

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

**IA/2812/2023 In C.P.(IB)/1570(MB)2017**

*(Under Section 33(3) of the Insolvency and  
Bankruptcy Code, 2016.)*

**Harshad Deshpande,**

*Supervisor of Monitoring committee and Former  
resolution Professional of Trimurti Corns Agro  
Foods Private Limited.*

**.....Applicant**

*In the matter of*

**Fairmacs Shipping & Transport Service  
Private Limited**

**.....Operational Creditor**

**Vs**

**Trimurti Corns Agro Foods Private Limited**

**.....Corporate Debtor**

**Order Reserved on: 11.09.2023**

**Order delivered on: 06.10.2023**

**CORAM:**

**SHRI CHARANJEET SINGH GULATI**

**HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG**

**HON'BLE MEMBER (J)**

*Appearances:*

For the Applicant : Adv. Akshay Petkar

**ORDER**

***Per- Charanjeet Singh Gulati, Member Technical***

It is an application filed u/s 33(3) of the Insolvency & Bankruptcy Code, 2016 by Mr. Harshad Deshpande, Supervisor of Monitoring Committee and Former Resolution Professional of Trimurti Corns Agro Foods Private Limited seeking liquidation order and appointment of liquidator, based on the inability of the Resolution Applicant to make payments and adhere with the terms of the Resolution Plan which was duly approved by this Authority.

2. The CP(IB)1570(MB)/2017 was admitted by this Tribunal on 20.11.2018 and CIRP of Corporate Debtor viz. Trimurti Corns Agro Foods Private Limited was initiated. Mr. Sandeep Dar was appointed as IRP, who was replaced in the 1<sup>st</sup> CoC meeting and the Applicant was appointed as Resolution Professional. The Applicant submitted that during the course of Corporate Insolvency Resolution Process of the Corporate Debtor as many as 10 CoC meetings were held.

3. The Applicant published Form-G inviting claims from various claimants. Pursuant to this, the IRP received claims from Creditors. The Applicant then formed the CoC with the abovementioned

Financial Creditors. Further, at the instance of the CoC, Form-G was published inviting Expression of Interest for submission of Resolution Plans in two newspapers i.e. Financial Express in English and Loksatta in Marathi.

4. In the 10<sup>th</sup> meeting of CoC the Resolution Plan was approved with 100% voting. The Resolution Plan envisaged a total payment of Rs. 17,30,30,000/- (Rupees Seventeen Crore Thirty Lakh Thirty Thousand only) against full and final settlement of all the liabilities of the Corporate Debtor. The payout proposed in the approved Resolution Plan towards various claims and business requirement of the Corporate Debtor was as under:

<b>Funds</b>	<b>Rs. in Lakhs</b>	<b>Resolution Plan</b>	<b>Rs. in Lakhs</b>
RA Infusion (Equity/ Quasi Equity/Debt)	400.00	Insolvency Process Cost	15.00
Noncore Asset Monetisation Corporate Debtor Buisness Accruals	2060.00	PF, ESIC and Gratuity Dues	11.1
		Employees Dues	-
		Financial Creditors	1691.00
		Trade Payable	13.2
		Statutory Liabilities	-
		Other Dues	-
<b>Total</b>	<b>2,460.00</b>	<b>Total</b>	<b>1730.00</b>

5. Out of the total payment of Rs. 17,30,30,000/- (Rupees Seventeen Crore Thirty Lakh Thirty Thousand Only) the Resolution Applicant agreed to infuse upfront cash payment of Rs.3,47,80,000/ - (Rupees Three Crore Forty-Seven Lakh Eighty Thousand Only) in the form of equity.

6. This Tribunal vide its order dated 24.03.2023 approved the resolution plan submitted by Dr. Gopal Agrawal, Resolution Applicant. However, the Resolution Applicant in the 1<sup>st</sup> meeting of the Monitoring Committee showed his inability to make the payment as per the approved Resolution Plan and sought for a time of 2-3 days to submit a payment schedule. The creditors agreed to the request of the Resolution Applicant and directed him to submit a repayment schedule before next meeting.

7. On the 2<sup>nd</sup> meeting of the Monitoring Committee which was held on 26.04.2023, the Resolution Applicant neither attended the meeting nor submitted the payment schedule and one Mr. Shinde on behalf of the Resolution Applicant informed that they will be presenting the payment schedule by 03.05.2023. As a last chance, creditors considered the request made on behalf of Resolution Applicant and allowed time till 03.05.2023 to submit a repayment plan, with a pre-condition that the 1<sup>st</sup> instalment should be paid before the next date of meeting scheduled on 03.05.2023 in order to show the bonafides of the Resolution Applicant.

8. The 3rd meeting of the Monitoring Committee was held on 03.05.2023. The Resolution Applicant failed to make payment or submit a payment schedule as per the discussion in last meeting and sought further extension for the same. Since, ample opportunities and extension were granted to the Resolution Applicant to submit a revised repayment schedule, the Creditors rejected the request of the Resolution Applicant to grant any extension of time. Thereafter, on 03.09.2023, the Resolution Applicant stated that he is unable to make payment as per approved Resolution Plan.

9. Under these circumstances the applicant submits that there is no alternative but to file an Application for liquidation of the Corporate Debtor under Section 33 of IBC. The interests of the creditors are prejudicially affected by the contravention of the Resolution Applicant to make the payment as per approved Resolution Plan. The Creditors in the Monitoring Committee have specifically directed to the Applicant as a supervisor to file an application before this Tribunal to initiate liquidation process u/s 33(3) of the Code of the Corporate Debtor and appoint Applicant, Mr. Harshad Deshpande as the Liquidator of the Corporate Debtor.

10. In the facts and circumstances of the case, Dr. Agarwal, Successful Resolution Applicant ('SRA') was duty bound to pay Rs. 3,47,80,000/- as upfront cash within 90 days from the approval of the plan, in the following manner:

<b>Particulars</b>	<b>Upfront Payment (Rs. In Lakhs)</b>
CIRP Cost	15.00
PF, ESIC & Gratuity Dues	11.1
Employees Dues	-
Operational Creditors	13.2
Financial Creditors	308.5
Other Creditors	-
Statutory Dues	-
Working Capital Infusion	-
<b>Total</b>	<b>347.80</b>

11. However, it is evident from the minutes of 1<sup>st</sup> meeting of Monitoring Committee held on 21.04.2023 that he was not in a financial position to make payments as proposed in the Resolution Plan and requested for 3 to 4 days to present a payment schedule in terms of approved Resolution Plan. Therefore, the 2<sup>nd</sup> meeting of monitoring committee was held on 26.04.2023, wherein, Mr. Santosh Shinde, on behalf of SRA informed that they are in process and will be presenting the payment schedule by 03.05.2023.

12. On 03.05.2023, the SRA failed to submit the proposal. Therefore, the Chairman of the monitoring Committee asked the

SRA as to whether he is in position to honour the terms as per approved Resolution Plan by this Tribunal. In response, the SRA admitted that he is no more in position to pay the amount as per approved resolution Plan.

13. It can therefore be seen that SRA is not even in a position to submit proposal/schedule of payment in terms of approved Resolution Plan, leave aside making any actual payment in accordance with the Resolution Plan. Accordingly, we are of the considered opinion that the SRA has contravened the Resolution Plan approved by this Tribunal by which the interest of the creditors is prejudicially affected. Further, the SRA has not taken any step even to seek further time for making payment. Therefore, this is a fit case for liquidation and we hereby order for liquidation of the company with directions as follows:

- a. After looking into the consent given by the Applicant/Insolvency Professional and the minutes of 3<sup>rd</sup> meeting of Monitoring Committee, we hereby appoint **Mr. Harshad Deshpande**, holding Registration No. **IBBI/IPA-001/IP-P00166/2017-18/10335** as Liquidator, in terms of Section 34 of the Code;
- b. The Resolution Applicant has failed to implement the Resolution Plan, therefore the amount of Rs. 50,00,000/- (Rupees Fifty Lakh Only) received as EMD shall stand forfeited.
- c. Registry is directed to communicate this Order to the Registrar

of Companies, Mumbai and to the Insolvency and Bankruptcy Board of India;

- d. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- e. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016.
- f. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- g. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- h. The liquidator shall also follow up the pending applications (if any) for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- i. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the

Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

- j. Copy of this order be sent to the financial creditors, corporate debtor, the Liquidator for taking necessary steps.

5. The **IA-2812/2023** filed by the Supervisor of Monitoring Committee/Former Resolution Professional for Liquidation of the Corporate Debtor stands **allowed and stands disposed of**.

**Sd/-**

**CHARANJEET SINGH GULATI  
(MEMBER TECHNICAL)**

**Sd/-**

**LAKSHMI GURUNG  
(MEMBER JUDICIAL)**

Arpan, LRA