

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA 1525/2018
in C.P.-(IB)1514(MB)/2017**

Under section 33(1)&(2) of the IBC, 2016

In the matter of
Allahabad Bank Petitioner/
Financial Creditor

Vs.

Biotor Industries Ltd.Corporate Debtor

Through Mr. Sanjay Kumar Agarwal
Resolution Professional
....Applicant

Order delivered on 31.12.2018

Coram: Hon'ble Shri. M.K. Shrawat, Member (Judicial)

For the Petitioner : Ms. Disha Ponda, Adv.
i/b India Law – for Resolution Professional

For the Respondent : Mr. Nikhil Rajani & Jyoti Sanap
i/b V. Deshpande & Co. for Resp. No. 7

Per M.K. Shrawat, Member (Judicial)

ORDER

The Resolution Professional (RP) filed a Miscellaneous Application on 07.12.2018 vide No.: 1525/2018 u/s 33(1)&(2) of the Insolvency and Bankruptcy Code, 2016, (Code) seeking initiation of liquidation of the Corporate Debtor on account of the CoC has recommended for Liquidation of the Corporate Debtor with 86.67% of vote share and accordingly authorised RP to approach this Tribunal to get the approval of this Bench for Liquidation order as envisaged under Section 33 of the Code, hence this application.

2. On perusal of this application, this Bench has noticed that a Petition u/s. 7 of the Insolvency and Bankruptcy Code, 2016 filed by the Financial Creditor viz. 'Allahabad Bank' against 'M/s. Biotor

Industries Ltd.’ was Admitted vide an order dated 01.01.2018 by this Bench wherein ‘Mr. Sanjay Kumar Agarwal (IBBI/IPA-001/IP-P00062/2017-18/10140)’ was appointed as Interim Resolution Professional (IRP). In pursuance thereof, IRP issued public announcement u/s 15 of the Code, on 13.01.2018 in two newspapers inviting claims from the creditors. After having verified and admitted the claims received from the creditors, CoC was constituted comprising of the Financial Creditors of the Corporate Debtor. In furtherance thereof, first CoC meeting took place on 08.02.2018, wherein the CoC approved resolution allowing IRP to continue as Resolution Professional.

3. In pursuant to the public announcement, RP received various claims from Financial Creditors, Operational Creditors, workmen and employees, statutory bodies, etc. for a total claim of nearly ₹ 30,000 crores. The RP stated that when he visited the Corporate Debtor’s office for taking all information, he realized that the whole operations of the Debtor Company had been closed since more than 8 years, hence no source of income and further noticed that most of the assets of the Debtor Company have been attached by various authorities and also there are various litigation including criminal litigation pending against the suspended directors of the Corporate Debtor.

4. This applicant appointed two Registered Valuers viz. (i) Rakesh Narula & Co and (ii) Yardi Prabhu Consultants, under Regulation 27 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 [IBBI(IRPCP)] for determination of Liquidation value of the assets of the Corporate Debtor in accordance with Regulation 35 of IBBI(IRPCP). Basing on the valuation given by them, this RP determined the average value of two Valuers as ₹279.57 crores (liquidation value) and ₹376.66 crores (market value).

5. The Expression of Interest (EoI) as per the provisions of the Code u/s 25(h) was published and some EoI were received from few

potential bidders. Thereafter, as the prospective Resolution Applicants wanted extension of time for submission of bids, the CoC in its meeting held on 08.06.2018 recommended for extension of CIRP for 90 days. Accordingly, RP approached this Tribunal for extension of CIRP and the same was granted by this Bench vide an order dated 06.07.2018.

6. As most of the properties of the Corporate Debtor are attached, the potential Resolution Applicants wanted the same be removed before submission of their bid for Resolution Plan. Accordingly, the CoC recommended for approaching this Tribunal for removal of attachments of properties. The RP filed an application vide MA No. 648/2018 for release of attachments of properties.

7. In the tenth CoC meeting held on 12.09.2018 the CoC was apprised about the hearing of the NCLT of the Petition for removal of attachments wherein the Tribunal had clearly informed the RP that the Tribunal is not inclined to pass any order of releasing the attachments and also inquired if any Resolution Plan was received by the RP. The Tribunal had also directed the RP to provide the Liquidation Value of the assets of the Corporate Debtor in a sealed envelope to the Tribunal. Further it was also informed to the members that last date for submission of Resolution Plan was extended up to 25.09.2018 and the advertisement with respect to the same was published on 31.08.2018 in newspaper (Business Standard).

8. The RP further stated that due to the attachment on the properties of the Corporate Debtor, in spite of receiving eight (8) EoIs RP received only one Resolution Plan from M/s. Manipal Foam Ltd. along with Bid Bond of ₹2.0 crores. The same was discussed amongst the RoC and after a thorough evaluation of the Plan, the CoC firmly expressed their views that the Plan is not acceptable and should be rejected by the RP as the same is not in compliance with the provisions of the Code and the regulations made thereunder.

The RP suggested the CoC to let the Plan be evaluated by a legal team.

9. In the twelfth meeting of the CoC held on 09.10.2018 the RP informed the members that the Resolution Plan submitted by the Applicant is not in compliance with Section 30 of the Code r/w Regulation 37 and 38 of the IBBI (CIRP) Regulation 2016 and the process documents communicated to the Resolution Applicant. The CoC members then expressed their concurrence to reject the Resolution Plan and **consequently decided to approve the 'Liquidation' of the Corporate Debtor.** However, due to paucity of time the members of the CoC could not vote on the Liquidation and as a result the required percentage of vote was not obtained and the resolution for Liquidation was not approved in the said meeting.

10. The Resolution Applicant informed the RP that the Applicant is willing to revise its offer and accordingly the CoC extended the time up to 22.10.2018. However, no revised Resolution Plan was received till that date and hence the CoC decided to go for Liquidation. **The CoC passed the resolution for 'Liquidation' with 86.67% of vote share.** In the said meeting, it was also approved that the RP to continue as 'Liquidator'.

11. The RP has further detailed in his Application the properties of the Corporate Debtor attached by various authorities viz. –

- (i) Sales Tax Dept., Vadodara, Gujarat
- (ii) Income Tax Dept., Mumbai
- (iii) Vadodara Municipal Sevasadan, Gujarat
- (iv) Directorate of Enforcement, Ahmedabad, Gujarat
- (v) Recovery Officer, DRT-II, Ahmedabad

12. These Departments have respectively attached number of properties of the Corporate Debtor, duly reflected in this Miscellaneous Application. Keeping brevity in mind all those properties are not reproduced in this order, however, on approval of

Liquidation, the Liquidator shall obtain list of attached properties from each departments and place on record the same for due adjudication by this Bench. The Liquidator shall also place on record all other properties of the Corporate Debtor and guarantors which are not under attachments.

13. On perusal of this application filed by the RP, this Bench having noticed that the CoC approved resolution with 86.67% voting for liquidation of this company under Section 33(1)&(2) of IB Code, 2016 and the Regulations thereof, this Bench hereby orders as follows:

- a. That the Corporate Debtor be liquidated in the manner as laid down in the Chapter III 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 under which this Company has been registered.
- b. The applicant herein is hereby directed to act as a Liquidator for the purpose of liquidation of Corporate Debtor company with all powers of the Board of Directors, key managerial persons and the partners of the Corporate Debtor shall cease to have effect and hereby vested in the Liquidator. The personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor. The Insolvency Resolution 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 Insolvency and Bankruptcy (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 proceeding 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. The Liquidator shall co-ordinate with all the authorities and the respected govt. authorities shall provide complete information to facilitate the process of Liquidation. It is hereby made clear that the attachment of a property is a first step of law to secure the property to avoid any apprehension of sale or dispose of by any means, however, the final remedy is the Liquidation of those attached properties by due process of law. On realization of the Liquidated value the outstanding dues of all the concerned authorities shall be satisfied depending upon the consideration realized on disposal of those properties.
- e. The Liquidator is at liberty to seek any directions, if need be, from this Bench during the Liquidation Process.
- f. The Liquidator shall take necessary Legal Action to recover the Trade Receivables and other Credits such as Loans and Advances from the parties which are reflected in the latest Balance Sheet of the Corporate Debtor, if any. This direction is hereby given in concurrence of the jurisdiction prescribed U/s. 33 (5) of the Code.
- g. The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.
14. Moratorium declared vide Order dated 01.01.2018 on CP No.: CP-1514/IBC/NCLT/MB/2017 ceased to exist.
15. Accordingly, the MA 1525/2018 u/s. 33 (1) (a) in CP-1514/IBC/NCLT/MB/2017 is hereby **allowed**. The Liquidator shall submit the progress report of liquidation on the next date of hearing, now listed for **31.01.2019**.
16. Registry is directed to communicate this order to the Applicant immediately even by way of e-mail.

Sd/-
M.K. SHRAWAT
MEMBER (JUDICIAL)

Date: 31.12.2018
pvs