

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

**(Exercising the powers of Adjudicating Authority
under the Insolvency and Bankruptcy Code, 2016)**

**CA No.102/2018
IN
CP(IB)No.36/Chd/CHD/2018
(Decided matter)**

Under Section 33(2) of IBC, 2016.

In the matter of:

Shivek Labs Limited
having its registered office
at 104, Industrial Area,
Phase I, Chandigarh-160002. ...Corporate Debtor.

And in the matter of:

Rajiv Khurana,
Resolution Professional
of Shivek Labs Limited
having office at 1299,
Sector 15-B, Chandigarh. ...Applicant-Resolution Professional

Order delivered on 17.05.2018.

**Coram: Hon'ble Mr. Justice R.P. Nagrath, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

For the Petitioner : 1. Mr. Vishwas Arora, Advocate.
2. Mr. Rajiv Khurana, Resolution Professional.

For the ex-Director : 1. Mr. P.D. Sharma, Practising Company Secretary.
of Corporate Debtor 2. Mr. G.S. Sarin, Practising Company Secretary.
(Sunil Guglani)

For the Financial : 1. Mr. R.S. Bhatia, Advocate for PNB.
Creditors. 2. Mr. A.P. Jagga for Canara Bank.
3. Mr. Vikram Bhide for IDBI Bank.

*Accepted
for filing*

Per: Pradeep R. Sethi, Member(Technical)

ORDER

CP(IB) No.36/Chd/CHD/2017 was filed by M/s Shivek Labs Limited (hereinafter referred to as Corporate Debtor) under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code') for initiating insolvency resolution process. The petition was admitted on 06.07.2017 and Mr. Vivek Kumar Arora was appointed as the Interim Resolution Professional with necessary directions and moratorium was also declared in terms of Section 14(1) of the Code. Subsequently, on the application of Punjab National Bank a financial creditor, Mr. Rajiv Khurana was appointed as the Resolution Professional vide order date 07.09.2017. The period of 180 days for conclusion of the resolution process expired on 02.01.2018. By order dated 08.01.2018, the period of completion of resolution process was extended by another 90 days in terms of sub section (3) of Section 12 of the Code.

2. The instant application has been filed by the Resolution Professional intimating the decision of liquidation passed by the Committee of Creditors (COC) and seeking order of liquidation pursuant to Section 33 of the Code. It is stated that the Interim Resolution Professional constituted the committee of creditors in accordance with Section 21 of the Code, after collating claims from the financial creditors of the corporate debtor and

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following creditors were taken as financial creditors and made members of COC:-

Name of Member of Committee of Creditors	Admitted Claim (₹)	Voting Share
Punjab National Bank	83,22,76,894	61.39%
Canara Bank	43,29,39,845	31.93%
IDBI Bank Ltd.	9,05,01,823	6.68%

3. It is stated that in the second meeting of COC on 30.10.2017, discussion regarding submission of resolution plan by corporate debtor/Mr. Sunil Guglani (Promoter-Director) took place whereby it was assured that plan will be submitted by 23.11.2017. However, in view of promulgation of ordinance dated 23.11.2017 inserting Section 29 A in the Code specifying persons not eligible to be resolution applicant, thereby disqualifying the promoter-directors, the third meeting of COC took place on 08.12.2017 for taking necessary action in order to invite prospective resolution applicants.

4. On 13.12.2017, expression of interest was invited by way of newspaper publication/advertisement in Economic Times Newspaper for inviting investors/resolution applicants to submit a resolution plan. It is stated that in the sixth meeting of COC held on 27.02.2018, the bids in the form of sealed quotations received from the prospective resolution applicants were opened at the meeting and it was found that four bids were received. In the 7th COC meeting on 06.03.2018, the bids received from the prospective resolution applicants were discussed and the applicants were asked to enhance the bids. The enhanced bids were considered in the 8th meeting of

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COC on 09.03.2018. The 9th meeting of the COC took place on 26.03.2018 and recommended the liquidation of the corporate debtor with 93.32% COC voting share. Relevant agenda No.9.05 of the 9th meeting of COC is as follows:-

To discuss the revised offers/resolution plans received from prospective Resolution Applicant.

Revised offers/Bids of Prospective Resolution Applicants handed over to the members of Committee of Creditors on 08.03.2018 were considered by the members of COC.

Canara Bank informed that the offers/bids were not found suitable by their concerned authority and recommended liquidation of the Corporate Debtor. Following this, Punjab National Bank too rejected the offers/bids as there was no majority available for resolution. However, IDBI Bank dissented for liquidation of Corporate Debtor. The voting shares of the members of the Committee of Creditors are as detailed below:-

1. Punjab National Bank	61.39%	Proposed Liquidation
2. Canara Bank	31.93%	Proposed Liquidation
3. IDBI Bank	06.68%	Dissented Liquidation

Since majority of Voting Share did not accept the above offers/bids, therefore, the Committee recommended for the liquidation of the corporate debtor with voting strength of 93.32% as against 6.68% recommending against liquidation.

The Committee further Resolved that the Resolution Professional shall file an appropriate application before the Hon'ble National Company Law Tribunal Chandigarh Bench to intimate the decision of the Committee of Creditors to liquidate the corporate debtor and seek Order of Liquidation from NCLT.

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5. It has been prayed that the order of liquidation of the corporate debtor may be passed in accordance with Section 33 (2) of the Code.

6. When the matter was listed on 17.04.2018, the authorised representative of Mr. Sunil Guglani the director of suspended Board of Directors informed this Tribunal that CWP No.7865 of 2018 had been filed before the Hon'ble High Court by Mr. Sunil Guglani against Union of India and others challenging the vires of the amendment made in the Code and that petition was listed on 19.04.2018. In view of the above, this matter was adjourned to 25.04.2018 for hearing.

7. On 25.04.2018, the authorised representative of Mr. Sunil Guglani stated that CWP 7865 of 2018 (*supra*) has since been withdrawn on 24.04.2018. When the matter was listed on 03.05.2018 notice of the instant application to the members of COC namely Punjab National Bank, Canara Bank and IDBI Bank was directed to be issued for 17.05.2018, i.e. today.

8. The learned counsel for resolution professional has pleaded that in view of the decision of the COC in its 9th meeting on 26.03.2018, the order of liquidation of the corporate debtor was passed in accordance with Section 33 (2) of the Code.

9. We have heard the learned counsel for the applicant/resolution professional, the authorised representative for Mr. Sunil Guglani Director of the suspended Board of Directors of the corporate debtor and learned counsel and authorised representatives of financial creditors. It was contended on behalf of the financial creditors that decision was taken by the COC in the meeting held on 26.03.2018 after due consideration of the four

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bids received. The representative for the IDBI Bank stated that they had dissented in the decision of liquidation of the corporate debtor.

10. Section 30 (4) of the Code states that the COC may approve a resolution plan by a vote of not less than 75% of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board. In the present case, the vote of 93.32% is against the acceptance of the four resolution plans stated to be submitted and only IDBI Bank with 6.68% shares has dissented for liquidation of the corporate debtor.

11. Section 33(2) states where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1). In the present case, the Resolution Professional has intimated the decision of the Committee of Creditors to liquidate the corporate debtor on 28.03.2018 i.e. before the expiry of CIRP (180 days of CIRP + 90 days of extended CIRP) on 02.04.2018. We have already extracted agenda No.9.05 of the 9th COC meeting on 26.03.2018 in which the COC recommended for the liquidation of the corporate debtor with voting strength of 93.32% as against 6.68% recommending against liquidation. We have discussed above that the members of the COC namely, Punjab National Bank, Canara Bank and IDBI Bank were given an opportunity of being heard on 17.05.2018 and have

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confirmed that the respective decisions taken by them were after due consideration.

12. In view of the above discussion and the provisions of Section 33(2) of the Code, we pass an order requiring the corporate debtor to be liquidated in the manner as laid down in Chapter III of the Code. We appoint Shri Rajiv Khurana presently Resolution Professional as the Liquidator for the purpose of liquidation. His appointment will take effect from the date of receipt of copy of this order. All the directions/requirements and provisions of Chapter III of the Code and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as Liquidation Process Regulations, 2016) shall be strictly complied with. Some of the directions are noted as under:-

- (i) Subject to Section 52 of the Code, when a liquidation order has been passed, no suit or other legal proceedings shall be instituted against the corporate debtor [Section 33 (5) of the Code];

Provided that a suit or other legal proceedings may be instituted by the liquidator on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority;

- (ii) However, in terms of sub-section (6) of Section 33 of the Code the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

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for order

- (iii) The order for liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the liquidator;
- (iv) All the 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 in the liquidator; and
- (v) The personnel of the Corporate Debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.

13. The Liquidator shall publish public announcement in accordance with Regulation 12 of the Liquidation Process Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

14. It is further directed that the announcement shall be published in accordance with Regulation 12(3) as under:-

“(a) In one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the

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opinion of the liquidator, the corporate debtor conducts material business operations;

(b) on the website, if any, of the corporate debtor; and

(c) on the website, if any, designated by the Board for this purpose."

15. In accordance with Regulation 13 of the Liquidation Process Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Rule 15 of the Liquidation Process Regulations 2016 and every fortnight thereafter.

16. It is clarified that the Financial Creditors are not debarred from having recourse to enforce of the personal guarantees and to take proper steps in this regard.

Copy of this order be supplied to the counsel for the liquidator as well as to the Registrar of Companies, Punjab and Chandigarh immediately.

(Justice R.P. Nagrath)
Member (Judicial)



(Pradeep R. Sethi)
Member (Technical)

May 17, 2018
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No. of Pages 09
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Date of Preparation of Copy 25/5/18
Date of Delivery of Copy 28/5/18

CERTIFIED TO BE TRUE
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(Decided matter)

Registrar/Court Officer
National Company Law Tribunal
Chandigarh Bench