



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH - I**

I.A. 1365 OF 2021

Under Section 33(2) of Insolvency &
Bankruptcy Code, 2016

Filed by

Mr. Sanjay Shrivastava

Having registered office at: 205B,
Suraksha Apartment, Hindustan Colony,
Amravati Road, Nagpur, Maharashtra,
440033

....Resolution Professional/ Applicant

In the matter of

C.P. No. 4596 of 2018

BMS Tradewings Private Limited

V/s

Agron India Limited

Order delivered on: 13.07.2023

Coram:

Hon'ble Member (Judicial) : Mr. H. V. Subba Rao

Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Applicant : Mr. Amit Tungare a/w. adv. Deep Dighe

The above application is filed by Resolution Professional, Mr. Sanjay Shrivastava seeking liquidation of Agron India Limited., (hereinafter referred as Corporate Debtor) under Section 33(2) of Insolvency and

Bankruptcy Code, 2016 (*hereinafter "IBC, 2016"*) for the following reliefs:

- a. *That this Hon'ble Tribunal maybe pleased to order and direct Liquidation Process of the Corporate Debtor as per Section 33(2) of the Insolvency and Bankruptcy Code. 2016;*
- b. *That this Hon'ble Tribunal maybe pleased to appoint the Applicant viz. Mr. Sanjay Shrivastava, IBBI Registration Number IBBI/IPA-001/IP-P01528/2018-2019/12425 as the Liquidator of the Corporate Debtor Company.*
- c. *That this Hon'ble Court maybe pleased to issue such other necessary orders and reliefs as may be deemed fit in the present matter.*

The brief facts of the Application are as follows:

1. The applicant submits that the CIRP of the Corporate Debtor was initiated vide order dated 20th December, 2019 by this Hon'ble Tribunal. Through the same order, Mr. Sanjay Shrivastava was appointed as the Interim Resolution Professional ("IRP").
2. The applicant further submits that the CIRP order passed by this Hon'ble Tribunal was received by the IRP on 10th January, 2021 and in pursuance to Section 13 and Section 15 of IBC, 2016 the IRP published Form A i.e. Public Announcement of the initiation of the CIRP of the Corporate Debtor via two local newspapers namely The Financial Express in English Language and Navshakt in Marathi Language on 12th January, 2020. That the last date for submission of claims as stated in the Public Announcement was 26th January, 2020.
3. The applicant further submits that, the IRP in pursuance to Section 21 of IBC, 2016, constituted a Committed of Creditors (herein after referred to as 'CoC') after collation of all claims

received against the Corporate Debtor and determination of the financial position of the Corporate Debtor. That during the CIRP Process of the Corporate Debtor following meetings of the Committee of Creditors were held: -

Sr. No.	COC Meeting	Date of Meeting
1.	1 st CoC Meeting	10 th February, 2020
2.	2 nd CoC Meeting	5 th June, 2020
3.	3 rd CoC Meeting	9 th October, 2020
4.	4 th CoC Meeting	9 th November, 2020
5.	5 th CoC Meeting	20 th January, 2021
6.	6 th CoC Meeting	7 th May, 2021

4. The applicant further submits that the IRP in the First CoC meeting held on 10th February, 2020, appraised the members that the Applicant had received one claim from Operational Creditor and one claim from Financial Creditor up to 26th January, 2020 i.e., the last date for receipt of claims, the same was to be submitted to the NCLT Bench as part of the Applicants report. The Applicant further informed the constitution of the CoC, details of which are stated herein as under;

Financial Creditor	Voting Percent
BANK OF BARODA	100%
TOTAL	100%

The CoC member resolved to take note of the CIRP costs incurred and the key expenses forming part of the CIRP Costs till the date of the meeting.

5. The Applicant further submits that upon assuming the role of IRP as per Section 17 and Section 18 of IBC, 2016, the Applicant had tried to gain information regarding the workings of the Corporate Debtor from the Suspended Board of Directors on multiple occasions via emails, but the Suspended Board of Directors deferred by stating that most of the documents and files of the Corporate Debtor had been seized by CBI for the Purpose of Investigation. It is pertinent to note that in the year 2018 the CoC member i.e., Bank of Baroda had through its regional head and deputy general manager filed a Complaint against the Corporate Debtor, alleging that the Corporate Debtor had committed a fraud of Rs. 14,63,81,000/- approximately. On the basis of the Complaint filed, the concerned CBI Officer had seized the Documents of the Corporate Debtor.
6. The applicant further submits that in the 2nd meeting of the CoC held on 5th June, 2020, after due discussion, the members of the CoC appointed the Applicant herein as the Resolution Professional. That during the 2nd CoC Meeting, the Applicant informed the CoC members that in accordance with Regulation 27 of CIRP Regulations, the Applicant had to appoint registered valuers within 47 days from the date of CIRP. That two valuers for each category of assets were appointed to determine the Fair Value and Liquidation Value of the Assets of the Corporate Debtor in accordance with Regulation 35 of CIRP Regulations.
7. In the 3rd CoC meeting held on 9th October, 2020, the Applicant informed the members that in accordance with regulations 36A of IBC, 2016, the Applicant had published Form G on 4th September, 2020, for inviting prospective resolution applicants for

brining Expression of Interest (EOI). That upon publication of Form G, two Applicants showed interest in submitting EOI and accordingly detailed EOI was issued to them but at the last moment both the Applicants backed out stating "No Interest".

8. The Applicant during the 3rd CoC meeting informed the status of Valuation of the assets of the Corporate Debtor and stated that repetitive request from valuer concerning information of the Corporate Debtor had been made out but due to non- availability of the books of accounts and other relevant documents from the Suspended Board of Directors, the process of Valuation was affected and had come to a standstill. The Applicant as per Regulation 35(A) of CIRP Regulations had also appointed a Forensic Auditor to audit the books of accounts of the Corporate Debtor but the same was on hold as no records concerning the Corporate Debtor was available. Owing to the said difficulty, the Applicant had tried on multiple occasions to get the valued information of the Corporate Debtor from the concerned officers of the CBI, who were in custody of the Books of Accounts and other financial information of the Corporate Debtor via various emails and telephonic communication, but the Applicant was unable to gather any response from the concerned officials of CBI due to their lack of corporation.
9. The Applicant in lieu of the non-corporation exhibited by both the Suspended Board of Directors and CBI filed an application under section 19(2) before NCLT, Mumbai Bench. The said Application is still pending for adjudication. The CoC members took note of the same and requested the Applicant to get qualified or preliminary report from the valuers on the basis of information available on the public domain for the time being.

10. The Applicant during the 4th CoC Meeting held on 9th November, 2020, appraised the CoC Members that Form G was published for the second time on 13th October, 2020 but no expression of interest was received within the prescribed time. Upon being asked by the CoC about the status of the case and the availability of assets, the Applicant appraised the CoC that the Corporate Debtor was no longer functioning and the Corporate Debtor being a non-going concern, the only major assets available as security was One Office Unit and Four Cars. The Applicant informed the CoC that the said Office Unit numbered as 301, located at Andheri East was currently under legal dire and was under custody of the Court Receiver of Bombay High Court. The CoC members passed a Resolution to file necessary Application before the Hon'ble Bombay High Court, seeking direction to grant the custody of Office Unit No. 301 lying in the custody of the Court Receiver to the Applicant herein as per the rules laid down in IBC, 2016. The said Application is pending adjudication before the Hon'ble Bombay High Court Bench.
11. The Applicant was made aware that in the year 2017, the CoC had conducted Forensic Audit of the Corporate Debtor in lieu of the fraud committed by the Corporate Debtor. Owing to the said information the Applicant in the 4th CoC Meeting, requested the CoC to provide the Forensic Audit Report which would inter alia help in procuring vial information for the Valuation of the assets of the Corporate Debtor as well as to determine any preferential, undervalued, extortionate, or fraudulent transactions conducted by the Corporate Debtor as required under section 66 of IBC, 2016.

12. The applicant further submits that in the Fifth CoC meeting held on 20th January, 2021, the Applicant made the CoC aware that there had been no development in the Valuation of the Corporate Debtor and the Forensic Audit was still incomplete, as the Applicant had not received any information or documents pertaining to the Corporate Debtor either from the Suspended Board of Directors or the CBI Officials. That the Applicant had also not received the Forensic Audit Report conducted by the CoC in the year 2017 despite agreeing to provide the same in the 4th CoC meeting. Apart from the above, the Applicant was only able to procure information from the master data available on the website of MCA including Balance sheet of FY 2012-2013 but the same could not be relied upon for identification of assets of the Corporate Debtor.
13. The Applicant further apprised the COC during the 4th CoC meeting that pursuant to publication of Form G on 13th October 2020 as stated above, no expression of interest was received. That considering the exclusion period of 220 days of Covid-19 Pandemic, the CIRP was ending on 23rd January, 2021. The CoC noted the timeline informed by the Applicant and decided that one more round of inviting expression of interest should be tried and accordingly the CoC passed a Resolution for filing a Miscellaneous Application before the Hon'ble NCLT, Mumbai Bench for Extension of 90 days period from 23rd January, 2021 to 23rd April, 2021.
14. The Applicant submits that pursuant to the Resolution passed in the 5th CoC Meeting to republish Form G, the Applicant published the requisite Form G on 26th January, 2021. That in the 6th CoC meeting held on 7th May, 2021, the Applicant informed

the CoC that no EOI was received despite republishing the Form G for the 3rd time. That the Applicant also made the CoC aware that in the 4th CoC meeting, the Applicant had requested the CoC to share the Forensic Audit Report obtained by the CoC in the year 2017. That despite repeated reminders and follow-ups made by the Applicant, the CoC only provided highlights of the Forensic Audit Report concerning the details submitted to the CBI. The said highlights were not potent enough to gather sufficient information for Valuation and Transaction Audit of the Corporate Debtor. The Applicant requested the CoC for the full-fledged Forensic Audit Report which would inherently benefit in formalizing the Transaction Audit Report under IBC, 2016, but the same was still pending to be submitted. The Applicant and the CoC after deliberating over various ways to combat the problem concluded by stating that the CoC would provide the copy of the Forensic Audit Report within one week to the Applicant herein.

15. The Applicant submits that considering the timeline of the CIRP and the extension of 90 days period coming to an end on 1st June, 2021, there had been no development in terms with that of the Corporate Debtors assets valuation or any information to ascertain the course of action of the Corporate Debtor due to lack of co-operation from the Suspended Board of Directors and as well as the CBI. The Applicant brought the attention of the COC towards the publication of Form G on varied occasions and further apprised the CoC member that till date no EOI was received against the published Form G.
16. The Applicant submits before this Hon'ble Tribunal that no EOI or Resolution Plan has been received during the pendency of the CIRP term and the said CIRP will cease to exist from 1st June,

2021. Therefore, the Applicant humbly prays that the Corporate Debtor be hereby liquidated under section 33(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is pertinent to note that the CoC has appointed Resolution Professional i.e. the Applicant herein to act as the Liquidator and thereby sought consent of the Applicant.

17. Accordingly, the Applicant put both the resolutions for e-voting. The relevant extract of the resolution put for e-voting at the 6th meeting of the committee of creditors is reproduced as follows;;

*"**RESOLVED THAT** Agron India Limited, the Corporate Debtor having CIN number U51220MH2004PLC144214 having its registered office at 301, Anna Bhavan, Broach Street, D.R. MARG MASJID BUNDER (EAST) MUMBAI MH 400009 IN, **be liquidated** under section 33(2) of Insolvency and Bankruptcy Code, 2016 as no appropriate resolution could be found during Corporate Insolvency Resolution Process commenced on 20.12.2019 vide an order of Hon'ble NCLT, Mumbai Bench".*

*"**RESOLVED THAT** the approval of CoC be and is hereby accorded for selling of corporate debtor as going concern during liquidation process and the liquidator be and is hereby authorized to sell the corporate debtor as going concern under Regulation 32 (e) or 32 (f) of Liquidation Process Resolution."*

18. Heard the arguments of the counsel appearing for the Applicant and perused the material available on record. It is

observed from the minutes of the 6th COC meeting dated 07.05.2021 that the COC has, with 100% voting, decided to liquidate the Corporate Debtor and relying on the settled principle of law regarding the Commercial Wisdom of the COC, we hereby allow this Interlocutory Application Number 1365 of 2021 by passing the following:

ORDER

- a. The I.A. 1365 of 2021 is allowed and liquidation order is passed against the Corporate Debtor M/s. Agron India Limited.
- b. **Mr. Sanjay Shrivastava**, having Registration No. *IBBI/IPA-001/IP-P01528/2018-2019/12425* is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- d. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e. The Liquidator appointed under section 34(1) of the Code. Will have all 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 with the liquidator.
- f. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the

Liquidator to send this order to the ROC under which this Company has been registered.

- g. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- h. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- i. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
- j. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

With the above directions, this application i.e. I.A. No. 1365 of 2021 is hereby **allowed and disposed of**.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
--Rajeev kr--

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)