

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

**IA No. 2480/2022,  
IA 2477/2022 and  
IA 908/2020**

Under Section 33(1) of Insolvency &  
Bankruptcy Code, 2016

**Ms. Jovita Reema Mathias**

Resolution Professional/  
...Applicant

In the matter of

**CP (IB) No.1777/MB/C-IV/2019**

**American Express Banking Corp**

...Financial Creditor

Vs.

**Dhanvantari Milk Products Private Limited**

...Corporate Debtor

**Order Pronounced on: 08.02.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Applicant/RP : Mr. Deep Dighe, Advocate;

***Per. Kishore Vemulapalli, Member Judicial***

1. The applications numbered as IA 2477/2022 and IA 908/2020 with the main IA no. 2480/2022 are taken up for disposal in this order.
2. The Application is filed by Ms. Jovita Reema Mathias, Applicant/ Resolution Professional, seeking liquidation of Dhanvantari Milk Products Private Limited, (hereinafter referred as Corporate

Debtor) under Section 33(1) (a) and 34(1) of Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”).

**The brief facts of the Application are as follows:**

3. That this Tribunal vide an Order dated 16.09.2019 in C.P.(IB)1777(MB)/2019 admitted the Petition under section 7 of the Code, filed by American Express Banking Corp. (hereinafter referred to as the “Financial Creditor”) and Corporate Insolvency Resolution Process (CIRP) was initiated against Dhanvantari Milk Products Private Limited, (hereinafter called as the “Corporate Debtor”). The Applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor by this Tribunal vide this Order and continued as Interim Resolution Professional till filing of this application seeking liquidation.
4. The Resolution Professional carried out Corporate Insolvency Resolution Process and undertook required actions from time to time. In this case, no resolution plan was received by the Applicant IRP, except one but such Prospective Resolution Applicant didn’t deposit the prescribed Earnest Money.
5. In the 9<sup>th</sup> meeting of the COC of the Corporate Debtor held on 24.01.2022, the IRP placed before the COC, a resolution, to approve the resolution of the Corporate Debtor u/s 33 of the Code. This resolution was voted for by 48.56% of COC Members while 1 Financial Creditor i.e. Union Bank of India holding 51.44% voting rights, abstained from voting. Tet, the IRP filed IA 1584/2022 seeking liquidation of the Corporate Debtor and the same was rejected by this Tribunal vide order dated 16.06.2022 holding that there was no resolution passed by the requisite

majority of the COC and directed the IRP to conduct a meeting of COC again to decide upon liquidation or the resolution plan, if any, within 30 days from the date of the order.

6. The IRP convened another meeting of COC on 08/07/2022 proposing liquidation again but Union Bank Of India holding 51.44% of voting share objected to the Liquidation Proposal and UBI proposed to consider the resolution plan of Panchtatwa Milk Industries Private Limited, who has not deposited EMD of Rs. 5 lakh. However, no decision could be arrived at in view of lack of communication amongst the various parties.
7. The Applicant has submitted that extended CIRP period has already come to an end and neither any Resolution Plan has been received for consideration nor any resolution plan is being considered by the COC, she has no option but to file this present application seeking liquidation; and appointment of any competent liquidator.
8. The Financial Creditor i.e Union Bank of India has filed an IA numbered as 2477/2022 seeking direction to the Resolution Professional “Not to take charge of assets secured exclusively with the Applicant and to exclude the same from the fixed assets of the Corporate Debtor” and for preparation of Transaction Report and initiation of fraud proceedings against the Guarantor and the promoters of the Corporate Debtor. The Applicant Financial Creditor has pleaded that One MOU for the property, already mortgaged with it was allegedly entered with the Guarantor by the Corporate Debtor playing a fraud upon it. The Applicant has also filed copy of mortgage deed dated 25.11.2016, copy of

Sanction letter and emails dated 17.02.2022 and 23.02.2022 to support its case.

9. We have perused the record and find that the CIRP commenced on 16.09.2019 and a period of 180 days expired on 13.03.2020. The IRP has also filed IA 908/2020 seeking extension of CIRP period for another 90 days and exclusion of Covid period from the CIRP period. We note that there is no resolution plan pending for consideration before COC as on date and the sole Resolution Applicant i.e. Panchtatwa Milk Industries Private Limited has failed to deposit EMD. In view of this, consideration of this IA will not serve any purpose.
10. Accordingly, in the absence of a resolution plan or any possibility for receiving the same, it is a fit case to order liquidation Section 33 of the Insolvency and Bankruptcy Code, 2016.
11. Section 33(1)(a) of the Insolvency And Bankruptcy Code, 2016 states that-

*“ 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;*

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

12. The Applicant has also prayed for appointment of any competent person as Liquidator in view of no resolution passed by COC proposing the name of any RP for appointment as the Liquidator of the Corporate Debtor.
13. We have perused the record pertaining to IA 2477/2022 and find that the properties do not belong to the Corporate Debtor and were mortgaged by the Guarantors in favour of the Financial Creditor prior to commencement of CIRP. The copy of MOU dated 07.03.2018 conveying the sale of property already mortgaged to the Financial Creditor cannot detriment or override the security interest held by the financial creditor. Accordingly, the Financial Creditor has unfettered right and interest over such property as a security to the credit facilities granted by it.

**ORDER**

14. Mr. Ashok Mittal, Resolution Professional/Applicant having Registration No. IBBI/IPA-001/IP-P02549/2021-22/13889 and Email- ashokmittal2020@gmail.com is hereby appointed as the Liquidator to conduct liquidation process of Dhanvantari Milk Products Private Limited as provided under Section 34(1) of the Code.
15. That the Liquidator would be entitled for the fees to conduct the Liquidation Proceedings as provided in Section 34 (8) & (9) and Regulation 4(3) of the Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 as no resolution for the fees of the Liquidator is passed by the COC.

16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. This liquidation order u/s 33(7) 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.

22. The Liquidator is directed to take into account unpaid CIRP costs as claimed by the IRP applicant after verification of the same in accordance with the approval granted by COC and shall disburse this amount in priority to the extent possible.
23. With the above directions, the IA No. 1211/2022 filed u/s 33(1) by the applicant is hereby **Allowed and Disposed of**.
24. In view of order in IA No. 1211/2022, IA No. 908/2020 becomes infructuous and accordingly disposed off.
25. In view of Findings in Para no.12, we allow prayer (a) contained in IA 2477/2022. Prayer (b) and (c) in this IA have become infructuous in view of liquidation order. However, the Financial Creditor can approach Liquidator in this relation.

**Sd/-**

**PRABHAT KUMAR**  
**Member (Technical)**  
/Akshata/

**Sd/-**

**KISHORE VEMULAPALLI**  
**Member (Judicial)**