

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

IA 528 of 2020 in CP(IB) 566/NCLT/AHM/2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.09.2020**

Name of the Company: Parag Sheth RP of Origin Formulations
Pvt Ltd
V/s
COC of Origin Formulations Pvt Ltd
Section 33(1),33(2) & 34(1) IBC,2016

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

**ORDER
(through video conferencing)**

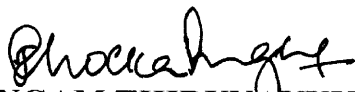
Advocate, Ms. Natasha Dhruman Shah appeared on behalf of Applicant.

The instant application is filed under Section 33(1), 33(2) & 34(1) of IBC.

Earlier, the Registry was directed to issue notice to the Suspended Management and CoC. The notice was issued on 04.09.2020 and the same was delivered on 09.09.2020, 10.09.2020, 11.09.2020 as per track report.

On receipt of notice, one Advocate, Mr. Mrugesh Jani appeared on behalf of Union Bank of India and fairly submitted that he has no objection towards the passing of any order under Section 33 of IBC.

Accordingly, the instant application is allowed and disposed of. The detail order is passed separately.


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 28th day of September, 2020


**MANORAMA KUMARI
MEMBER JUDICIAL**

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

**I.A. No. 528 of 2020
in
CP(IB) No. 566 of 2019**

In the matter of:

Mr. Parag Sheth,
Resolution Professional of
Origin Formulations Private Limited ...Applicant

Versus

Committee of Creditors of
Origin Formulations Private Limited ...Respondent

Order delivered on 28th September, 2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance: Advocate Ms. Natasha Dhruman Shah for Applicant.
Advocate Mr. Mrugesh Jani for Union Bank of India.

ORDER

[Per se: Ms. Manorama Kumari, Member (J)]

1. The Applicant, Resolution Professional (hereinafter referred as "RP") of the Corporate Debtor filed the instant IA No. 528 of 2020 in the aforesaid Company Petition (IB) No. 566 of 2019 for Liquidation of the Corporate Debtor under Section 33(1), 33(2) & 34(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IB Code").

2. The facts of the case are stated herein:

2.1 CP (IB) No. 566 of 2019 was filed by Financial Creditor, namely Prutha Enterprise, against the Corporate Debtor viz., Origin





seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP"), which was admitted by this Adjudicating Authority vide its Order dated 17.09.2019 and appointed Mr. Parag Sheth as Interim Resolution Professional (hereinafter referred as "IRP") of the Corporate Debtor.

2.2 It is stated in the application that Committee of Creditors (hereinafter referred as "CoC") in its Third Meeting held on 12.03.2020 decided for continuation of the IRP as RP and further resolved for extension of 90 days beyond 180 days of the CIRP. The application for extension of time was filed by the RP before this Adjudicating Authority and the order in the said application was passed on 29.06.2020.

2.3 It is stated by the Applicant that in the Fifth CoC meeting held on 14.08.2020, CoC resolved for Liquidation of the Corporate Debtor since no Resolution Plan was received till the last date of submission of Resolution Plan, despite of the fact that the publication of Form G and Expression of Interest was carried out twice. Also, the CIRP period is expiring on 18.08.2020. Hence, CoC decided to file an application for Liquidation of the Corporate Debtor through RP under section 33 of the IB Code.

3. Heard the applicant and also seen the records, it is found that since no Resolution Plan was received till the last date of submission of Resolution Plan, despite of the fact that the publication of Form G and Expression of Interest was carried out twice. Further, the CIRP is also expiring on 18.08.2020. Therefore, the CoC has resolved for liquidation of the Corporate Debtor vide its Fifth meeting dated 14.08.2020 with 78.61% voting in favour of the Liquidation. It is also to be noted that this Adjudicating Authority has no jurisdiction to interfere in the commercial wisdom of the CoC as observed in **K. Sasidhar's** case and subsequently also reiterated by Hon'ble Supreme Court of India in its judgement passed in Civil Appeal No. 8766-67 of 2019 - **Committee of Creditors of Essar Steel India Limited through**



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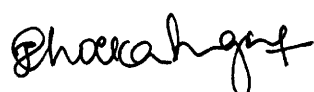
Authorised Signatory vs. Satish Kumar Gupta & Ors observed as follows:

“The commercial wisdom of the Committee of Creditors cannot be interfered into by the Adjudicating Authority. The Hon’ble Supreme Court affirmed K. Sashidhar’s judgement that neither the Adjudicating Authority nor the Appellate Authority has been endowed with the jurisdiction to reverse the commercial wisdom of the CoC.

The Hon’ble Supreme Court took the view that the commercial wisdom has been exercised by the CoC after taking into count all the factors leading to maximisation of asset value of the Corporate Debtor, but the ultimate discretion of what to pay and how to pay each class or sub-class of creditors lies with the CoC.”

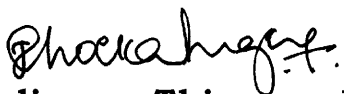
4. Under the facts and circumstances as narrated above, we pass the following orders:

- a) The moratorium declared under Section 14 of the IB Code shall cease to have effect from the date of the order of liquidation.
- b) The Liquidator is further directed to issue public announcement stating that the Corporate Debtor is in liquidation.
- c) The Liquidator is required to send certified copy of this order to the authority with which the Corporate Debtor is registered.
- d) Subject to Section 52 of the IB Code, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
- e) This Authority makes it clear that para (d) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
- f) The Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.





- g) 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 effect and shall be vested with the Company Liquidator. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the IB Code, 2016, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
 - h) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
 - i) The Company Liquidator shall be entitled to charge such fee for the conduct of the liquidation proceedings in such a proportion to the value of the liquidation estate assets as may be specified by the Board.
 - j) The Registry is directed to communicate this order with immediate effect to the concerned Registrar of Companies, registered office of the Corporate Debtor and Company Liquidator for information and compliance
5. Hence, the IA 528 of 2020 in CP(IB) 566 of 2019 so filed by the RP under Section 33(1), 33(2) & 34(1) of the IB Code, 2016 is allowed and the Adjudicating Authority passes an order for initiation of liquidation of the Corporate Debtor viz., Origin Formulations Private Limited. The RP i.e. Mr. Parag Sheth, shall act as the Liquidator for the purpose of Liquidation of the Corporate Debtor.
6. Accordingly, the instant IA is allowed and stands disposed of with the above observations.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Manorama Kumari
Adjudicating Authority
Member (Judicial)