

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

(Video Conference) Virtual Hearing

**CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON’BLE MEMBER (J)
CORAM: SHRI SATYA RANJAN PRASAD- HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 23.01.2023 AT 4:00 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1323/2022 in CP (IB) No.102/7/HDB/2019
NAME OF THE COMPANY	Sarda Agro Oils Ltd
NAME OF THE PETITIONER(S)	Allahabad Bank
NAME OF THE RESPONDENT(S)	Sarda Agro Oils Ltd
UNDER SECTION	7 of IBC

ORDER

IA No. 1323/2022 in CP No. 102/7/HDB/21022

Taken up on being mentioned by Ld. Advocate Ms. Mummaneni Vazra Laxmi for the Resolution Professional.

It is brought to the notice of this Adjudicating Authority that the name of the Resolution Professional though has been correctly mentioned while ordering his appointment, in the body of the matter the name of the Resolution Professional has been wrongly mentioned and hence sought for correction.

We have perused the order, it being a typographical error we allow the correction and direct the Registry to forthwith issue an corrected copy of the order to the Resolution Professional, as per the procedure and also to upload this proceeding as well as the corrected order in IA No. 1323/2022 in CP No. 102/7/HDB/21022.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II, HYDERABAD**

I.A. No. 1323/2022 in
C.P. (IB) No. 102/7/HDB/2019
Under Section 33(1)(1)(a) r/w
Section 34 of the IB Code, 2016.

In the matter of
M/S Sarda Agro Oils Limited

G. Madhusudan Rao,
Resolution Professional for M/S Sarda Agro Oils Limited,
IBBI/IPA-001/IP-P00181/2017-18/10360,
7-1-285, Flat No. 103, Sri Sai Swapna Sampada Apts.,
Balkampet, Hyderabad – 500038.

...Applicant/Resolution Professional

Date of Order: 09.01.2023
Date of Amended order: 23.01.2023*¹

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Member, Judicial
Sri Satya Ranjan Prasad, Member, Technical

Appearance:

For the Applicant: Ms. Mummaneni Vazra Laxmi, Advocate

Per : Bench

¹ *Amended as per the order of the Adjudicating Authority dated 23/01/2023.

ORDER

1. Under consideration is an Interlocutory Application filed by the Resolution Professional (hereinafter referred to as the “Applicant”) of M/S Sarda Agro Oils Limited (hereinafter referred to as the “Corporate Debtor”), under Sections 33(2) and 34 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code, 2016”), praying for an order to liquidate the Corporate Debtor and to appoint the Applicant as the Liquidator to administer the liquidation of process of the Corporate Debtor.

2. Brief facts of the matter as submitted by the Applicant herein, are as follows:
 - a) Corporate Insolvency Resolution Process (hereinafter referred to as the “CIRP”) had been initiated against the Corporate Debtor, vide order of this Tribunal, dated 27.08.2019 in C.P. (IB) No. 102/7/HDB/2019 and the Applicant was appointed as the Interim Resolution Professional, who was subsequently confirmed as the Resolution Professional by the Committee of Creditors (hereinafter referred to as the “CoC”), in its 1st meeting, dated 23.09.2019.

 - b) Subsequent to the 2nd meeting of the CoC, dated 05.11.2019, the Applicant issued the Expression of Interest (hereinafter referred to as the "EoI"), dated 12.11.2019, in compliance with Regulation 36A(1) of the IBBI (Resolution Process for Corporate Persons) Regulations, 2016

(hereinafter referred to as the "CIRP Regulations"), inviting prospective Resolution Applicants to submit their EoIs before 12.01.2020, pursuant to which, 10 EoIs were received.

- c) The CoC, in its 3rd meeting, dated 09.01.2020, decided to extend the time to submit the Resolution Plans till 12.02.2020.
- d) Pursuant to the 4th meeting of the CoC, dated 12.02.2020, the Applicant filed I.A. No. 188/2020, seeking extension of the CIRP period by 90 days, beyond the period of 180 days, which was granted vide order, dated 25.02.2020, thereby extending the CIRP period with effect from 23.02.2020.
- e) The CoC, in its 5th meeting, dated 03.03.2020, decided to extend the time to submit the Resolution Plans till 25.03.2020.
- f) Due to the outbreak of the COVID-19 pandemic, Regulation 40C was introduced in the CIRP Regulations, thereby excluding the period of lockdown for the purposes of the timeline for any activity in relation to the CIRP, that could not be completed due to the lockdown.
- g) In the 6th CoC meeting, it was informed that only two Resolution Plans had been received. The last date for submission of Resolution Plans was extended to 22.06.2020.
- h) In the 7th meeting of the CoC, dated 24.06.2020, the two Resolution Plans were opened and the prospective Resolution Applicants explained their plans and the plans submitted were set to be examined.

- i) In the 8th meeting of the CoC, dated 21.07.2020 and the 9th meeting, dated 25.07.2020, it was agreed that more time may be provided to the prospective Resolution Applicants to improve on their plans. Further in the 8th meeting, it was informed that the Resolution Plan submitted by the members of the suspended Board of the Corporate Debtor had been rejected for the reasons elaborated therein.
- j) In the 10th meeting of the CoC, dated 29.07.2020, the two Resolution Plans were reviewed. It was informed by the Applicant that the prescribed CIRP period of 270 days will end on 28.08.2020, subsequent to which the members of the CoC, with 100% voting rights, approved the liquidation of the Corporate Debtor.
- k) Further, the CoC approved to pay 70% of the specified fee to the Liquidator, as per Regulation 4(2)(a) and (b) of the IBBI (Liquidation Process) Regulation, 2016.
- l) At this juncture, the Hon'ble NCLAT, vide order, dated 28.08.2020, in Company Appeal (AT) (Ins.) No. 183/2020, set aside the order of this Tribunal, dated 27.08.2019, initiating CIRP against the Corporate Debtor. As a result, this Tribunal, vide orders dated 11.09.2020, closed the CIRP and the pending interlocutory applications in the matter.
- m) Subsequently, the order of the Hon'ble NCLAT was set aside vide the order of the Hon'ble Supreme Court of India, dated 13.09.2022, in Civil

Appeal No. 3849/2020, and the order of this Tribunal, dated 27.08.2019, had been restored.

- n) As voting in favour of the liquidation of the Corporate Debtor had already taken place, the CoC, in its 11th meeting, decided to explore the possibility of sale of the Corporate Debtor as a going concern as per Regulation 39C of the IBBI (Resolution Process for Corporate Persons) Regulations, 2016.

Hence, the instant Application seeking an order to liquidate the Corporate Debtor and to appoint the Applicant as the Liquidator to administer the liquidation process.

3. In the light of the facts of the matter, the point that arises for our consideration is:

Whether an order of liquidation of the Corporate Debtor can be passed?

4. We have heard the learned counsel for the Applicant and perused the record.

5. Section 33 of the Code, 2016, reads as under:

Section 33. Initiation of liquidation.

(1) Where the Adjudicating Authority, –

- (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or
- (b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall –
 - (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
 - (ii) issue a public announcement stating that the corporate debtor is in liquidation; and
 - (iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[*Explanation.* – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

(3) Where the resolution plan approved by the Adjudicating Authority [under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority,

(6) the provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

6. Section 33 (1)(a)(i) mandates that this Adjudicating Authority shall pass an order requiring the Corporate Debtor to be liquidated where the Adjudicating Authority does not receive a resolution plan, before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under Section 12.

7. Further, Section 33(2) mandates that the Adjudicating Authority shall pass a liquidation order, when the Resolution Professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of

the decision of the CoC, approved by not less than 66% of the voting share, to liquidate the Corporate Debtor.

8. It is important to note that the CoC has, in its commercial wisdom, approved the liquidation of the Corporate Debtor, with a 100% majority, in view of the fact that the CIRP period of 270 days was to be over on 28.08.2020. Considering that the CoC has, within the period of the CIRP, voted in favour of liquidation of the Corporate Debtor with a 100% majority, much above the threshold mandated by the provision referred to above, the requirements of both, Section 33 (1)(a)(i) and Section 33 (2) have been satisfied in the instant case. Further, necessary resolutions for appointment of the Liquidator and payment of the Liquidator's fee have also been passed by the CoC.
9. On consideration of the facts and circumstances of the matter, we deem it proper to allow the instant Application and permit the liquidation of the Corporate Debtor, as prayed for. Hence, the point is answered accordingly.
10. Accordingly, in exercise of powers conferred under sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of Section 33 of the Code, 2016, we pass the order as follows:
 - (i) This Adjudicating Authority, hereby, orders for liquidation of the Corporate Debtor, which shall be conducted in the manner as laid down in Chapter III of Part II of the Code, 2016.

- (ii) This Adjudicating Authority, hereby, appoints the Applicant *Mr. G. Madhusudhan Rao, having Registration No. IBBI/IPA-001/IP-P00181/2017-2018/10360, R/o 7-1-285, Flat No 103, Sri Sai Swapna Sampada Apt, Balkampet, Hyderabad, Telangana 500038, as the Liquidator of the Corporate Debtor. He shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation*².
- (iii) The moratorium declared under Section 14 of the Code, 2016, shall cease to have effect from the date of the order of Liquidation.
- (iv) Subject to Section 52 of the Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
- (v) We make it clear that para (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
- (vi) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the Liquidation process by the Liquidator.
- (vii) All the 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 in the Company Liquidator. In addition to this, the Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the Code, 2016, read with

² * Amended as per the order of the Adjudicating Authority dated 23/01/2023.

the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- (viii) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- (ix) The Liquidator shall be entitled to charge such fee for conducting the Liquidation proceedings in accordance with Regulation 4(2) of IBBI (Liquidation Process) Regulations, 2016.
- (x) Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, registered office of the Corporate Debtor and the Liquidator, for information and compliance.
- (xi) Registry is directed to furnish a copy of this order to the IBBI for confirmation of appointment of Liquidator.

11. Accordingly, this Application stands disposed of.

-Sd-

(Satya Ranjan Prasad)
Member, Technical

-Sd-

(Dr. N.V. Ramakrishna Badarinath)
Member, Judicial

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II, HYDERABAD**

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Appearance:

For the Applicant: Ms. Mummaneni Vazra Laxmi, Advocate

Per : Bench

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- e) The CoC, in its 5th meeting, dated 03.03.2020, decided to extend the time to submit the Resolution Plans till 25.03.2020.
- f) Due to the outbreak of the COVID-19 pandemic, Regulation 40C was introduced in the CIRP Regulations, thereby excluding the period of lockdown for the purposes of the timeline for any activity in relation to the CIRP, that could not be completed due to the lockdown.
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- k) Further, the CoC approved to pay 70% of the specified fee to the Liquidator, as per Regulation 4(2)(a) and (b) of the IBBI (Liquidation Process) Regulation, 2016.
- l) At this juncture, the Hon'ble NCLAT, vide order, dated 28.08.2020, in Company Appeal (AT) (Ins.) No. 183/2020, set aside the order of this Tribunal, dated 27.08.2019, initiating CIRP against the Corporate Debtor. As a result, this Tribunal, vide orders dated 11.09.2020, closed the CIRP and the pending interlocutory applications in the matter.
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Appeal No. 3849/2020, and the order of this Tribunal, dated 27.08.2019, had been restored.

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- (b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall –
 - (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
 - (ii) issue a public announcement stating that the corporate debtor is in liquidation; and
 - (iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[*Explanation.* – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

(3) Where the resolution plan approved by the Adjudicating Authority [under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority,

(6) the provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

6. Section 33 (1)(a)(i) mandates that this Adjudicating Authority shall pass an order requiring the Corporate Debtor to be liquidated where the Adjudicating Authority does not receive a resolution plan, before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under Section 12.

7. Further, Section 33(2) mandates that the Adjudicating Authority shall pass a liquidation order, when the Resolution Professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of

the decision of the CoC, approved by not less than 66% of the voting share, to liquidate the Corporate Debtor.

8. It is important to note that the CoC has, in its commercial wisdom, approved the liquidation of the Corporate Debtor, with a 100% majority, in view of the fact that the CIRP period of 270 days was to be over on 28.08.2020. Considering that the CoC has, within the period of the CIRP, voted in favour of liquidation of the Corporate Debtor with a 100% majority, much above the threshold mandated by the provision referred to above, the requirements of both, Section 33 (1)(a)(i) and Section 33 (2) have been satisfied in the instant case. Further, necessary resolutions for appointment of the Liquidator and payment of the Liquidator's fee have also been passed by the CoC.
9. On consideration of the facts and circumstances of the matter, we deem it proper to allow the instant Application and permit the liquidation of the Corporate Debtor, as prayed for. Hence, the point is answered accordingly.
10. Accordingly, in exercise of powers conferred under sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of Section 33 of the Code, 2016, we pass the order as follows:
 - (i) This Adjudicating Authority, hereby, orders for liquidation of the Corporate Debtor, which shall be conducted in the manner as laid down in Chapter III of Part II of the Code, 2016.

- (ii) This Adjudicating Authority, hereby, appoints the Applicant *Mr. G. Madhusudhan Rao, having Registration No. IBBI/IPA-001/IP-P00181/2017-2018/10360, R/o 7-1-285, Flat No 103, Sri Sai Swapna Sampada Apt, Balkampet, Hyderabad, Telangana 500038, as the Liquidator of the Corporate Debtor. He shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation*².
- (iii) The moratorium declared under Section 14 of the Code, 2016, shall cease to have effect from the date of the order of Liquidation.
- (iv) Subject to Section 52 of the Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
- (v) We make it clear that para (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
- (vi) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the Liquidation process by the Liquidator.
- (vii) All the 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 in the Company Liquidator. In addition to this, the Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the Code, 2016, read with

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the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- (viii) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- (ix) The Liquidator shall be entitled to charge such fee for conducting the Liquidation proceedings in accordance with Regulation 4(2) of IBBI (Liquidation Process) Regulations, 2016.
- (x) Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, registered office of the Corporate Debtor and the Liquidator, for information and compliance.
- (xi) Registry is directed to furnish a copy of this order to the IBBI for confirmation of appointment of Liquidator.

11. Accordingly, this Application stands disposed of.

-Sd-

(Satya Ranjan Prasad)
Member, Technical

-Sd-

(Dr. N.V. Ramakrishna Badarinath)
Member, Judicial