IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 408/JPR/2023
In CP No. (IB)- 87/9/JPR/2020

UNDER SECTIONS 33 & 34 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

IN THE MATTER OF:

APOLLO PIPES PRIVATE LIMITED

...Financial Creditor

VERSUS

TONK WATER SUPPLY LIMITED

...Corporate Debtor

MEMO OF PARTIES

IN THE MATTER OF
IA(IBC) No. 408/JPR/2023

Mr. Amit Gupta
Resolution Professional
M/s Tonk Water Supply Limited
IP Registration Number: IBBI/IPA-002/IPA-002/IP-N00021/2016-2017/10048
Registered Add.: C-17, Vinay Nagar, Krishna Nagar, Lucknow Uttar Pradesh-226023
E-mail: amitguptacs@gmail.com

...Applicant/Resolution Professional

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VERSUS

M/s Apollo Pipes Limited,
Ankit Sharma, Company Secretary
Apollo Pipes Limited, Corp. Off:
A-140, Sector-136, Noida-
201305

...Respondent

FOR THE RP: Rishabh Singh, Adv.

Order Pronounced On: 22.12.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Adjudicating Authority had admitted an Insolvency Application filed by *Apollo Pipes Limited* under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code'/ 'IBC') and directed the commencement of Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor namely *M/s Tonk Water Supply Limited*; thereby appointing *Mr. Amit Agrawal* as the Interim Resolution Professional ('IRP') vide order dated 16.09.2022.

2. It is seen that the present application has been filed by the Resolution Professional subsequent to the filing of the application bearing *IA No. 408/JPR/2023* seeking liquidation of the Corporate Debtor and appointment of the Applicant/RP as liquidator under Section 33(2) of the IBC, 2016 read

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with Rule 11 of the National Company Law Tribunal Rules, 2016 Section 60(5) of the IBC, 2016.

3. The present application has been filed on the following grounds:

3.1. It is stated that 1st meeting of CoC was held on 17.10.2022 wherein the Applicant, IRP confirmed as Resolution Professional ('RP'). It was confirmed vide order dated 15.11.2022 in IA 570/JPR/2022 by this Adjudicating Authority.

3.2. Thereafter the RP has invited Expression of Interest ('EOI') on 15.11.2022 by publishing Form-G in Indian Express (English) and Mahanagar Times (Hindi)-Jaipur Edition; Financial Express (English) and Jansatta (Hindi)-New Delhi Edition and Financial Express (English) and Navakal (Marathi)-Mumbai Edition. Subsequently on the account of publication of Form-G parties have requested to extend the timelines to submit the EOI. Further the Applicant has issued fresh Form-G on 07.12.2022 in all abovementioned newspapers in order to allow the interested parties to submit their EOI and Earnest Money Deposit ('EMD').

3.3. Pursuant to the publication of Form-G, the Applicant had received one (1) EOI, who had successfully met and satisfied the criteria as per the detailed EOI including the submission of EMD amount and emerged as Prospective Resolution Applicant ('PRA').

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3.4. The Applicant has submitted that the last date for submission of resolution plan was 05.02.2023 which was further extended by 15 days i.e., 20.02.2023 however till the last date no resolution plan has received from the PRA.

3.5. Thereafter in the 6th CoC meeting held on 22.02.2023 the CoC has decided to invite fresh expression of interest and to re-publish the Form-G. In the meantime, the period of 180 days got expired on 15.03.2023. The Applicant accordingly has filed an application for extension of the CIRP period for further 90 days i.e., till 14.06.2023. This Adjudicating Authority vide order dated 16.03.2023 had extended the CIRP period for further 90 days i.e., 14.06.2023.

3.6. Thereafter the RP has published fresh Form-G on 01.03.2023 in the same newspapers and received one query regarding the submission of the Resolution Plan. However, till the last date of the submission of the Resolution Plan no plans have been received by the Applicant.

3.7. In the 7th CoC meeting held on 18.05.2023 it was discussed that despite publication of Form-G on three occasions the Applicant has not received any Resolution Plan till the last date of submission of the Resolution Plan. Therefore, the CoC members have decided and approved the agenda for liquidation of the Corporate Debtor and approved the appointment of Mr. Amit Gupta, RP to act as the

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Liquidator of the Corporate Debtor. By a majority vote of not less than 66% voting, the CoC has resolved to liquidate the Corporate Debtor in the 7th CoC meeting. A copy of the minutes of the 7th meeting of the CoC is annexed as Annexure – 4 (Colly) of the IA. Moreover, the CoC has appointed the RP to act as the liquidator and has been accepted by the RP. However, the RP has not filed his written consent to act as the liquidator of the Corporate Debtor.

4. We have carefully heard and considered the arguments of the learned counsel for the RP and perused the records. Taking into consideration the above facts concerning the affairs of the Corporate Debtor, the provisions of Section 33 of IBC, 2016 are as follows:

"33. Initiation of liquidation. —

(1) Where the Adjudicating Authority, -

(a) *before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast-track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30, or*

(b) *rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, if shall -*

(i) *pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter,*

(ii) *issue a public announcement stating that the corporate debtor is in liquidation, and*

(iii) *require such order to be sent to the authority with which the corporate debtor is registered.*

(2) where the resolution professional at any time during the corporate insolvency resolution process but before confirmation of resolution

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plan, intimates the adjudicating authority of the decision of the committee of creditor approved by not less than sixty-six per cent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clause (i), (ii) and (iii) of clause (b) of sub-Section (1)".

5. The Hon'ble National Company Law Appellate Tribunal ('NCLAT'), in *Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 308 of 2020 observed as under:

> *"Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of the corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review".*

However, whether the relevant Application is filed within stipulated timelines as per the applicable procedure is to be seen.

6. The prescribed period for filing Application – In the present case, the application under Section 9 of the Code was admitted on 16.09.2022 and the date for completion of CIRP was 15.03.2023, within 180 days of the timeline prescribed under the Code, the RP has filed an application for extension of CIRP and the period of CIRP further extended for 90 days i.e., 14.06.2023. Accordingly, the RP has filed the present Application electronically on 03.06.2023 in accordance with Section 33(2) of the Code. Hence, the present application is filed within the prescribed period. In view, the Application under consideration is taken up under Section 33(2) of the Code

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7. ***Appointment of Liquidator and fee to be paid*** – Section 34(1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the Corporate Insolvency Resolution Process shall, subject to submission of written consent act as the Liquidator for liquidation. The relevant provisions of Section 34(1) of the Code are as follows:

> *"Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4)"*

8. The present RP, Mr. Amit Gupta, is eligible as a Liquidator. It is noted that liquidation proceedings herein, at the instance of the CoC, have given the consensus to liquidate the Corporate Debtor and are automatically initiated due to the prescription of the statute. We do not find any reason to replace the existing RP. Mr. Amit Gupta, Resolution Professional with IBBI Registration No. IBBI/IPA-002/IP-N00021/2016-17/10048, to act as the Liquidator provided that Mr. Amit Gupta files his written consent to act as the Liquidator of the Corporate Debtor within ten days of this Order.

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9. It is also seen that Regulations 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted *via Notification No. IBBI/2019-20/GN/REG/*048 dated 25.07.2019 along with Regulation 39BA of the CIRP Regulations, 2016 inserted vide Notification No. IBBI/2022-23/GN/REG093, dated 16.09.2022. The relevant aspects in this respect are examined hereunder.

10. **Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)** – The estimated liquidation expenses were not voted upon. The estimated liquidation cost has not been presented before this Adjudicating Authority. The Liquidator is directed to estimate the Liquidation Cost and present the same before the Stakeholder Creditors Committee for due consideration. The Liquidator is directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.

11. ***Assessment of Compromise or Arrangement (Regulation 39BA of CIRP Regulations, 2016)-*** As per Regulation 39BA of the CIRP Regulations, 2016 an opportunity to explore the compromise or arrangement may be explored by the Liquidator during the Liquidation of the Corporate Debtor.

12. ***Assessment of Sale as a going concern (Regulation 39C of CIRP Regulations, 2016)*** – Under Section 35 of the Code, the Liquidator shall have the power and duty to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public or private

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contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified. In furtherance to the same, regulation 32A of the Liquidation Regulations, 2016 lays down the mode of sale by the Liquidator and subsequently Regulation 33 of the Liquidation Regulations, 2016 provides that the Liquidator has powers to sell the corporate debtor by means of private sale with the prior permission of the Adjudicating Authority.

13. ***Fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016)***– The committee is required to approve the fee of the proposed Liquidator in terms of Regulation 4 of the Liquidation Process Regulations, 2016. The remuneration of the proposed liquidator was not approved by the CoC till the date of filing of Liquidation application. Therefore, the fees of the Liquidator shall be in accordance with the limit prescribed under the Regulations.

14. ***Decision for liquidation (Regulation 40D of CIRP Regulations, 2016)***- The committee to consider the factors including but not limited to non-operational status for preceding three years, goods produced or service offered or technology employed being obsolete, absence of any assets, lack of any intangible assets or factors which bring value as a going concern over and above the physical assets like brand value, intellectual property, accumulated losses, depreciation, investments that are yet to mature. The

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COC in its 7th meeting dated 18.05.2023 considered that since the resolution Applicant failed to submit its Resolution Plan as on the last date for submission of the Resolution Plan, therefore, it was decided by the committee that the Resolution Professional should proceed with the agenda in respect of the liquidation of the Corporate Debtor.

15. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor, *M/s Tonk Water Supply Limited* is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include:

15.1 As per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor;

Provided that a suit or other legal proceedings may be instituted by Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;

15.2 The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings concerning such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

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15.3 This order of liquidation under Section 33 of the Code shall be deemed as notice of discharge to the officers, employees and workmen of the Corporate Debtor;

15.4 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 an effect and shall be vested in the Liquidator;

15.5 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 concerning the liquidation process as they apply with CIR process with the substitution of references to the Resolution Professional for the Liquidator;

15.6 The Liquidator shall publish a public announcement per Regulation 12 of the IBBI (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 stakeholders 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;

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15.7 Under Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and regular progress reports according to Regulation 15.

16. In view of the foregoing, IA No. 408/JPR/2023 is disposed of. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies forthwith.

17. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

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DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

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RAJEEV MEHROTRA,
TECHNICAL MEMBER