

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III**

M. A. No. 3987/2019
In
C. P. No. 1619/IB/2019

Under Section 33 of Insolvency &
Bankruptcy Code, 2016
In the matter of

SAI PROJECTS AND ENGINEERS PVT.LTD.
... Operational Creditor

V/s.

KALPYOG CHEMICALS PVT. Ltd.
... Corporate Debtor

M. A. No. 3987/2019

Mr. SREEKUMAR NAIR

... Applicant/
Resolution Professional

Order delivered on 21.09.2020

Coram:

Hon'ble Shri Venkata Subba Rao Hari, Member (Judicial)
Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Advocate Vikranti Rao

Per Shri Shyam Babu Gautam, Member (Technical)

ORDER

1. It is an application filed by the Resolution professional seeking liquidation of the Corporate Debtor namely (KALPYOG CHEMICALS PVT. Ltd.) on the ground that no resolution plan has been received by him, hence this application under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016, praying following reliefs:

- a. *"To pass necessary order under Section 33(1) read with section 33(2) of the Insolvency and Bankruptcy Code, 2016.*

- b. To confirm the appointment of the resolution Professional as Liquidator of the Corporate Debtor under Section 34(1) of the Insolvency and Bankruptcy Code.*
2. The Adjudicating Authority vide its order dated 29.08.2019 on a Petition filed by the Operational Creditor under Section 9 of the Code directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely M/s. KALPYOG CHEMICALS PVT. Ltd., wherein Mr. Sreekumar Radhakrishnan Nair, was appointed as Interim Resolution Professional (IRP). Thereafter in the 1st Committee of Creditors (CoC) meeting held on 04.10.2019 Mr. Sreekumar Radhakrishnan Nair was resolved to be appointed as Resolution Professional (RP) and the same was approved by this Bench.
 3. The RP submits that the public announcement was made on 07.09.2019, 08.09.2019, in “Financial Express” in English and in regional language in Marathi. It is further submitted that an advertisement, inviting Expression of Interest (EoI) in Form G was not published. Thereafter, no extension has been sought and no EoI was invited and no Resolution plan was received.
 4. The CoC in its 2nd meeting held on 18.11.2019 decided to appoint a Valuer. The RP accordingly appointed two registered valuers as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016 and the Information Memorandum was prepared as provided under Regulation 36(1) of the said regulation.
 5. The CoC in the 2nd CoC meeting held on 18.11.2019, the sole financial creditor i.e. Phoenix ARC Pvt. Ltd. had informed in the meeting that the Corporate debtor Company is closed for more than 3 years and not in operation and hence Corporate debtor is not going concern and they were not hopeful for getting potential resolution applicant on account of the following grounds:
 - i. *“That the Corporate Debtor is not a going concern, hence it has no enterprise value;*
 - ii. *that the liability of Corporate Debtor is huge as against asset value, which may hinder investor’s participation;*

- iii. *that there is no business in the Corporate Debtor Company.*
 - iv. *that there is no electricity connection in the company for the past 2-3 years;*
 - v. *That the machineries have not been used for the past 3 years and not usable condition and to recommission it there will be a huge investment to the tune of 6-9 crores and more than 9 months;*
 - vi. *That the company is a chemical factory and there is no technical know or intellectual property in the company;*
 - vii. *That with the reduction in crude price the product pricing is competitive;*
 - viii. *That the products and by products are hazardous and there is a possibility of factory area moving out of chemical zone in 2 years;*
 - ix. *That the corporate debtor has no value other than the land and the scrap value of machinery.*
6. Hence, the CoC in its 2nd meeting held on 18.11.20219, unanimously passed a resolution for liquidating the company. Accordingly, the Resolution Professional filed this application for liquidation of the Company as provided u/s 33 of the Insolvency & Bankruptcy Code, 2016 (Code).
7. The Applicant/ Resolution Professional Mr. Sreekumar Radhakrishnan Nair, has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator.
8. Upon hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein it is found, the RP has complied with the procedure laid down under the Code Regulations made thereunder. On verification, we are of the considered view that this is a fit case to pass liquidation order under sub-section 1 of section 33 of the Code for liquidation in the absence of any resolution plan. Hence ordered;

ORDER

- a. The Miscellaneous Application is hereby allowed.
- b. Mr. Sreekumar Radhakrishnan Nair, Registration No. IBBI/IPA-001/IP-P01237/2018-2019/11988, herein is hereby

appointed as Liquidator as provided under Section 34(1) of the Code.

- c. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- d. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e. The Liquidator appointed under section 34(1) of the Code. Will have all powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.
- f. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- g. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- h. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- i. That on having liquidation process initiated, 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.

- j. 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.

Sd/-
SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)