

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD BENCH
Court 2**

IA/1(MP) 2021 in TP 73(MP)2019 [CP(IB) 20 of 2018]

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
VIRENDRA KUMAR GUPTA, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH AT
AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON
18.03.2021**

Name of the Company: Amresh Shukla RP Vindhya Cereals Pvt
Ltd
V/s
Punjab National Bank & Ors
secrion 33(1),33(2),34(1) IBC.

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER
(through video conferencing)**

Ms. Natasha Dhruvan Shah, advocate, appeared on behalf of Applicant.

1. The instant application is filed under Section 33(1), 33(2), 34(1) of IB Code. On filing of the application, the notice was issued to the CoC .
2. Notice was issued to the Suspended Management. On 04.03.2021, Mr. Pratik Thakkar, advocate, appeared on behalf of Suspended Management and took time to file an OTS proposal to the CoC. The learned lawyer of the RP submitted that OTS proposal so submitted by the Suspended Management is rejected.
3. Today, on behalf of Suspended Management advocate, Ms. Mansavi, Trivedi is present.
4. Heard the Learned Lawyer for the Applicant. It is seen that in the 5th meeting of CoC (Annexure G at page no. 65), CoC passed a resolution for liquidation

of the Corporate Debtor company with 100% voting share, being the sole member of CoC.

5. It is submitted that since CoC has not received any viable resolution plan, as such, CoC decided to go for liquidation of the Corporate Debtor company. It is further submitted by RP that he does not wish to continue as a liquidator, hence requesting this Bench to appoint independent/separate liquidator.
6. Accordingly, this Bench is appointing Mr. Sajjan Kumar Dokania as liquidator of the Corporate Debtor company, having Registration No. IBBI/IPA-003/IP-N000150/2017-18/11729, sajjan-suman@hotmail.com 8989997257, 9910104708 25, Globus Fab City, Chuna Bhati, Kolar Road, Near Suyash Hospital, Bhopal 462016.
7. On perusal of the records, it is found that in AGENDA No. 5 at paragraph no. 3 of the resolution, CoC made observation that, *"The agenda item was evaluated, deliberated and discussed by the Committee of Creditors and after that it is recommended by the CoC that the liquidator should not go to sale the Corporate Debtor as a going concern or sale the business(s) of the Corporate Debtor as a going concern"*.
8. It is very strange to see that how CoC can put a rider upon the sale of the company as going concern as it is against the provision of law. It is to be remembered that our legislation is beneficial legislation and while passing any agenda the CoC must keep in mind that this type of rider should not be imposed before passing any resolution. For the sake of convenience, the said Rule reproduced herein below:

Regulation 32A of IBBI (Liquidation Process) Regulations, 2016, Sale as a going concern.

- (1). *Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of*

the corporate debtor, he shall endeavour to first sell under the said clauses.

- (2). For the purpose of sale under sub-regulation (1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.*
- (3). Where the committee of creditors has not identified the assets and liabilities under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and group the assets and liabilities to be sold as a going concern, in consultation with the consultation committee.*
- (4). If the Liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commencement date, he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32.]*

9. However, liquidator so appointed in this matter has liberty/may try to sale the Corporate Debtor company as a going concern as far as possible or as the case may be.

10. Accordingly, the instant application is allowed with the following, ^{observations.}

- a) The moratorium declared under Section 14 of the IB Code shall cease to have effect from the date of the order of liquidation.
- b) The Liquidator is further directed to issue public announcement stating that the Corporate Debtor is in liquidation.
- c) The Liquidator is required to send certified copy of this order to the authority with which the Corporate Debtor is registered.
- d) Subject to Section 52 of the IB Code, 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.

- e) This Authority makes it clear that para (d) 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.
- f) The 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.
- g) 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 with the Company Liquidator. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the IB Code, 2016, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- h) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- i) The Company Liquidator shall be entitled to charge such fee for the conduct of the liquidation proceedings in such a proportion to the value of the liquidation estate assets as may be specified by the Board.
- j) The Registry is directed to communicate this order with immediate effect to the concerned Registrar of Companies, registered office of the Corporate Debtor and Company Liquidator for information and compliance

11. Accordingly, the instant application is allowed and disposed of with no order as to costs.


VIRENDRA KUMAR GUPTA
MEMBER TECHNICAL

Dated this the 18th day of March, 2021


MANORAMA KUMARI
MEMBER JUDICIAL

I agree with the conclusion but not with the observations given in Para 8. My separate Note attached.

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Amresh Shukla Resolution Professional of Vindhya Cereals Pvt. Ltd.

V/s.


Punjab National Bank & Ors.

I have seen the draft order of the Learned Judicial Member. I agree with the conclusion. However, I find myself unable to agree to the findings given in para-8 of the said draft order for the following reasons:

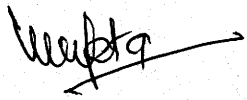
- It is not mandatory that CoC should in all cases recommend / decide that the Corporate Debtor be sold as a going concern. In my view, Corporate Debtor which is a going concern during CIRP or though it may not be going concern during CIRP but if it could be sold as a going concern then only such recommendation / decision has to be taken by CoC. This intent of the legislature also emanates from Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which is reproduced as under:

39C. Assessment of sale as a going concern.

- (1) *While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.*
- (2) *Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*
- (3) *The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be."*

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- From the heading of this regulation itself, it is evident that it is an assessment of CoC as regard to the sale of the Corporate Debtor as a going concern and if CoC finds its proper to do so

then only it will recommend to the liquidator to do so at first instance during liquidation process. The genesis of Regulation 32A of IBBI (Liquidation Process) Regulations 2016 is Regulation 39C of the aforesaid CIRP regulations. Further it is now well established that the commercial wisdom of CoC is supreme and unless there is a grave violation of principles of natural justice or other judicial principles, this Adjudicating Authority cannot question the same. Hence, for this reason also, having regard to the provisions as stated herein before, in my view, the decision of the CoC in the present case not to liquidate the Corporate Debtor as a going concern is correct in law.



VIRENDRA KUMAR GUPTA
MEMBER (TECHNICAL)