

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No. 246/2022
In
CP (IB) No.234/Chd/Pb/2019
(Admitted)**

**Under Section 33 (1) (a) of the
Insolvency and Bankruptcy Code, 2016**

In the matter of:

State Bank of India

....Petitioner/Financial Creditor

Versus

Vij Agro-Exports Private Limited

....Respondent/Corporate Debtor

And in the matter of IA No. 246/2022:-

Mr. Rajender Kumar Jain
Resolution Professional
of Vij Agro-Exports Private Limited
SCO 818, 1St Floor, NAC Manimajra, Chandigarh-160101

...Applicant

Order delivered on: 18.07.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present: Ms. Swati Saluja, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No.246/2022:-

This application has been filed by Mr. Rajender Kumar Jain- Resolution Professional of the corporate debtor, for the initiation of the liquidation process of the corporate debtor under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016.

2. The following facts have been stated by the applicant in the application:-

- a) This adjudicating authority vide order dated 16.06.2021 admitted the petition filed by the financial creditor for initiation of the CIRP under Section 7 of the code against Vij Agro-Exports Pvt. Ltd., i.e. the corporate debtor vide this order moratorium was declared and Mr. Rajendra Kumar Jain was appointed as the Interim Resolution Professional of the corporate debtor. A public announcement was made in Form-A dated 18.06.2021 and the last date for submission of proof of claim was specified as 02.07.2021. Subsequently, three claims were submitted by the creditors of the corporate debtor.
- b) In the second COC meeting dated 17.08.2021, the members of the COC authorized the RP to publish Form G, and such Form G for inviting the prospective resolution applicants (herein referred to as PRAs) was published by the RP in two newspapers, namely "Financial Express" and "Punjabi Jagran", both dated 25.08.2021.
- c) The RP convened the third COC meeting on 16.09.2021, and the COC members were apprised of the fact that one Expression of Interest (EOI) has been received by the RP on 09.09.2021 from M/s Shanti Group. Thereby, it

was resolved by the members of COC to extend the date of invitation for the Invitation of Expression of Interest for the PRAs to get better resolution plans. Another expression of interest was received from M/s Pioneer Engineering Industries on 06.10.2021, after the extended timelines of Form G.

- d) In the fifth meeting of the CoC on 25.11.2021, the members of the COC authorized the RP to file an application under section 12(2) of the Code for an extension of time by 90 days beyond the period of 180 days and the resolution was passed on the following lines and the same was granted via order dated 04.01.2022 of this Adjudicating Authority.

"RESOLVED THAT the COC members holding more than 66% voting rights, hereby approves for extension of the period of CIRP for 90 days beyond 180 days and authorizes the Resolution Professional to move an application under section 12(2) of IBC, 2016, before the NCLT Chandigarh Bench, Chandigarh for extension of the period of CIRP for 90 days beyond 180 days, which is ending on 12.12.2021."

- e) In the sixth meeting of the CoC on 24.12.2021, the RP informed that out of the two PRAs, only one PRA submitted its resolution plan and the RP presented the resolution plan received from the PRA-M/s Pioneer Engineering Industries, wherein the CoC asked the RP to negotiate with the PRA as the amount being offered is even less than the liquidation value of the corporate debtor and hence was unsatisfactory and not acceptable to the CoC.
- f) The CoC in its seventh meeting held on 24.01.2022 decided not to consider any resolution plan and opted for the liquidation of the corporate debtor. CoC members discussed the liquidation agendas and asked the RP to put all the

agendas on e-voting. The e-voting was held from 29.01.2022 till 11.03.2022 and such resolution was passed on the following lines:-

"RESOLVED THAT the COC hereby resolves to liquidate the corporate debtor under the provisions of section 33 of IBC, 2016. Resolved further that the Resolution Professional, Mr. Rajender Kumar Jain be and is hereby authorized to move an application to the Adjudicating Authority under section 33 on behalf of the Committee for obtaining an order for liquidation of the Corporate Debtor from the Adjudicating Authority."

"RESOLVED THAT, Mr. Rajender Kumar Jain, Resolution Professional, be and is hereby appointed, to act as Liquidator in the matter of Ms Vij Agro-Exports Private Limited subject to the approval of Adjudicating Authority"

g) In the eighth meeting of the COC held on 07.03.2022 The State Bank of India, being the sole member of the COC apprised that the e-voting on liquidation agendas were concluded on 11.03.2022 and hence, an application under section 33(1)(a) of the Code be filed.

h) The applicant in the present case is willing to act as the liquidator of the corporate debtor and the copy of the written consent in form AA along with an affidavit to the effect that no disciplinary proceedings are pending against him, both dated 11.03.2022 are attached as Annexure-A15 of the application.

3. The applicant has also filed his written submissions via Dairy No. 378/01 dated 18.07.2022 in which similar facts have been reproduced.

4. Now, coming to the merit of the application, before considering the prayer, we would like to refer the Section 33(2) of IBC, and the relevant provision is reproduced below:-

"Section 33(2): Initiation of liquidation:

...(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).

[Explanation. - For the purpose of this subsection, it is hereby declared that the Committee of Creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of Section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]..."

5. A bare perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

- i. Before the expiry of the Insolvency Resolution Process period;
- ii. 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; and
- iii. If does not receive a resolution plan under sub-section (6) of Section 30.

6. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

7. The Liquidator's Fee shall be structured in the manner mentioned herein below:

- a) *In case the security interest is relinquished to Liquidation Estate- the Liquidator's Fees shall be 50% of rates of Liquidator's Fees provided under Regulation 4(2) of IBBI (Liquidation Process) Regulations, 2016.*
- b) *In case the Security Interest is not relinquished to Liquidation Estate (In such case, there will be no Liquidation Estate available to be liquidated by the Liquidator) the Liquidator shall be entitled to the same monthly*

fees as paid to the Resolution Professional during the CIRP (i.e. Rs. 50,000/-) from the date of Liquidation Commencement date to the date of Dissolution of the Corporate Debtor.

c) GST and out-of-pocket expenses shall be in addition to the above.

8. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor i.e. **M/s Vij Agro-Exports Private Limited** is directed to be liquidated in the manner as laid down in Chapter III of the Code.

9. Accordingly, by exercising our power under Section 33(2) pass the following order:-

- i. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016;
- ii. Since the Resolution Professional has shown his willingness to act as Liquidator of CD, and has also attached his consent in Form-AA attached as Annexure A15 of the application, therefore, the Resolution Professional bearing Registration No. IBBI/IPA-001/IP-P00543/2017-2018/10968, Mobile No. 9915598862, e-mail: rkjain.ip@gmail.com is hereby appointed as liquidator;
- iii. Mr. Rajender Kumar Jain, Shall take over the charge of the entire records and assets of the corporate debtor and perform his duty, as required under the Code and Regulations.
- iv. The liquidator is directed to take custody and control of the assets, and property of the Corporate Debtor with immediate effect and made a public announcement clearly stating that the Corporate Debtor is under

Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

- v. The Provision of Section 33 (5), (6), and (7) of the IBC, 2016 shall have come into force with immediate effect. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- vi. This Order shall be deemed to be a notice of discharge to the officers, employees, and workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- vii. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- viii. The Liquidator shall file regular progress reports as per Regulation 15 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 every fortnightly thereafter;
- ix. The Liquidator shall take necessary legal action to recover the trade receivables and other credits such as loans and advances from the parties which are reflected in the latest Balance Sheet of the Corporate Debtor, if any. This direction is hereby given in concurrence with the jurisdiction prescribed under Section 33(5) of the Code.

- x. On initiation of the liquidation process but 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, as provided in Section 33(5) of the Code read with its proviso.
- xi. That 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 in the liquidator;
- xii. That 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 in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional;
- xiii. The Registry is directed to communicate a copy of the Order to the Corporate Debtor immediately;
- xiv. A copy of this order be sent by the Registry to the concerned Registrar of Companies (RoC), for updating the Master Data. After updating the Master Data, RoC shall send a compliance report to the Registrar, NCLT within a period of 30 days;
- xv. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

xvi. The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.

18. Thus, IA No. 246/2022 stands allowed and disposed of.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

July 18, 2023
JGS