the liquidator as may be required in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified under regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under section 53 of the Code.

- c) Since this liquidation order has been passed, no suit or other legal proceedings shall be instituted by or against the Corporate debtor without prior approval of this

Adjudicating Authority save and except as mentioned in sub-section 6 of section 33 of the Code.

d) This liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of the Corporate Debtor except to extent of the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

e) The liquidator is directed to carry the functions of the Liquidator as envisaged under the Insolvency and Bankruptcy Code, 2016 and also Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

10. Accordingly, this MA/989/2019 filed in CP/759/IB/2018 is hereby allowed.

-Sd-

(S. VIJAYARAGHAVAN)
Member (Technical)

-Sd-

(B. S.V. PRAKASH KUMAR)
Member (Judicial)

VS/TJS