(2)

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI

IA(IBC)/806(CHE)/2022 IN CP/748/IB/2018

(filed under Section 33 of the Insolvency & Bankruptcy Code, 2016)

In the matter of ***Juku Orchem Pvt. Ltd***

Mr.Chandrasekhar Sagutoor,
Resolution Professional,
Juku Orchem Pvt. Ltd.
G5 & G6, Ground Floor,
No.333/17, Salma Arcade Complex,
Kodambakkam Main Road,
Trustpuram, Kodambakkam,
Chennai - 600024

... Applicant

Along with

MA/81/2021 in CP/748/IB/2018
(Filed under Section 19 (1) & 19(2) of the Insolvency and Bankruptcy Code, 2016

Mr. V.M.Gurusamy,
Interim Resolution Professional
5/159, West Street,
Vaiyakoundanpatti,
Thiruvengadam Post (Tk),
Tenkasi – 627 719

... Applicant/Interim Resolution Professional

-Vs-

Mr. Poovazhagan,
Managing Director,
Juku Orchem Private Limited,
S-3, Royal Suite, No.14,
Saravana Street, T.Nagar,
Chennai – 600 017

...Respondent

Order Pronounced on ***23rd November 2022***

CORAM

JUSTICE (RETD.) RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant: *Bhagavath Krishnan, Advocate in IA/806/2022 & MA/81/2021*
For Respondent: *Vaiduriya Advocate in MA/81/2021*

ORDER

***Per:* SAMEER KAKAR, MEMBER (TECHNICAL)**

IA/806/2022 has been filed by the RP in the matter seeking the following reliefs:-

> *"In light of the above, it is therefore prayed that this Hon'ble Tribunal may be pleased to pass orders requiring the Corporate Debtor to be liquidated and pass such further orders as this Hon'ble Tribunal deems fit and thus render justice."*

MA/81/2021 was filed under Section 19(1)(2) of the Insolvency & Bankruptcy Code, 2016 seeking the following reliefs:

> *"a. Pass order under Section 19(2) of the Code directing the Respondent to forthwith furnish the Annual Financial Statements for the period 2016-17 to 2020-21 and Articles and Memorandum of Association together the entire Tally Data for the financial years and Statutory Registers.*
>
> *b. Pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and thus render justice."*

2. It is seen from the Application that vide order dated 02.03.2022 in CP/748/2018 the Corporate Debtor was admitted to CIRP and IRP

was appointed. Vide order dated 03.01.2022 in MA/121/2021 the Applicant herein was appointed as the RP.

3. It is submitted that the only assets of the Corporate Debtor are two manufacturing facilities comprising of land, factory building and plant and machinery at the below locations in the State of Tamil Nadu.

   a) Plant-2 location at Vedanthangal Road, Puzhuthivakkam Village, Maduranthakam Taluk, Chengalpattu District, PIN: 603 314.

   b) Plant-1 location at East Coast Road, Atchikadu Village, Marakkanam Taluk, Villupuram District, PIN: 604 303.

4. It is submitted that as on date, certain third parties are in the premises at Plant-2 and the properties are not handed over to the Resolution Professional so far.

5. This Tribunal vide order dated 18.02.2022 in IA/1145/2021 excluded the period of 180 days in the CIRP of the Corporate Debtor.

6. Vide order dated 14.03.2022 in IA/165/2022 the CIRP period of the Corporate Debtor was extended by further period of 90 days.

7. It is seen that three times the Form-G has been issued by the Applicant herein. However, no resolution plan was received.

8. It is seen that 12th meeting of the CoC was held on 27.06.2022. In all 12 CoC meeting have been held in the matter.

9. The CoC of the Corporate Debtor comprises of one Financial Creditor i.e., Indian Overseas Bank.

10. In the 12th CoC meeting the CoC with 100% majority has resolved as under: - (page Nos. 56 and 57 of the Application).

> ***"Resolution No 1***
> ***To approve the decision on liquidation of the corporate debtor and authorise the Resolution Professional to file application for liquidation of the Corporate Debtor under Section 33(2) of the Insolvency and Bankruptcy Code, 2016.***
>
> ***"RESOLVED THAT*** *the CoC be and hereby approve for initiation of liquidation of the corporate debtor under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 and the Resolution Professional be and hereby authorized to file the necessary applications, deeds and things that may be required to file before the Adjudicating Authority for initiation of liquidation of the corporate debtor."*

Poll Result: Accepted

1	*Accept*	*Vote Count :1*	*Voting Percentage : 100%*
2	*Reject*	*Vote Count :0*	*Voting Percentage : 0%*
3	*Abstain*	*Vote Count :0*	*Voting Percentage : 0%*

Voting Table:

1	*Indian Overseas Bank*	*Voted: Yes*	*Voting Percentage : 100%*

> ***Resolution No 2***
> ***To approve the estimated cost of Liquidation and the plan for contribution for meeting the liquidation cost under 39B of The Insolvency and Bankruptcy Board of***

India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

*"**RESOLVED THAT** the estimated liquidation cost (excluding liquidator fee) or Rs. 13.96 Lakhs excluding applicable GST be and hereby approved by the CoC in the event of Liquidation order passed by the Adjudicating Authority and the member of the Committee of Creditors shall contribute funds as per the voting share".*

*"**FURTHER RESOLVED THAT** the approved expenses as and when incurred shall form part of Liquidation cost".*

Poll Result: Accepted

1	***Accept***	***Vote Count :1***	***Voting Percentage : 100%***
2	***Reject***	***Vote Count :0***	***Voting Percentage : 0%***
3	***Abstain***	***Vote Count :0***	***Voting Percentage : 0%***

Voting Table:

1	*Indian Overseas Bank*	*Voted: Yes*	*Voting Percentage : 100%*

11. Form-H in the matter was not filed along with the Application by the Ld. RP. Vide order dated 13.09.2022 the RP was directed to file Form-H.

12. In compliance of the order dated 13.09.2022 Form-H was filed under SR.No.5565 dated 11.10.2022.

13. The suspended director was represented by the Ld. Counsel Ms. Vaiduriya in the hearing held on 02.08.2022.

14. In relation to IA/IBC/81/2021 it is seen that the RP in para 2 of the Application has requested for certain documents to be furnished by the Respondent / suspended Board of Directors. In

response, an Affidavit has been filed by the Respondent on 16.06.2022. Several interim orders were passed in the matter on 19.07.2021, 01.11.2021, 06.12.2021, 28.03.2022, 29.04.2022, 16.06.2022 and 19.07.2022. It is required to be noted that the Corporate Insolvency Resolution Process in respect of the Corporate Debtor was triggered under the instance of the Corporate Debtor itself under Section 9 of Insolvency and Bankruptcy Code, 2016. Under the circumstances, we direct the Respondents to provide the copy of the documents referred to in para 2 of the Application to the Applicant / proposed Liquidator within a period of 15 days from the date of this order. Since we are inclined to order for liquidation of the Corporate Debtor, the proposed liquidator appointed, if necessary can file an application seeking cooperation of the board in the liquidation process under Regulation 9 of the IBBI (Liquidation Process) Regulations, 2016. With the above said directions, **MA/81/2021** stands **disposed of**.

15. In so far as IA/806/2022 is concerned, in view of the resolution passed by the CoC with 100% voting majority to liquidate the Corporate Debtor in absence of any resolution plan, this Tribunal is forced to put this Corporate Debtor into liquidation.

16. It is seen from the application that the written communication of the proposed Liquidator **Mr. Chandrasekhar Sagutoor** with Reg. No: IBBI/IPA-001/IP-P00960/2017-2018/11581 **(email id:** sagutoor@gmail.com**)** is annexed at page Nos. 60 & 61 of the Application.

17. Apropos, it can be seen that it satisfies the mandate of 66% voting share under Section 33 (2) of the IBC, 2016. The Section 33 (2) of the IBC, 2016 is extracted hereunder:-

> **Section 33 (2)**
>
> "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 approved by not less than sixty-six percent of the voting share 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)."

18. It is also seen from the records that the Applicant herein has accorded the written consent, Form AA to act as the Liquidator of the Corporate Debtor and further the Applicant has placed on record a valid AFA till 09.10.2023.

19. In the circumstances, we hereby order the liquidation of the Corporate Debtor Juku Orchem Pvt. Ltd. **Mr. Chandrasekhar Sagutoor** with Reg. No: IBBI/IPA-001/IP-P00960/2017-

2018/11581 **(email id:** sagutoor@gmail.com**)** is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions:-

a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.

b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.

d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;

e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.

h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.

i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

j) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

20. With the above directions, this **IA(IBC)/806(CHE)/2022** stands **allowed**.

-Sd-	-Sd-
SAMEER KAKAR	**JUSTICE RAMALINGAM SUDHAKAR**
MEMBER (TECHNICAL)	PRESIDENT