IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

I.A. 177 OF 2021

Under Section 33(1) of Insolvency & Bankruptcy Code, 2016

Megha Agrawal

001, Shivranjini Apartments, In Circle of Congress Nagar Garden, Congress Nagar, Nagpur – 440 012

Resolution Professional/
...Applicant

In the matter of

C.P.(IB) No. 2144/MB/2019

M/s. Rasayano

Operational Creditor

Vs.

Katariya Pet Private Limited

Corporate Debtor

Order delivered on: 28.01.2022

Coram:

Mr. Rajesh Sharma	Mr. Kishore Vemulapalli
Hon'ble Member (Technical)	Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant/RP : Mr. Harsh Kesharia

ORDER

Per: Rajesh Sharma, Member (Technical)

1. The above application is filed by Mrs. Megha Agarwal Resolution Professional, seeking liquidation of Katariya Pet Private Limited, (hereinafter referred as Corporate Debtor) under Section 33(1) (a) and 34(1) of Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:

   a. *To pass an order extending period of the Corporate Insolvency Resolution Process of the Corporate Debtor by a period of 90 days;*
   b. *To pass the order for Liquidation of the Corporate Debtor;*
   c. *To appoint Mrs. Megha Agrawal as the liquidator of the Corporate Debtor.*

2. The brief facts of the Application are as follows:

A. That this Tribunal vide an order dated 06.12.2019 in Company Petition No. 2144 of 2019 admitted the petition under Section 9 of the Code, filed by M/s. Rasayano (hereinafter referred to as the "Operational Creditor") and Corporate Insolvency Resolution Process (CIRP) was initiated against Katariya Pet Private Limited, (hereinafter called as the "Corporate Debtor"). The Applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor by this Tribunal vide this Order. The applicant was confirmed as Resolution Professional in the first meeting of Committee of Creditors held on 23.12.2020.

B. The Applicant submits that the Form-G seeking Expression of Interest was published on 10.06.2020. It is submitted that after publishing of invitation for Expression of Interest, the Applicant did not receive any Expression of Interest and the same was informed to the CoC of the Corporate Debtor vide email dated 25.06.2020 and the same was approved vide email dated 02.07.2020. The Expression of Interest was extended for the first time on 15.07.2020.

C. The Applicant submits that had not received any Expression of Interest and therefore, the Expression of Interest was extended for the second time on 12.08.2020.

D. The Applicant submits that the only one Expression of Interest was received from one of the Suspended Board of Director of the Corporate Debtor, however, the same did not satisfy the eligibility criteria and hence rejected.

E. The Applicant further submits that the Committee of Creditors of the Corporate Debtor in its 10th Meeting held on 23.12.2020 resolved to liquidate the Corporate Debtor in order to avail the maximum realization value of the assets of the Corporate Debtor. In the said meeting, it was also resolved to appoint the Applicant/ RP as the Liquidator of the Corporate Debtor. Relevant extract of the Resolution passed is reproduced hereunder: -

> *"**RESOLVED THAT** approval of the Committee is accorded for filing an application with the NCLT, Mumbai Bench for liquidation of the Corporate Debtor.*

FURTHER RESOLVED THAT *Mrs. Megha Agrawal, the Resolution Professional of the Corporate Debtor, be and is hereby authorized to take the necessary steps to file the said Application with the NCLT, Mumbai Bench to obtain its approval for the same."*

F. The Applicant submits that the Mrs. Megha Agrawal, Resolution Professional as a Liquidator of the Corporate Debtor is approved at Rs.80,000/- (Eighty Thousand per month) (Exclusive of applicable tax and OPE) subject to maximum of Rs.5,00,000/- (Five Lakhs) (Exclusive of applicable tax and OPE) and all other incidental expenses pertaining to liquidation will be chargeable on actual basis to the complete liquidation process.

3. The Applicant/ RP filed Additional Affidavit on 24.09.2021, the Applicant submits as under:-

a. The Applicant submits that during the hearing of the present application on 08.09.2021, the Applicant had presented the comparative data of the financial statements of the Corporate Debtor for previous four Financial Years viz 2016-17, 2017-18, 2018-19 and 2019-20.

b. The Applicant submit that after perusing the data of the Corporate Debtor, the Hon'ble Tribunal noticed that the Corporate Debtor had availed various facilities in form of Cash Credit and Term loan amounting to Rs. 6.58/-crores in the Financial Year 2017-18. On perusing the data, the

Hon'ble Tribunal asked the Applicant about the utilisation of the loan availed by the Corporate Debtor.

c. The Applicant submits that the Corporate Debtor had availed a sum of Rs.6.26 crores through Cash Credit facility on 27.02.2018 from the Financial Creditor and the said funds were utilised towards Raw Material procurement, finished goods and debtors and for working capital of the Corporate Debtor.

d. The Applicant submits that the Corporate Debtor had availed a term loan of Rs.92.00 lakhs on 20.03.2018 and the said loan was utilised towards purchase of plant and machinery of the Corporate Debtor.

e. The Applicant submits that the Corporate Debtor had availed another term loan of Rs.1.96 crores on 20.03.2018 and the said loan was utilised towards construction of shed of a building and purchase of land to make the plant working and to operate the business of pet bottles of the Corporate Debtor.

f. The Applicant submits that the closing balance of the aforesaid financial facilities aggregates to Rs.8.23 crores.

g. The Applicant submits that the Corporate Debtor was manufacturing pet bottles from plant and machineries which were in the hypothecated by proprietorship concern of the suspended director of the Corporate Debtor viz. Mr. Mahesh Katariya. It is further submitted that the possession of the said plant and machineries has been taken by the Financial

Creditor as the proprietorship concern has also been categorised as NPA.

h. The Applicant submits that the Financial Creditor is getting offers to purchase/ acquire the said plant and machineries. The Applicant further submits that barring the said plant and machineries there is only land and building and spare parts which classify as assets of the Corporate Debtor. The Applicant said that thus finding a resolution for the Corporate Debtor would be difficult as there are no plant and machineries in the Corporate Debtor which can manufacture pet bottles.

i. The Applicant submits that the CoC is constituted having sole single member i.e. Janata Sahakari Bank Limited who is the Financial Creditor approved with 100% voting in the 10th CoC meeting held on 23.12.2020 to liquidate the Corporate Debtor.

j. Heard the arguments of the counsel appearing for the Applicant and perused the material available on record. It is observed from the minutes of the 10th CoC meeting dated 23.12.2020 that the COC has, with 100% majority, decided to liquidate the Corporate Debtor and relying on the settled principle of law regarding the Commercial Wisdom of the COC, we hereby passing the following order:

ORDER

a. I.A. 177/2021 filed by the Applicat/ RP for Liquidation of the Katariya Pet Private Limited.

b. Mrs. Megha Agrawal, having Registration No. IBBI/IPA-001/IP-P-01456/2018-19/12272 is hereby appointed as the 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.

With the above directions, this application being I.A. No. 177 of 2021 is hereby **allowed and disposed of**.

Sd/-	Sd/-
KISHORE VEMULAPALLI	**RAJESH SHARMA**
Member (Judicial)	**Member (Technical)**

/skd/