

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/731(KB)2018
IA(I.B.C)/629(KB)2021
IA(I.B.C)/108(KB)2021

**CORAM: 1. Hon'ble Member(J), Shri Rajasekhar V.K.
2. Hon'ble Member(T), Shri Harish Chander Suri**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 07th January, 2022, 10:30 A.M

Name of the Company	EDELWEISS ASSET RECONSTRUCTION COMPANY LIMITED VS GENA PHARMACEUTICALS LIMITED
Under Section	IBC under Sec 7

Appearances (via video conference)

Ms. Urmila Chakraborty, Advocate] For Petitioner IA 629/KB/2021

Ms. Ankita Baid, Advocate] for respondent in IA 629/KB/2021

ORDER

Ld. Counsel for Petitioner in IA 629/KB/2021 present. Ld. Counsel for respondent in IA 629/KB/2021 present. Ld. Counsel appearing for IA 108/KB/2021 has not given his attendance on the chat box.

IA 108 (KB)/2021:

1. This is an application filed by **Mr. Anup Kumar Singh**, the Resolution Professional seeking liquidation of the Corporate Debtor viz., Gena Pharmaceuticals Limited on the grounds that the Committee of Creditors (CoC) has rejected the resolution plan received from SREI Multiple Asset Investment Trust Vision India Fund with 47.33% votes against the said Resolution. 26.68% votes in favour of the Resolution Plan and 25.99% abstained from voting.
2. This Adjudicating Authority *vide* its order dated 09.08.2019 on a petition filed by Edelweiss Asset Reconstruction Co. Ltd. under Section 7 of the Insolvency and Bankruptcy Code, 2016 directed initiation of Corporate Insolvency Resolution

Process (CIRP) against the Corporate Debtor and appointed Mr. Anup Kumar Singh as the Interim Resolution Professional (IRP). The IRP was appointed as RP in the 1st meeting of the CoC held on 06.09.2019.

3. The Applicant submits that in terms of Section 15 of the Code, public announcement was made on 13.08.2019 in *Business Standard* (English) and *Aajkal* (Bengali), newspapers, fixing the last date for submitting the claim on 20.11.2019.
4. The Applicant states that as on that date the applicant received Expressions of Interest (EoI) from two prospective Resolution Applicants. On receiving multiple requests for several occasions for extension of the timelines for submitting the EOI, the CoC in its wisdom requested the Applicant to extend the date for submitting the EoI till 12.12.2019. The revised form G dated 27.11.2019 was uploaded in the Website. As no EoIs were received by the Applicant, the last date was further extended till 11.01.2020. In response, an EoI was received from one more prospective Resolution Applicant. The Applicant issued the final list of prospective Resolution Applicants.
5. It is submitted that the Applicant filed an application for extension of CIRP period by further 90 days over and above the period of 180 days for completion of CIRP on 30.01.2020, on the basis of the resolution passed by the CoC at its third meeting. The matter was considered and approved *vide* order dated 14.02.2020 of this Adjudicating Authority, thereby extending the CIRP period from 04.02.2020 till 04.05.2020. The Applicant on request of one of the Prospective Resolution Applicants extended the last date for submission of Resolution Plan from 25.02.2020 till 11.03.2020. A Resolution Plan was received from SREI Multiple Asset Investment Trust Vision India Fund. In the meantime, the Central Government declared a nationwide lockdown as a preventive measure against the Covid-19 pandemic in the country with effect from 25.03.2020.
6. The applicant made a Fifth & Sixth Revision of Form G on 05.07.2020 and 15.07.2020 respectively wherein the last date for submission of EoI was extended till 12.07.2020 and 26.07.2020 respectively.
7. The Applicant in the eighth meeting of the CoC placed the revised Resolution Plan of SREI Multiple Asset Investment Trust Vision India Fund received on 31.08.2020 for

approval through E-Voting Mechanism, but it was unable to meet the minimum requirement of 66% for approval of the Resolution Plan as required under section 30(4) of the Insolvency and Bankruptcy Code (IBC), 2016.

8. The applicant states that liquidation of the Corporate Debtor has to be initiated in terms of Section 33(1)(a) of the Code as the CoC has disapproved the said resolution plan with 47.33% votes against the said Resolution, 26.68% votes in favour and 25.99% abstaining.
9. We have considered the submission made by the Ld. Counsel on behalf of the Applicant/RP and perused the record.
10. 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.
11. On account of some personal engagement the Resolution Professional Mr. Anup Kumar Singh recused to act as a Liquidator. The CoC, in its ninth meeting, has proposed the name of Mr. Sachin Gopal Jathar for appointment as a Liquidator.
12. Section 34(4)(c) of the IBC mandates the Adjudicating Authority to replace the resolution professional as liquidator only if the resolution professional fails to submit written consent to act as liquidator as required under sub-section (1) thereof. In the present case, the Resolution Professional has not given his consent to act as Liquidator. Therefore, the Bench shall appoint someone from the panel of insolvency professionals made available to it, by the Insolvency & Bankruptcy Board of India (IBBI). There is no role for the CoC to recommend the name of the Liquidator or to vote on his appointment.
13. In these circumstances, the following orders are passed: -
 - a. The prayers as sought for in IA (IB) No.108/KB/2021 filed by Mr. Anup Kumar Singh, Resolution Professional of **Gena Pharmaceuticals Limited** 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. In the present case the RP has not submitted his written consent to act as Liquidator. Therefore, this Adjudicating Authority proposes to appoint **Mr. Vasudeo Agarwal, (IBBI Registration No.IBBI/IPA-001/IP-P00186/2017-18/10365)**, Email ID: vdainfo@gmail.com as the Liquidator from the panel of names made available to this Bench by the IBBI.
- 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.*, *Business Standard* (English) and *Aajkal* (Bengali) (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.
- j. The application bearing **IA (IB) No.108/KB/2021** shall stand disposed of in accordance with the above directions.

14. **IA 629/KB/2021:** Ld. Counsel appearing for the respondents submits that in view of the present pandemic condition, it is not possible to obtain a notarised copy of affidavit to verify the reply. Therefore, an unauthorised affidavit is permitted, along with the undertaking that as soon as conditions improve, the notarised version of the same affidavit shall be submitted before the Adjudicating Authority. Copies of the reply be served on the counsel on record for the applicant/Resolution Professional.
15. List this matter on **16/02/2022**.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

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