



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

**IA NO.398/2022
IN
CP (IB) NO.377/ALD/2019**

In the matter of

An application under Section 33(2) of the Insolvency & Bankruptcy Code, 2016

In the matter of:

DEV VRAT RANA

Hansraj Agrofresh Private Limited
C-23, 2nd Floor, Swastik Gardenia, Shivpuri,
Varanasi-221003

..... Applicant/ Resolution Professional

In the matter of:

M/S MANJUSHREE TECHNOPACK LIMITED

..... Operational Creditor

Versus

M/S HANSRAJ AGROFRESH PRIVATE LIMITED

.....Corporate Debtor

Order pronounced on 6th July, 2023

Coram:

Mr. Praveen Gupta : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearance :

For Applicant/ Resolution Professional

: Sh. Krishna Dev Vyas, Adv.

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ORDER

1. The present application (IA No.398/2022) has been filed by the Resolution Professional (RP) of the Corporate Debtor seeking direction for initiating liquidation proceedings of the Corporate Debtor in terms of Section 33(2) of the Code and to appoint the applicant Mr. Dev Vrat Rana, Resolution Professional as the Liquidator of the Corporate Debtor, and further seeking directions to invite Scheme of Compromise and Arrangement under Section 230 of Companies Act, 2013 in terms of Regulation 2B of the Liquidation Process Regulations, 2016, and to sell the Corporate Debtor as a going concern in terms of Regulation 32 of Liquidation Process Regulations, 2016 as resolved by the Committee of Creditors in 6th meeting.
2. Briefly stated facts of the case are that in pursuance of an application filed U/s 9 by the Operational Creditor, the application was admitted vide order dated 31.01.2022 passed by this Tribunal and an Interim Resolution Professional (IRP) was appointed to conduct the CIRP of the Corporate Debtor. In pursuance of the admission order, the public announcement of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor, appointment of IRP and invitation of claims from the creditors was made in FORM-A on 02.02.2022 in two newspapers namely 'Financial Express' in English, Uttar Pradesh Edition, and 'Ek Din' West Bengal Edition (Regional Language).

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- 3.** It is stated that the revised Form-G was published and the last date for submission of Expression of Interest (EoI) was on 26.08.2022 and the last date for submission of Resolution Plan was 30.09.2022. In pursuance thereof, two EoIs were received along with EMD amount as approved by the CoC from the following Prospective Resolution Applicants :-
- i.** Asian Tea & Exports Limited;
 - ii.** Sapphire Dealtrade Private Limited.
- 4.** However, the RP did not receive any Resolution Plan till the said last date. Thereafter, the sole CoC member was of the view that the RP had already published Form G thrice for inviting Expression of Interest from the PRAs and inspite of receiving EOI from the PRAs, no resolution plan was received by the RP, therefore, CoC asserted that there was no need to extend the timeline of the CIRP beyond 270 days and suggested to take the agenda of liquidation of the Corporate Debtor and approved the resolutions with 100% voting share in 6th CoC meeting dated 18.10.2022. The minutes of the 6th CoC meeting has been attached as Annexure A-15 with the present application starting from page 233-280. The agenda item no.A-10 was thus, put up in the 6th CoC meeting held on 18.10.2022 and a Resolution was passed thereon by the CoC recommending liquidation of the Corporate Debtor under the provisions of Section 33(2) of the Code and the RP was authorized to file an appropriate application before the Adjudicating Authority about the recommendations of the

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CoC to liquidate the Corporate Debtor. The relevant part of the agenda item no.A-10 as well as the Resolution No.C-1(A) passed thereon is as under :-

Item No. A-10 : To discuss way forward with the CIR Process of Hansraj Agrofresh Private Limited and approve necessary resolutions accordingly

The Chairman apprised the CoC that as the Committee is well aware about the fact that he has not received any Resolution Plan as on the last date for submitting the Resolution Plan i.e., 30.09.2022 and the CIRP period of 270 days is going to end on 27.10.2022 therefore, at this point of time the CoC needs to decide whether they want to move forward with the Corporate Insolvency Resolution Process of the Corporate Debtor by Republishing Form G in terms of Regulation 36A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 OR to liquidate the Corporate Debtor in terms of the provisions of Section 33(2) of the Insolvency and Bankruptcy Code, 2016. Further, if CoC decides to republish Form G, then in that case an extension of 60 days beyond 270 days is required to be obtained in pursuant to the provisions of Section 12 of IBC, 2016 so that CIR Process can be completed within time.

On this representative of Sole CoC member said that RP has already published Form G three times for inviting the Expression of Interest from the prospective resolution applicant's inspite of receiving EOI from the PRAs but no resolution plan was received by the RP therefore, CoC asserted that there is no need to extend the timeline of the CIRP beyond 270 days and suggested to take the agenda of liquidation of the Corporate Debtor on which, Chairman said

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that this agenda shall be taken in any other agenda.

Resolution No. C-1(A) : To discuss and consider the filing of application with the Hon'ble National Company Law Tribunal, Allahabad Bench under Regulation 33(2) of IBC, 2016, for the initiation of liquidation of Corporate Debtor

The Chairman apprised the members of CoC that if the Resolution for extension of CIRP period is voted against/ rejected by the CoC members or in the absence of any other more favorable alternative, the Corporate Debtor may be taken towards Liquidation. Thus, the Chairman sought permission from the members of the CoC to apply before the Hon'ble NCLT, Allahabad Bench, for the initiation of liquidation proceedings against the CD under section 33 of IBC, 2016. Therefore, the following Resolution was proposed for consideration of CoC.

Resolution

To consider and, if thought fit, to pass with or without modification the following resolution :

RESOLVED THAT *in pursuant to Section 33(2) of IBC, 2016 and the rules made thereunder, the consent of members of the CoC be and is hereby accorded to approve the filing of application with Hon'ble NCLT, Allahabad Bench, regarding the initiation of liquidation of Hansraj Agrofresh Private Limited, Corporate Debtor and to appoint the existing RP, who also has given his consent to act as Liquidator, as the Liquidator of the CD.*

RESOLVED FURTHER THAT *Resolution Professional be and is hereby authorized to do*

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all such acts, deeds and things as may be required or considered necessary or incidental thereto.”

This Resolution has been passed by the CoC with 100% positive voting through Ballot paper, hence, it is approved.

5. The IRP has further appointed two set of valuer for Land & Building, Plant & Machinery and Securities & Financial Assets namely Resolute Valuers & Consultants Pvt. Ltd. for all the three class, Mr. Vivek Jagtap for Land & Building, Mr. Debashish Ghosh for Plant & Machinery & Mr. Swapnil Jain for Securities & Financial Assets for working out the Fair Market Value & Liquidation Value of the assets of the Corporate Debtor. The valuers reports have also been submitted and as per the said reports by the appointed valuers, the fair value and the liquidation value of the Corporate Debtor is as follows :-

Assets Class	Fair Value (In Rs.)		
	I	II	Average
	Mr. Vivek Jagtap	Mr. Darisipudi Veerraju Rajkumar	
Land & Building	6,16,00,000	5,33,54,000	5,74,77,000
	Mr. Debashish Ghosh	Mr. Partha Pratim Chattopadhyay	
Plant & Machinery	10,11,38,566	10,13,02,000	10,12,20,283
	Mr. Swapnil Jain	Mr. Pranab Kumar Chakrabarty	
Security & Financial Assets	1,65,000	1,63,000	1,64,000
Total			15,88,61,283

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Assets Class	Liquidation Value (In Rs.)		
	I	II	Average
	Mr. Vivek Jagtap	Mr. Darisipudi Veerraju Rajkumar	
Land & Building	4,42,78,000	4,33,50,000	4,48,14,000
	Mr. Debashish Ghosh	Mr. Partha Pratim Chattopadhyay	
Plant & Machinery	7,08,05,479	8,10,42,000	7,59,23,740
	Mr. Swapnil Jain	Mr. Pranab Kumar Chakrabarty	
Security & Financial Assets	1,65,000	1,63,000	1,64,000
Total			12,09,01,740

6. Therefore, in the 6th CoC meeting which was convened on 18.10.2012, the CoC decided to proceed with the liquidation of the Corporate Debtor with 100% voting share as there was no Resolution Plan. The RP has also given his consent to act as a Liquidator in terms of Section 34(1) of the Code, which is annexed as Annexure A-18 with the present application.
7. We have perused the record and also we have heard the submissions made by the Ld. Counsel representing the RP.
8. Section 33(2) of the Code, under which the present application has been moved, is reproduced below :-

33. (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

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of the committee of creditors 1 [approved by not less than sixty-six per cent. 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 subsection (1).

9. In view of the stated position as averred in the application and submitted by the Ld. Counsel for the RP as well as the provisions of Section 33 of the Code, we are inclined to allow the present application. We have found that despite having made of all possible efforts by the RP acting on the advice of the CoC for inviting EOI and for submission of the Resolution Plan by the PRAs, no concrete and final proposal could be submitted. It was thereafter, only as per the commercial wisdom of the CoC in its 6th CoC meeting held on 18.10.2022, the conscious decision has been taken for initiating liquidation process and accordingly, the RP had been directed to move the present application. It has been stipulated U/s 33(2) as reproduced above that where the RP during the CIRP intimates the Adjudicating Authority of the decision of the Committee of Creditors approved by not less than 66% (sixty-six) per cent of the voting share to liquidate the Corporate Debtor, the Adjudicating Authority shall pass a liquidation order. In the present case, the Resolution to initiate the liquidation process has been taken by the CoC in its 6th CoC meeting as referred to above, by a majority of

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100%, thus, meet the bench mark of percentage share of voting prescribed under the aforesaid provisions of the Code.

- 10.** Section 33(2) of the Code empowers 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.
- 11.** We thus, allow the present IA. The RP, who has been acting so far as such, has also given his consent in Form AA to act as a Liquidator of the Corporate Debtor and the said consent has been placed as Annexure A-18. As per Section 34(1) of the Code, it has been stipulated that, where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor U/s 33, the RP appointed for CIRP shall act as Liquidator for the purpose of liquidation subject to the submission of written consent by the RP to act as a Liquidator. The provisions of Section 34(1) of the Code are reproduced here below :-

34. (1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process

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under 1 [Chapter II 2 [or for the pre-packaged insolvency resolution process under Chapter III-A] shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form,] shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).

- 12.** The credentials of the RP, who would act as a Liquidator, have been verified by the LRA Ms. Aditi Kharbanda, from the IBBI website, and are found to be correct and valid.
- 13.** In view of our foregoing discussions, we pass the following orders :-
 - (i)** The present IA is allowed for initiation of the liquidation proceedings of the Corporate Debtor in terms of Section 33(2) of the Code.
 - (ii)** The RP Mr. Dev Vrat Rana is appointed to act as a Liquidator.
 - (iii)** The Liquidator is directed to forthwith take into his custody all the assets, Properties, and actionable claims of the corporate debtor and take necessary steps to ensure preservation, protection security and maintenance of those properties as provided under section 35(1)(b) & (d) of IBC 2016.

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- (iv)** The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time
- (v)** The Stakeholder Consultation Committee (SCC) would be constituted as per Regulation 31A of IBBI (Liquidation Process) Regulations, 2016 and the list of SCC would be filed before this Tribunal in accordance with the provisions of the Code and Regulations made therein.
- (vi)** The Liquidator shall first try to sell the Corporate Debtor as a going concern in terms of Regulation 32A read with Regulation 32(e) and (f) of IBBI (Liquidation Process) Regulations, 2016. 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.
- (vii)** Fees of the Liquidator are to be paid in accordance with Liquidation Process Regulations, 2016, and to be decided in the meeting of SCC.
- (viii)** All the powers of the Board of Directors, and of Key Managerial Personnel, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.

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- (ix)** 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.
- (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)** 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 continues during the liquidation process by the Liquidator as a going concern.
- (xii)** In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Kanpur, Uttar Pradesh, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, Uttar Pradesh, Kanpur.

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(xiii) As per Regulation 13 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, the liquidator shall submit a preliminary report to the Adjudicating Authority within 75 days from the liquidation commencement date providing various details/information as mentioned in the said regulation.

14. In view of the aforesaid order, the IA No.398/2022 is allowed and stands disposed off accordingly.

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(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)

6th July, 2023