



IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT-III

I.A. 5527/2023

IN

C.P. NO. (IB) 2279/MB/C-III/2019

Under Section 33(3) r.w. 60(5)(c) of Insolvency and Bankruptcy Code, 2016.

CMA Srigini Rajat Naidu

)

Chairperson, Steering Committee for

)

M/s. M.S. Mining and Consultancy Pvt. Ltd.

)

..Applicant

Vs.

M/s. Rudransh Agro & Co.

...Respondent

IN THE MATTER OF

M/s Standard Scientific Co.

...Operational Creditor

Vs.

M/s M.S. Mining and Consultancy Private

Limited

....Corporate Debtor

Order Pronounced on: 01.10.2024

Coram:

Hon'ble Smt. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Applicant: Ld. Counsel Avinash R. Khanolkar, Ld. Counsel Kavita Singh, Ld. Counsel Surekha D Yadav



Per: Sh. Charanjeet Singh Gulati Member (Technical)

1. The present application is filed under Section 33(3) r.w.60(5)(c) of the Insolvency and Bankruptcy Code, 2016 by Mr. CMA Srigini Rajat Naidu, Chairperson of Steering Committee for M/s. M.S. Mining and Consultancy Private Limited against the Successful Resolution Applicant M/s. Rudransh Agro & Co. seeking liquidation based on the Resolution Applicant's inability to implement the Resolution Plan and along with the following reliefs:

- a. Admit and allow the present Application.*
- b. Pass an order commencing Liquidation Proceedings against M/s. M.S. Mining & Consultancy Pvt. Ltd. as per Part I, Chapter III of the Insolvency and Bankruptcy Code, 2016.*
- c. Appoint the applicant viz. CMA Srigini Rajat Naidu as Liquidator of M/s. M.S. Mining & Consultancy Pvt. Ltd. as per Section 34 of the Insolvency and Bankruptcy Code, 2016.*
- d. Fix the fee of the appointed Liquidator as per the provisions of Reg. 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*
- e. Allow the appointed Liquidator to represent M/s. M.S. Mining & Consultancy Pvt. Ltd. as per the provisions of Section 35(1)(k) of the Insolvency and Bankruptcy Code, 2016 before any court of law for the institution of proceedings and/or in pending proceedings.*
- f. Direct the dissolved Committee of Creditors of M/s. M.S. Mining & Consultancy Pvt. Ltd. to meet the shortfall, if any, remains there between the Liquidation Cost and actual realized amount from the sale proceeds of M/s. M.S. Mining & Consultancy Pvt. Ltd.*
- e. Direct the Respondent to make payment of entire CIRP Cost till commencement of Liquidation at actuals."*



Brief Facts

2. The **C.P. NO. (IB) 2279/MB/C-III/2019** was **admitted** by this Tribunal and the process of CIRP was initiated against the Corporate Debtor viz. M/s. M.S. Mining and Consultancy Private Limited vide an order dated 17.03.2020. Ms. Manisha Sanjay Agrawal was appointed as Interim Resolution Professional
3. Pursuant to the CIRP process on recommendation of the CoC, the Applicant was confirmed as Resolution Professional for the Corporate Debtor vide an order dated 11.11.2020. According to the due process, the Applicant published a public notice on 03.12.2020 in Form – G inviting the Expression of Interest to submit Resolution Plan for the Corporate Debtor.
4. Due to the Covid-19 situation, the CIRP period lapsed, therefore the Applicant filed an application bearing **IA 2478/2020** in **C.P. NO. (IB) 2279/MB/C-III/2019** seeking for exclusion of the lapsed time which stood allowed vide an order dated 25.03.2021. Therefore, the statutory time limit for completion of the CIRP was shifted to 26.07.2021.
5. The Respondent submitted the Resolution Plan with the Applicant on 30.04.2021. The plan was approved by 76.56% vote share in the CoC meeting. Thereafter, the Applicant brought the Resolution Plan for approval before this Tribunal through I.A. 403/2022.
6. The Tribunal vide order dated 30.06.2023 approved the resolution plan and declared the Respondent as Successful Resolution Applicant (SRA) for the Corporate Debtor. The Applicant communicated the said Order to the Respondent and CoC vide an e-mail dated 15.07.2023 for the implementation of the Resolution Plan.
7. The Resolution Plan proposed a total consideration of Rs.3,45,00,000/-. The Plan was to be implemented within a period of



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3 months from the Effective date (the date on which the Resolution Plan was approved by the Adjudicating Authority), within which the payments were to be made to all the creditors in the following 3 phases:-

Time Limit	Amount	Nature of Fund	Application of funds (Purpose)
Upfront payment within 30 days of approval by NCLT (phase 1)	1,12,00,000/-	Towards Equity	1. Payment of CIRP Cost (Rs.40.00 Lakh) 2. Payment of Operational Creditors (Rs.1.00 Lakh) 3. Payment to Operational Creditors (Duties & Taxes Rs.0.50 Lakh and Other Payable Rs.0.50 Lakh) 4. Payment to Financial Creditors Rs.70 Lakh) + 5. Payment to Unsecured Financial Creditors (Rs.5.00 Lakh)
Upfront payment within 60 days of approval by NCLT (phase 2)	1,10,00,000/-	Towards Equity	Payment to Financial Creditors
Upfront payment	1,23,00,000/-		



within 90 days of approval by NCLT (phase 3)		Towards Equity	Payment to Financial Creditors
	3,45,00,000/-		

8. On 27.07.2023 the Respondent wrote a letter to the Applicant, communicating withdrawal from the implementation of the Resolution Plan. With respect to the resolving the M.S. Mining and Consultancy Pvt. Ltd. under CIRP, the Respondent conveyed that the market for the concerned product i.e. Manganese Oxide was profitable at the time of submission of Resolution Plan. However, based on their assumptions, two years back they were confident of reviving the plant hence they had submitted the Resolution Plan on 30.04.2021. After a lapse of two years the market dynamics for Manganese Oxide had totally changed into low demand for this product in local as well as international market which makes the unit unviable. As per their assessment the demand for this product shall not improve in near future and any investment in this sector will be unviable. Considering this scenario, the Respondent withdrew the implementation of the Resolution Plan. The Respondents honoring the clause 5(11) and 6(11) of Request for Resolution Plan (RFRP) gave their consent via this letter dated 27.07.2023 to forfeit Rs.70,00,000 deposited by them towards (EMD) of Rs.20,00,000 and encashment Performance Guaranty of Rs. 50,00,000 provided vide Fixed Deposit.
9. Subsequently, the Applicant called upon a meeting of the Monitoring Committee (stated as Steering Committee in the Petition) of the Corporate Debtor M/s. Mining and Consultancy Private Limited on 31.07.2023 and placed the letter of the Respondent in the meeting.
10. The 1st Monitoring (Steering) Committee which was held on 31.07.2023 and chaired by CMA Shrigini Rajat Naidu with Ms.



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Kalpna Purohit and Mr. Shantanu Bansal from Indian Bank as the members of the meeting. The committee consentaneously decided to proceed with the liquidation of the corporate debtor.

11. During the 1st Monitoring (Steering) Committee meeting it was decided that the expenses arising from the CIRP shall be borne by the Respondent. The Applicant sent a letter dated 11.08.2023 to the Respondent, elaborating the details of the pending CIRP cost amounting to Rs.79,57,754. The Respondent had paid an amount of Rs.70,00,000 (Earnest Money Deposit EMD of Rs.20,00,000) and (Performance security of Rs.50,00,000). The Respondent withdrew the implementation of the Resolution Plan hence, shall compensate the CoC and the Company with the CIRP cost which has been incurred. The details of the CIRP cost have been reproduced in the following tabular form: -

Sr. No.	Particular	Total Amount Incurred Amount (in Rs.)
1.	IRP Fees (from 21.07.2020 to 11.11.2020)	7,40,000
2.	RP Fees (From 18.11.2020 to 12.07.2023) – 31 months 24 days	46,90,500
3.	Security Guards (From August 2020 to July 2023) – 35 months 12 days	16,99,200
4.	CA Satish Sarda (Transaction Auditor)	1,77,000
5.	Mr. Rhishikesh Pardhy (Valuer – L&B)	19,000
6.	Mr. Harshad Deshpande (Valuer – SFA)	35,000
7.	Mr. Kerdar Chikodi (Valuer – L&B, P&M)	65,286
8.	Mr. Arun Sonkusale (Valuer – P&M)	18,000



9.	Mr. Charudutta Marathe (Valuer – SFA)	35,000
10.	Paper Publication – (Form G)	77,968
11.	Adv. Avinash Khanolkar (Advocate on record)	1,61,900
12.	AMC Law Firm	2,07,000
13.	Mr. Vinayak Misar (for opinion on perspective license)	30,000
TOTAL		79,57,754

12. The 2nd meeting of the Monitoring (Steering) Committee was called on 16.11.2023, where the Chairman mentioned that as per section 53 of IBC Code (Distribution of Funds), the unpaid CIRP cost shall hold top most priority over all other dues and it shall be paid from the available funds. Indian Bank, a member present at the meeting contributed an amount of Rs.18,39,548 towards the cost of CIRP which shall be repaid to the bank from the available funds.
13. The Applicant filed an Additional Affidavit to place on record, the email sent to the Authorized Officer of the Insolvency and Bankruptcy Board of India. The relevant paragraphs of the abovementioned letter addressed to the IBBI dated 18.03.2024 have been reproduced below:-

“In the 2nd Steering Committee meeting dated 16.11.2023 it has been unanimously decided that the entire CIRP cost of Rs. 79,57,754/- (Rs. Seventy Nine Lac Fifty Seven Thousand Seven Hundred Fifty Four) which has been incurred during the CIRP process should be recovered from RA as they failed to implement the Resolution Plan approved by Hon’ble NCLT.

Accordingly, amount deposited by RA towards the EMD and Performance Security has been forfeited and the undersigned as erstwhile RP/Chairman of Steering Committee has filed an



application u/s 33 of Insolvency and Bankruptcy Code 2016 for Liquidation of company on 23rd November 2023 through the IA 5527/2023.

This is for your information and record and to take appropriate action under the law against M/s. Rudransh & Co. (SRA), if deems fit to your good office.”

14. As per the letter dated 27.07.2023 sent by SRA viz. M/s. Rudransh & Co. to CMA Srigini Rajat Naidu, the SRA stated that: -

“...We are aware that as per the clause 5 (II) and 6 (II) of Request for Resolution Plan (RFRP) the amount deposited towards Earnest Money Deposit and performance Guaranty will be forfeited/enchased if. Successful Resolution Applicant withdraws out of the Resolution Process and contributed to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.”

15. Under the circumstances and since the Monitoring Committee has consentaneously decided to proceed with liquidation, the only option is of the liquidation of the Corporate Debtor. Accordingly, we are of the considered opinion that since the SRA contravened the implementation of the Resolution Plan approved by this Tribunal and there is nothing further which can be done to resolve the Corporate Debtor, therefore, this is a fit case for liquidation of the company, with the following directions: -

ORDER

- a. After looking into the consent given by the Applicant/Insolvency Professional and the minutes of the 1st and 2nd Steering Committee Meeting, we hereby appoint **Mr. Srigini Rajat Naidu**



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bearing Registration No. **IBBI/IPA-003/IP-N000137/2017-2018/11513** as the Liquidator in terms of Section 34 of the Code. His Authorization for Assignment is valid up to 30.11.2024.

- b. The fees of the liquidator shall be as per the provisions of Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- c. The Resolution Applicant failed to implement the Resolution Plan, therefore the amount of Rs.70,00,000/- received as EMD and Performance Security shall be forfeited.
- d. Registry is directed to send a copy of the order to the Registrar of Companies, Mumbai and the Insolvency and Bankruptcy Board of India.
- e. A fresh moratorium shall commence under Section 33(5) of the Insolvency and Bankruptcy Code.
- f. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33(7) of the IBC Code, 2016.
- g. The Liquidator is directed to proceed with the process of liquidation as laid down under Chapter III of the Part II of Insolvency and Bankruptcy Code, 2016 and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) regulations, 2016.



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- i. The Liquidator appointed under section 34 of the Code shall have all powers of the Board of Directors, Key Managerial Personnel and the existing Board of the Corporate Debtor, the Key Managerial Persons and the partners shall cease to have effect.
 - j. The personnel of the corporate debtor shall extend all co-operation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.
 - k. The fees entitled to the Liquidator shall be as per Regulation 4(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
 - l. A copy of the said order shall be sent to the Financial Creditors, Corporate Debtors and the liquidator for taking necessary steps.
16. Hence, **I.A. No. 5527 of 2023** in C.P. No. 2279 of 2019 is **allowed and stands disposed of**.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Vaishnavi, LRA

Sd/-

Lakshmi Gurung
Member (Judicial)