



**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

I.A(IB)No.135/CB/2023

In

C.P(IB) No.34/CB/2020

In the matter of:

An application under Section 33 and 34 of Insolvency and Bankruptcy Code ,2016 for an order of liquidation against the corporate debtor;

-And-

In the matters of:

Mr. Sambhulal Agarwal, Resolution Professional of M/s. Sabitri Industries private Limited, having office at-2nd Floor, Bazaar Kolkata Building, Nayapada, Sambalpur- 768001, Odisha;

...Applicant

-In-

In the matter of:

State Bank of India, (SBI), Stressed Assets, Management Branch, A/34, PT. Jawaharlal Neheru Marg. OSCARD Bank Building, 4th Floor, Bhubaneswar – 751 001;

... Financial Creditor

-Versus-

Sabitri Industries Pvt Ltd, having its registered office at Girima, Ward No- 12, Karanjha, Mayurbhanj, Odisha -757 037.

... Corporate Debtor

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearance:

For the Petitioner : Mr. S. S. Mohanty, Adv.

Mr. Swayamjit Rout, Adv.

Mr. Goutam Rai, Adv.



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In re:SBI -Vs- Sabitri Industries (p)Ltd

Mr. S. Pradhan, Adv.

Ms. Gyaninee Nayak, Adv.

For the Respondent

:

Order reserved on: 19.06.2023
Order pronounced on:03.07.2023

ORDER

1. This application has been filed by **Mr. Sambhulal Agarwal**, Resolution Professional of Corporate Debtor- Sabitri Industries Pvt Ltd. The Corporate Insolvency Resolution Process (**CIRP**) against the corporate debtor under Section 7 of IBC,2016 was admitted by this Adjudicating Authority on 03.06. 2022.The applicant was initially appointed as Interim Resolution Professional, subsequently, the applicant was appointed as Resolution Professional in the 1st CoC meeting held on 5th July,2022. The applicant made necessary paper publications, took over the assets of the corporate debtor, verification of the claims as well as constituted the Committee of Creditors(**“CoC”**)
2. In pursuance of CIRP order the IRP effected public announcement in **“Business Standard”** (English Newspaper) and **“Sambad”** (Odiya Newspaper) both on 10.09.2022. The applicant states that during that period the applicant has received three expressions of interest from:
 - 1) B.K. Agro products private. Limited,2) Shri Annapurna Rice Mill and
 - 3) Fortish Chemical Private Limited.
3. The Applicant states that the Prospective Resolution Applicant Namely B.K Agro Products Private Limited has mentioned in clause 2.2(d) of the Resolution Plan where the Resolution Applicant reserves and retains the right to suitably amend and modify the Resolution Plan on the basis of



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such change or modification or amendment or addition in the information already proved and prospective Resolution Applicant namely Fortis Chemicals Private Limited. The Resolution Plan has proposed to spend a sum of Rs.70,000 for the purpose of registration /transfer of the said lease hold land in the name of Corporate Debtor and that has to be done in priority and Financial Creditor is required to take sufficient measures/approvals for the same.

4. The Applicant has communicated these points to the Prospective Resolution Applicants to remove or modify the clauses mentioned above. However, the Prospective Resolution Applicant have not removed or modified the same in the modified Resolution Plan.
5. The Applicant states that he has received legal opinion dated 3rd April 2023 from EP; that there is no scope for retaining any clauses for renegotiation or modification of the resolution plan after it is approved by CoC and NCLT, so the clauses of the Resolution Plan submitted by B.K. Agro, not only seek to retain right to modify the resolution plan but also to be revoke it at its discretion and also opined that in the Resolution Plan provided by Fortis Chemicals the condition sought b y them with respect tom the transfer of the land owned by the third party is clearly contrary to the provisions laid down by the law.
6. The Applicant states that the above legal opinion was put Forword before the CoC on 12th CoC meeting held on 10th April,2023 and the members considered the ELP opinion and noted that with the conditionalities as mentioned in the ELP opinion, the two resolution conditionalities as mentioned in the ELP opinion, the two resolution plans would not satisfy the requirement of Section 30(2) (e) of this code. CoC also noted that the PRAs have by Applicant, till the date information about the Corporate Debtor by the Applicant, till the date of submission of revised resolution



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Plan and there was no change in the Information which was available with the Applicant and which has been shared to the PRA, but the PRAs has chosen not to remove or modify this condition in this revised Resolution plans. In view of this stand of PRAs as regards the contentious clauses of their Respective Resolution Plans, the Plans submitted by the two PRAs cannot be considered viable and complaint according CoC decided not to consider both the plans as submitted by namely; B.K. Agro Products Pvt. Ltd. And Forties Chemicals Pvt, Ltd. For the Insolvency Resolution of the Corporate Debtor. There being no other Resolution Plan before CoC other the two plans of PRAs, the CoC proposed and recommended for Liquidation of the corporate Debtor.

7. The Applicant states that in the 12th CoC meeting held on 10th April 2023 100% voting of the Committee of Creditors have voted in favour of initiation of Liquidation Process of the Corporate Debtor.
8. The applicant Resolution Professional has filed this application for liquidation under Section 33 of the IBC, 2016 as the two resolution plans received were rejected by COC and in absence of any other viable plan the COC in its 12th meeting has unanimously decided for liquidation of the Corporate Debtor. In view of the forgoing, the request of the applicant is accepted.
9. In the result, **Sabitri Industries Pvt. Ltd**, Corporate Debtor is **ordered to be liquidated**.
10. The applicant **Mr. Sambhulal Agarwal**, Resolution Professional of corporate debtor, Sabitri Industries Private Limited, having its registered office at Girima, Ward No- 12, Karanjha, Mayurbhanj, Odisha-757 037 under section 34(1) with Registration No- IBBI/IPA-001/IP-P00387/2017-18/10698 is appointed as liquidator of corporate debtor Sabitri Industries Pvt Ltd, **subject to his filing of written consent as**



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provided in section 34(1) of IBC ,2016 within 5 days from date of this order, he shall then proceed with liquidation order.

11. 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) & of IBC 2016.
12. The Liquidator is directed to adhere 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.
13. Public Notice as contemplated under section 33(1) of the Code shall be issued in one morning, English daily and in one morning regional language newspapers.
14. All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel, shall cease to exist in accordance with section 34 (2) of the Code. These powers shall henceforth vest in the Liquidator. The personal of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in the Liquidation process of the Corporate Debtor.
15. 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 a 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.
16. In accordance with section 33 of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and work men of the Corporate Debtor, except to the extent of the business of the



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Corporate Debtor continued during the liquidation process by the liquidator.

17. In terms of Section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Odisha at Cuttack, within whose jurisdiction the Corporate Debtor is registered.
18. The fee of Liquidator to be determined as provided under Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016.
19. 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.
20. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
21. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.07.03 16:46:53 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.07.03 17:00:22 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this, 03rd day of July,2023.

Bijaylaxmi (LRA)