

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

[SPECIAL BENCH]

IA (IB) No. 1338/KB/2020

in

CP (IB) No.1338/KB/2018

Under section 33 of Insolvency & Bankruptcy Code, 2016

In the matter of

Sunil Kumar Kasera

... Operational Creditor

Versus

Amricon Agrovvet Private Limited

... Corporate Debtor

Asim Kumar Bose, Resolution Professional of Amricon Agrovvet Private Limited

... Applicant

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Appearances (through video conferencing):

For the Resolution Professional

Ms. Shruti Singhania, Pr. CS,

Mr. Asim Kumar Bose, Resolution Professional present on person

Order reserved on: 22.12.2020

Order pronounced on: 07.01.2021

ORDER

Per Rajasekhar V.K., Member (Judicial)

1. This court convened *via* video conferencing.
2. This is an application filed by the Resolution professional upon the instructions of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, *viz.*, Amricon Agrovat Private Limited [CIN: U01409WB2000PTC090900], on the ground that the Corporate Debtor is not a going concern and no activity nor any records pertaining to the Corporate Debtor was available.
3. This Adjudicating Authority *vide* its order dated 30.09.2019 on a Petition filed by Sunil Kumar Kasera (*operational creditor*) under section 9 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed the Applicant herein as the Interim Resolution Professional (IRP).
4. The Applicant submits that in terms of section 15 of the Code, public announcement was made on 11.10.2019, in *Financial Express* (English) and *Ekdin* (Bengali) of Kolkata Edition of the said newspapers, fixing 23.10.2019 as the last date for submitting the claim.
5. The Committee of Creditors (CoC) was duly constituted on 04.11.2019 with seven Operational Creditors, and the Report certifying the constitution of the CoC was filed with the Adjudicating Authority.
6. The first meeting of the CoC was held on 11.11.2019, wherein *inter alia* resolution was passed to appoint the Interim Resolution Professional as the Resolution Professional.
7. The CoC was reconstituted on 12.12.2019 with one Financial Creditor.
8. Thereafter, in the second meeting of the CoC meeting held on 20.12.2019. In the same meeting, the CoC proposed to search for unencumbered property standing in the name

of the Company or its Directors and valuation of the properties owned by the Company and mortgaged to SBI.

9. At its fifth meeting held on 16.11.2020, the CoC noted that the Corporate Debtor is not a going concern. There was no possibility of getting any resolution of the Corporate Debtor due to the fact that it was not in operation for more than three years. Therefore, no expressions of interest were invited due to lack of information. Although audited Balance Sheet as on 31.03.2019 was available, its authenticity was questionable. As per qualifications of the Auditor the Corporate Debtor was not a going concern. Therefore, the CoC resolved that the Corporate Debtor should be liquidated. The proposal was approved with 100% voting in favour. The minutes of the said meeting and the voting results have been placed on record at **Annexure 'E'** to the IA.
10. The Applicant/Resolution Professional, Mr. Asim Kumar Bose [Reg. No.IBBI/IPA-001/IP-P01538/2019-2020/12480], has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator, in the prescribed Form AA, in terms of section 34(1) of the Code and has also filed Form B for Authorisation for Appointment in terms of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2019, which is valid from 02.12.2020 to 12.06.2021.
11. I have considered the submission made by the Applicant/RP in person and perused the record.
12. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 100% voting share to liquidate the Corporate Debtor.
13. This Bench, therefore, hereby orders as follows: -
 - a. IA No.1338/KB/2020 filed by Mr Asim Kumar Bose, RP of Amricon Agrovet Private Limited, the Corporate Debtor, is allowed and the Corporate Debtor is

ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;

- b. Mr. Asim Kumar Bose [Reg. No. .IBBI/IPA-001/IP-P01538/2019-2020/12480], the Applicant/RP herein, is hereby appointed as Liquidator as provided under section 34(1) of the Code, and he possesses a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.
- c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, *i.e.*, *Financial Express* (English) and *Ekdin* (Bengali) of Kolkata Edition, stating that the Corporate Debtor is in liquidation.
- e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. 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.
- h. In accordance with section 33(7) of the Code, this liquidation order 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.

- i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.
14. The application bearing **IA (IB) No. 1338/KB/2020** shall stand disposed of in accordance with the above directions.
 15. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Authorised Representative for information and for taking necessary steps.
 16. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Rajasekhar V.K.

Member (Judicial)

Signed on this 7th day of January, 2021

GGRB[LRA]