IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 44

IA 820 of 2020 in CP(IB) 457 of 2018

Order under Section 30(6) IBC,2016

IN THE MATTER OF:

Sunit Jagdishchandra Shah Liquidator of SRK Chemicals Ltd .....**Applicant**
V/s
SRK Chemicals Ltd & Ors .....**Respondent**

Order delivered on ..29/11/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the IRP/RP :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

(AJAI DAS MEHROTRA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Sweta

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

I.A. No. 820 of 2020

IN

C.P. (I.B.) No.457/9/NCLT/AHM/2018

(An application under section 30 (6) of the Insolvency and Bankruptcy Code, 2016 for the approval of Resolution Plan)

Through
Mr.SunitJagdishchandraShah
("RP"of S. R. K. Chemicals Ltd,) **...Applicant/ RP**

In the matter between:
Mr.Sunit Jagdishchandra Shah
"Resolution Professional" of,
S. R. K. Chemicals Ltd,
303, 3'd Floor, Abhijit -1, Opp. Bhuj
Mercantile Bank, Mithakhali Six Road,
Navrangpura, Ahmedabad.

.....Petitioner/Operational Creditor

Versus

1. S. R. K. Chemicals Ltd.
   Having registered office at:
   Neelkanth B B Z S 60,
   Zandachowk Gandhidham-470201.

2. Arjanbhai Sadhbhai Kangad (Ex-Director)
   Having Address at:
   Plot no.36, Sector 2Gandhidham,
   Gujarat-370201
   Email-hariomask@gmail.com

3. Teja Sadhabhai Kangad (Ex-director)
   Plot No. 35, Sector 2 Gandhidham,
   Gujarat-370201

Email-tkangad@gmail.com

4. ShamjibhaiSadhabhaiKangad (Ex-director)
   Plot No. 34, Sector 2 Gandhidham,
   Gujarat-370201
   Email-shamjikangad@gmail.com

5. SOI Global PTE Ltd.,
   (Operational Creditor)
   Member of Committee of Creditors
   10-Anson Road, #16-06,
   International Plaza, Singapore-079903

6. Radhe Shyam Handling
   (Operational Creditor)
   Member of Committee of Creditors
   Office No. 209, 2nd Floor,
   BMCB Complex, Plot No. 19,
   Sector-9, Gandhidham-Kutch-370201

7. Sudansh Incorporation
   (Operational Creditor)
   Member of Committee of Creditors
   Darshan Chamber, 2nd Floor,
   Plot No.10, Sector 1/A,
   Gandhidham-Kutch

8. Portal Shipping & Chartering Agencies
   (Operational Creditor)
   Member of Committee of Creditors
   Darshan Chamber, 2nd Floor,
   Plot No. 10, Sector 1/A
   Gandhidham-Kutch

9. Resolution Applicants
   a. Kamal Narendra Ganatra
      Plot No. 514, Lilashah Nagar,
      Ward 12/C, Gandhidham,
      Kutch-370201

   b. Mahavir Ratanlal Parekh
      Plot No. 54, Sector 4,
      Candhidham, Kutch-370201

   c. Sharad Mahabal Shetty
      Plot No. 147, Opp. P N Amarsy,

Ward 10/A, Gandhidham,
Kutch-370201

.....Respondents

Order pronounced on 29/11/2021

Coram: Madan B. Gosavi, Member (Judicial)
Ajai D. Mehrotra, Member (Technical)

Appearance:
For the Applicant:
Ld. Sr. Counsel Mr. NavinPahwa, Ld. Counsel Mr. Vishal Dave, and Ld. Counsel Nipun Singhvi

(Order)

[Per: Mr. Madan B.Gosavi, Member (Judicial)]

1. The instant application is filed by the Resolution Professional Mr. Sunit Jagdishchandra Shah of Corporate Debtor i.e M/s S.R.K. Chemicals Pvt. Ltd. under section 30 (6) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"IB Code"**) for the approval of the Resolution Plan.

2. It is submitted by the applicant that the Corporate Debtor i.e. M/s S.R.K. Chemicals Pvt. Ltd. was admitted into CIRP vide order dated 27.11.2019, passed by this Adjudicating Authority and Mr. Sunit Jagdishchandra Shah bearing registration No. IBBI/IPA-001/IP-P00471/2017-18/10814, was appointed as an IRP. The IRP published Form-A on 28.12.2021 inviting the Creditors to submit their claims, as per Regulation 6 of IBBI (CIRP) Regulations 2016 (hereinafter referred to as **"CIRP**

Regulation"), and the COC was formulated by the IRP comprising of SOI Global Pvt Ltd, having 45.83% voting shares, RadheShyam having 8.27% voting shares, Sudansh Incorporation having 2.10% voting shares and Portal Shipping & Chartering Agency having 43.80% voting shares i.e., total 100%of shares.

3. The first meeting of COC was held on 25.02.2020, wherein, name of the IRP was confirmed to act as the Resolution Professional. In the 2nd COC meeting dated 10.07.2020, a resolution was passed to appoint the registered valuers namely- (i) Devang Shah & Vishal Shah for making valuation of the plant and machinery and (ii) Mr. Dharmendra Dhelariya& Chirag Shah for Security and Financial Assets of the Corporate Debtor.

4. The applicant further submitted that in the 3rd meeting of COC dated 27.07.2020, it was discussed by the COC for evaluation matrix and publication of Form-G for inviting the expression of interests (hereinafter referred to as **"EOI"**), and the same was published by the Resolution Professional in two newspapers i.e., Indian Express and Kutch Uday on 31.07.2020.

5. In the meantime, one request was made by the one of the operational creditors Portal Shipping for withdrawing CIRP who was not an original applicant for initiation of CIRP. The CIRP proceedings were initiated by M/s Pacific Gulf Shipping Pvt. Ltd.

who has not filed any claim thereby being not a member of COC. Hence, the COC decided to take legal opinion of this point whether the other operational creditors are entitled to withdraw the CIRP proceedings or not?

6. It is also submitted by the applicant that the prospective resolution applicant filed the resolution plan jointly by Kamal Narendra Ganatra, Mahavir Ratanlal Parekh, and Sharad Mahabal Shetty. The Resolution Plan submitted by the prospective Resolution applicant was approved by COC with 100% voting rights in its 5thmeeting dated 14.09.2020.

7. The Counsel of the applicant submitted that the average fair value of the assets of the Corporate Debtor is Rs. 1,53,50,077/- and liquidation value is Rs. 80,13,998/-. However, the plan submitted by the prospective resolution applicant provides the following amount to the creditors as well as other stakeholders. The amount provided for the stakeholders under the Resolution Plan is as under:

Sl. No	Category of Stakeholder	Sub-Category of Stakeholder	Amount claimed	Amount Admitted	Amount Provided Under the Plan	Amount Provided to the Amount Claimed (%)
1	2	3	4	5	6	7

1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (20 of section 21	39,75,000	39,75,000	Nil	-
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	-	-	-	-
		Total [a+b]	39,75,000	39,75,000	-	-
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (20 of section 21	-	-	-	-
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	-	-	-	-
		Total [a+b]	-	-	-	-
3	Operational Creditors	(a) (i) related Party of Corporate Debtor (b) (ii) Non related of Corporate Debtor (Including Govt Dues)	58,89,261	58,89,261	1,30,000	2.21

		(c) Other than (a) above: (i) Government (ii) Workmen & Employees Dues (iii) others	-	-	-	-
		Total [a+b]	58,89,261	58,89,261	1,30,000	2.21
4	Other debts and dues	-	-	-	-	-
Grand Total			**98,64,261**	**98,64,261**	**1,30,000**	

8. The applicant has submitted that this Authority vide order dated 15.06.2020 in IA 264/20 confirmed that the CIRP period shall be counted from the date of coming into the knowledge of IRP of his appointment i.e., from 25.01.2020. It is also submitted by the applicant that this Authority vide order dated 16.09.2020 excluded the period of 60 days of Lockdown due to the Covid-19 outbreak. Hence, the approval of the Resolution Plan by the COC is well within the period of CIRP as prescribed under Section 12 of the**"IB Code".**

9. Heard Learned Counsel for the applicant and perused contents of Resolution Plan as well as Form-H, it appears that the amount offered by the prospective Resolution Applicant is far lower than the liquidation value of Corporate Debtor is Rs.80,13,998/- as per Form-H. However, the amount offered in the resolution plan is Rs. 1,30,000/- does not justify the approval of the Resolution Plan.The object of **"IB Code"** is to revive the Company if any prospective Resolution applicant offers a reasonable bid in a time

bound manner for maximization of value of assets, but it cannot be derogative to the interest of stakeholders specially when the liquidation value is much higher than Resolution Applicant's bid. The amount provided to the operational creditors shall not be less than the amount provided under liquidation value of the corporate debtor as per section 30 (2) of IB Code. In the presnt case though the amount committed amount under the resolution plan is being given to the operational creditor as there are no financial creditor, but, still amount provided under resolution plan is much lower than liquidation value. For ready reference we hereby reproduce section 30 (2) of IB Code it is as follow;

> (2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –
>
> (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the 3 [payment] of other debts of the corporate debtor;
>
> (b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause

shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) The implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) confirms to such other requirements as may be specified by the Board. 1

[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being

in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]

Keeping before our sight above provisions of Law, we examined the Resolution Plan submitted by the Resolution Professional for our approval. It is true that the Resolution Plan has been approved by the CoC by 100% votes. We don't wish to challenge their commercial wisdom nor we have jurisdiction to do so but at the same time, we have to satisfy ourselves relating to the facts whether the Resolution Plan as submitted for approval does not contravene any provisions of law including provisions of the I.B. Code and regulations made thereunder.

In this case, as noted above, the liquidation value of the assets of the Corporate Debtor is Rs.80,13,998/- as against fair value Rs.1,53,50,077/-. The Resolution Applicant has offered paltry sum of Rs.1,30,000/- as a plan value, it is far less than the liquidation value. We have already noted facts that one of the objectives of the Insolvency and Bankruptcy Code, 2016 is maximization of the value of the assets of the Corporate Debtor. In this case, the assets of the Corporate Debtor are valued as almost nil as against their fair value. The explanation offered by the RP and CoC for such minimal amount offered by the

Resolution Applicant is not at all accepted by us. Moreover, in Resolution Plan, the Operational Creditor has not been offered the amount as required under the Law. We, in our judicial wisdom cannot approve such plan. Hence, we reject the application filed by the RP for approval of the Resolution Plan and proceed to pass order for liquidation of the Corporate Debtor.

In view of the facts as stated above, we invoke our jurisdiction under Section 34(4) of the I. B. Code, 2016 and replace the RP by appointing another professional as the Liquidator. Hence, the order.

ORDER

I. We hereby pass the order of liquidation of the Corporate Debtor M/s S.R.K. Chemicals Ltd. and consequently reject the IA No. 820 of 2020.

II. The Moratorium declared vide order dated 13.02.2018 on CP(IB) No.457/9/NCLT/AHM/2018, henceforth, ceases to exist.

III. As per Section 30(6) of the I.B. Code, the Applicant/ Resolution Professional, **Mr. Rajendra Sanghi** bearing registration **No. IBBI/IPA-001/IP-P01973/2019-20/13011**, email id- **rajendra.sanghi@yahoo.com**, appointed as RP, of the company, M/s S.R.K. Chemicals

Limited, having CIN No. U24298GJ2005PLC047229, shall complete the liquidation process as per the provisions of the Insolvency and Bankruptcy Code, 2016 r.w. Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016. He is further directed to endeavor to sell the Corporate Debtor firstly as per regulation 39 B of IBBI (Insolvency Regulation Process for the Corporate Persons) Regulation, 2016.

IV. All the powers of the Board of Directors, Key Managerial Person(s), and the partners of the Corporate Debtor hereafter cease to exist. All these powers henceforth, vests with the Liquidator.

V. The personnel of the Corporate Debtor is directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor, further, the Liquidator shall also provide all co-operation to various Government Agency(s)/ Authority(s) in ongoing investigations/ inquiry or inquiries-initiated hereafter.

VI. That once having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceedings on behalf of the corporate debtor

with prior approval of this Adjudicating Authority as mentioned in Sub-Section 6 of Section 30 of the **"I.B. Code".**

VII. This liquidation order shall be a deemed 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.

VIII. Registry is directed to upload this order on the official website within maximum two working days from the date of this order. The authenticated copy of this order shall also be sent by the registry to the Financial Creditor, Corporate Debtor, Registrar of the Company, Resolution Professional, and Liquidator by Speed-post within one week from this order.

10. Accordingly, the present I.A. No. 820 of 2020 stands rejected & disposed of.

(Ajai Das Mehrotra)
Member (Technical)

(Madan B.Gosavi)
Member (Judicial)