

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, (BENCH IV)  
IA NO. 1585/(ND)/2020**

**IN**

**COMPANY PETITION NO. (IB) 777/(ND)/2019**

*{Under Section 33(2) & 34 of the Insolvency and Bankruptcy Code,  
2016 for liquidation of the corporate debtor*

**IN THE MATTER OF:**

Rakesh Kumar Jain

.... Applicant

In

**In the matter of:**

M/s Shivalik Packaging Industries

.... Petitioner

Versus

M/s Jiya Agro Private Limited

.... Corporate Debtor

ORDER PRONOUNCED ON: 20.07.2021

**Coram:**

**DR. DEEPTI MUKESH  
HON'BLE MEMBER (JUDICIAL)**

**MS. SUMITA PURKAYASTHA  
HON'BLE MEMBER (TECHNICAL)**

## **MEMO OF PARTIES**

### **RAKESH KUMAR JAIN**

Resolution Professional  
For Jiya Agro Private Limited

**...APPLICANT**

#### Present:

For RP /Applicant	- Mr. Mohit Nandwani, Adv.
For the Respondent	- Mr. Pramod Kumar, Adv. Mr. Vinay Agarawal
For the DBS Bank	- Ms. Tania Sharma, Adv. Ms. Shankari Mishra, Adv.

### **ORDER**

#### **Per-Dr. Deepti Mukesh, Member (Judicial)**

1. This is an application filed by the Resolution Professional (hereinafter referred as "RP") under Section 33 (2) and Section 34 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for passing an order of liquidation and Appointment of liquidator of the corporate debtor, M/s Jiya Agro Private limited.
2. The facts in brief are that the Operational Creditor, M/s Shivalik Packaging Industries had filed an application bearing no. IB-777 (ND)/2019 under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP), against the Corporate Debtor, M/s Jiya Agro Private Limited. The insolvency application was admitted by this Tribunal vide order dated 29.08.2019 and Mr. Rajesh Kumar Jain was appointed as Interim Resolution Professional (IRP).The copy of order dated 29.08.2019 is annexed.

3. The RP under Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, made a public announcement in FORM-A on 31.10.2019 and the last date for submission of proof of claim was 12.09.2019. A copy of newspaper cutting in Form-A is annexed.
4. In terms of Section 18(1)(a) of the code, the RP collated all claims submitted by the creditors pursuant to Public Announcement and accordingly constituted a Committee of Creditors (hereinafter referred as the “COC”) on 19.09.2019, which comprised of sole Operational creditor, being M/s Shivalik Packaging Industries. The first meeting was convened on 27.09.2019, wherein the sole COC member confirmed the IRP as RP with 100% voting in favour. The minutes of 1<sup>st</sup> meeting of COC is annexed.
5. In the Second meeting of COC, the RP apprised the sole COC member that more claims have been received and post verification of claims, COC may be reconstituted. The COC was reconstituted on 12.10.2019 which consisted of Laxmi Vilas Bank, as the sole financial creditor, having 100% voting share which was present in 3<sup>rd</sup> COC meeting are held on 19/12/20219. The minutes of meetings of 2<sup>nd</sup> and 3<sup>rd</sup> COC meeting are annexed.
6. The applicant stated that on 12.11.2019 Form G was published and last date of receipt of Expression of Interest (“EOI”) as mentioned in the Form-G was 27.11.2019. A copy of publication of Form – G is annexed. Further the applicant stated that an application was filed under Section 19(2) of the code, seeking direction against the suspended directors of the corporate directors and the statutory auditor of the corporate debtor which is still pending adjudication.
7. The applicant stated that pursuant to the publication of Form – G, no EOI’s were received till the last date of hearing. In the 4<sup>th</sup> meeting of COC, the RP apprised that the CIRP period of 180 days is expiring on 25.02.2020 and no

EOI's were received. The COC with 100% voting share, passed a resolution to consider and liquidate the corporate debtor and resolved as under:

*“Resolved that an application shall be made to the Hon’ble National Company law Tribunal (NCLT), Delhi for approval of liquidation of corporate debtor. The resolution Professional shall file the necessary application for approval of liquidation of corporate debtor along with his written consent to act as liquidator with the Hon’ble NCLT on behalf of CoC.”*

A copy of minutes of 4<sup>th</sup> COC meeting along with the voting sheet has been annexed. The copy of Form AA being consent to act as liquidator is also annexed.

8. In the 5<sup>th</sup> CoC meeting dated 18.12.2020, the applicant informed the COC about his withdrawal of consent to act as liquidator. Thereafter, application was filed by RP under Section 11 of the code seeking withdrawal of consent to act as liquidator, which was allowed on 24.03.2021.
9. Considering the documents on record and submission made, since the COC in its commercial wisdom has decided liquidate the corporate debtor, we are of opinion that the decision of COC need not be interfered. Thereby the present application seeking liquidation of the corporate debtor, M/s Jiya Agro Private Limited, as laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 is allowed.
10. Since the RP/applicant has withdrawn its consent to act as liquidator and the fresh name for liquidator has not been proposed, this bench appoints Mr. Vivek Sharma having registration no. IBBI/IPA-002/IP-N01077/2020-2021/13442, having email id:fcsviveksharma@gmail.com, is be and hereby appointed as Liquidator in terms of Section 34(1) of the Code, subject to the condition that no disciplinary proceedings are pending against him. The IRP is required to file consent to act as liquidator in Form AA along with certificate of Registration and following directions are issued:

- a) The liquidator to issue Public Announcement stating that the corporate debtor is in liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- b) The liquidator 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 and in accordance with the relevant rules and regulations.
- c) The liquidator to follow up and continue to investigate the financial affairs of the Corporate Debtor to determine any undervalued and preferential transactions etc.
- d) This order is deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016.
- e) The Liquidator to submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

11. As a consequence of the application being allowed the Moratorium as envisaged 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.

12. A copy of the order shall be communicated to the Applicant and the Corporate Debtor as well as to the liquidator above named and intimate of the said appointment by the Registry. In addition, a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

**Sd/-**  
**(SUMITA PURKAYASTHA)**  
**MEMBER (T)**

**Sd/-**  
**(DR. DEEPTI MUKESH)**  
**MEMBER (J)**