

**THE NATIONAL COMPANY LAW TRIBUNAL  
SPECIAL BENCH  
AT NEW DELHI**

**C.A. 1235 (PB) /2019**

**IN**

**Company Petition No. (IB)-904 (PB) /2018**

In the matter of:

Mr. Harvinder Kumar Jatana

Applicant/Resolution Professional

**AND**

In the matter of:

M/s Surya Pharmaceutical Limited

Corporate Debtor

*Under Section 33 of the Insolvency and Bankruptcy Code, 2016  
for liquidation of the corporate debtor*

***Judgment delivered on: 09.08.2019***

**Coram:**

**DR. DEEPTI MUKESH, Hon'ble Member (Judicial)**

**MR. S. K. MOHAPATRA, Hon'ble Member (Technical)**

For the Financial Creditor:

Mr. Avinash Mohapatra, Advocate

For the Respondent:

Mr. Pulkit Tare, Ms. S. Rama,

Mr. Anup Jain, Advocates



## **ORDER**

### **S. K. Mohapatra, Member**

1. This is an application filed by the Resolution Professional under Section 33 (2) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the “Code”) for issuance of directions for liquidation of the corporate debtor, M/s. Surya Pharmaceutical Limited.
2. The facts in brief are that the financial creditor, State Bank of India had filed an application under Section 7 of the Code bearing number IB-904 (PB) /2018 for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this Tribunal on 08.10.2018 initiating Corporate Insolvency Resolution Process against the corporate debtor M/s. Surya Pharmaceutical Limited and there in appointed Mr. Harvinder Kumar Jatana as Interim Resolution Professional (IRP).
3. Thereafter, in terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP

Regulations) the Interim Resolution Professional made paper publication inviting claims from the creditors of the corporate debtor. In compliance of Section 21 of the Code read with Regulation 17 of the CIRP Regulations, CoC was constituted.

4. In the first meeting of Committee of Creditors convened on 05.11.2018 the Interim Resolution Professional was appointed as the Resolution Professional to conduct Corporate Insolvency Resolution Process in respect of the corporate debtor, which was confirmed by Adjudicating Authority vide order dated 27.11.2018.
5. With approval of CoC the resolution Professional invited Expression of Interest in terms of Regulation 36A (1) through paper publication. It is submitted that seven resolution applicants submitted their expression of interest (EOI). Till the last of submission of Resolution Plan i.e., 20.05.2019, only one applicant had submitted resolution plan. However, the same was non-compliant with respect to conditions of submission of resolution plan as laid down in the EOI process document and RFRP.



6. Despite several opportunity the resolution applicant failed to rectify the resolution plan in compliance with the EOI process document and RFRP. CoC in its ninth meeting dated 28.06.2019 on the issue of resolution plan resolved that the same being non-compliant cannot be taken into consideration. In the absence of any other resolution plan, CoC by majority decision resolved to initiate the process of liquidation. The relevant portion of the minutes of ninth meeting is reproduced herein below:

*“Agenda item No. 1*

*To approve the liquidation of Corporate Debtor*

*Explanatory Statement*

*There have been publication of Form G with three extensions from the period 21.12.2018 to 19.04.2019 and there being seven EOI applicants, only one resolution plan which could not be considered. The CoC needs to take a view and decide on the liquidation of the Corporate Debtor as CIRP is due to expire on 05.07.2019.”*

*The following resolution was passed therein:*



*“RESOLVED THAT as provided under section 33 of Insolvency and Bankruptcy Code, 2016, the Corporate Debtor is hereby to be liquidated.*

*FURTHER RESOLVED THAT the Resolution Professional is hereby authorized to file an application before Adjudicating Authority for initiation of liquidation proceedings of the Corporate Debtor.”*

7. It is pertinent to mention here that this Bench vide order dated 01.04.2019 allowed the prayer for extension of CIRP by further 90 days under Section 12(3) of the Code. The entire CIRP Process of 270 days has expired on 05.07.2019.
8. It is therefore seen that in the absence any viable and feasible resolution plan and for want of time beyond the statutory CIRP period of 270 days, there is no option left but to order for liquidation of the corporate debtor under Section 33 of the Code in conformity with the majority decision of the CoC.
9. It is pertinent to refer here the case of Palash Goswami Vs M/s Alloys & Metals (India) & Anr. in Company Appeal (AT) (Insolvency) No. 589 of 2019 wherein Hon'ble NCLAT has held that:



*“Admittedly, more than 270 days have crossed and in absence of any viable and feasible ‘Resolution Plan’, the Adjudicating Authority had no option, but to pass order under Section 33 of the I&B Code.”*

- 10.** Even the statutory provisions as envisages in Section 33 (1) (a) of the Code mandates that *“where the Adjudicating Authority before the expiry of the maximum period permitted for completion of the corporation insolvency resolution process under Section 12 does not receive a resolution plan under sub-section (6) of Section 30, it shall pass an order requiring the corporate debtor to be liquidated in the manner as laid down in the Chapter.”*
- 11.** Therefore, upon failure of resolution process there being no resolution plan and on completion of the statutory period of 270 days; Liquidation has to follow. Adherence to statutory requirement has to be in toto. When the language of the Code is clear and explicit the Adjudicating Authority must give effect to it whatever may be the consequence.
- 12.** In the factual background and in the absence of any resolution plan and for want of time beyond statutory CIRP



period; there is no other alternative but to order in conformity with the majority decision of the Committee of Creditors *for liquidation of the corporate debtor under Section 33 (1) (a) of the Code.*

**13.** In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s Surya Pharmaceutical Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

a. Mr. Harvinder Kumar Jatana, having registration no. IBBI/IPA-002/IP-N00418/2017-18/11193, is appointed as Liquidator in terms of Section 34(1) of the Code.

b. Mr. Harvinder Kumar Jatana, is directed 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;

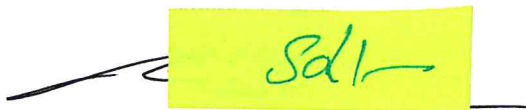


- c. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- e. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.
- f. The liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (1) of the Code.
- g. The liquidator shall also follow up the pending applications for its disposal during

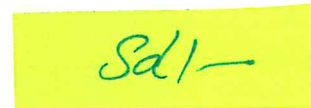


the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor.

- h. The Liquidator shall 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.
- i. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.
- j. C.A. 1235(PB) /2019 filed in IB 904(PB)/2018 is disposed of in the aforesaid terms.



**(S. K. MOHAPATRA)**  
**MEMBER (T)**



**(DR. DEEPTI MUKESH)**  
**MEMBER (J)**