

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

01

ORDER SHEET OF THE HEARING ON 18th DECEMBER, 2023, 10:30 A.M.

IA (IBC)/3/GB/2023
CP (IB)/18/GB/2021

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

Name of the Company	Purshotam Gaggar, RP In (R.S.H Agro Products Ltd. Vs Punjab National Bank. 2. HDFC Bank & 3. ICICI Bank.)
Under Section	U/s 33 of IBC, 2016.

For Petitioner (s) : Mr.Nirmal Goenka, Adv for RP.

For Respondent (s) :

ORDER

Order Pronounced through VC vide separate sheets.

Sd/-
Satya Ranjan Prasad
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)

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**IA (IBC)/3/GB/2023
In CP (IB)/18/GB/2021**

In the Matter of:

An Application under Section 33 of the Insolvency and Bankruptcy Code, 2016 for an order of Liquidation of the Corporate Debtor;

-And-

In the Matter of:

Mr. Purshotam Gagar, Resolution Professional of the Corporate Debtor having address at Advika, 3rd Floor, M.G. Road, Opp. Sukreshwar Ghat Garden, Panbazar, Guwahati 781001, Assam; **... Applicant**

-And-

In the Matter of

RSH Agro Products Limited;

...Corporate Debtor

Versus

Punjab National Bank.

... Financial Creditor

Coram:

Shri H. V. Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

For Petitioner : Mr.Nirmal Goenka, Adv for RP

**Order reserved on: 05.12.2023
Order pronounced on: 18.12.2023**

ORDER

1. This Interlocutory Application has been filed under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the National Company Law Tribunal Rules,

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2016 by the Resolution Professional in the matter of CD- RSH Agro Products Limited praying mainly to the following effect :

Pass an order for liquidation of the Corporate Debtor and consequently appoint the applicant herein as a liquidator for the Corporate Debtor.

2. The brief facts are that the main application CP (IB)/18/GB/2021 filed by the Corporate Debtor under Section 10 of the Insolvency and Bankruptcy Code, 2016 ('IBC' for brevity) was admitted by this Adjudicating Authority on 23.11.2021 and Mr. Krishna Mohan Gollamudi was appointed as Interim Resolution Professional (IRP). The IRP, Mr. Krishna Mohan Gollamudi had constituted a Committee of Creditors (CoC) and the Committee of the Creditors in the 2nd CoC Meeting held on 11.01.2022 decided to replace the IRP Krishna Mohan Gollamudi and resolved to appoint Mr. Purshotam Gaggar as Resolution Professional and an application for the replacement of IRP was filed before the bench.
3. The IRP made Public Announcement on 26.11.2021 in prescribed format 'FORM A' [Under Regulation 6 of the Insolvency and Bankruptcy Code] which was published in the *Assam Tribune* and *Amar Asom* (English and Regional Language Newspapers respectively) having wide circulation in Assam. The IRP has received claims of different nature and the total claim admitted by Interim Resolution Professional/Resolution Professional till the approval of Resolution plan stands at Rs. 516,665,114.00. Subsequently, in the 1st CoC Meeting, in compliance with Regulation 27, the IRP appointed Registered Valuers on 09.01.2021 to determine the fair market and liquidation value of the Corporate Debtor.
4. Subsequently, this Adjudicating Authority *vide* order dated 11.02.2022 in IA (IBC)/7/GB/2022, appointed Mr. Purshotam Gaggar, the Applicant herein as Resolution Professional.
5. On 02.03.2022, the 5th CoC Meeting was held wherein it was resolved to appoint forensic auditor to conduct transaction audit of the Corporate Debtor and Form G was approved

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for publication. On 03.03.2022, the RP appointed a Transaction Auditor to carry out investigation into the affairs of the Corporate Debtor.

6. It is stated that the RP published the Expression of Interest under Form G in Assam Tribune (English Paper) and Asomiya Protidin (Assamese paper) on 05.03.2022. The last date for submitting the Expression of Interest was 21.03.2022. The last date for submitting the Resolution Plan was 03.05.2022. In response to the invitation, the RP received two EOIs from prospective Resolution applicants (PRA).
7. In the 6th CoC Meeting held on 30.03.2022, the Request for Resolution Plan was prepared following Regulation 36B of the CIRP Regulations. The RP issued Request for Resolution Plan (RFRP) to both the PRAs and received resolution plans from both the PRAs.
8. It is stated that the RP in the 7th CoC Meeting dated 29.04.2022 place the transaction audit report before the CoC. In the same meeting it was also resolved by the CoC to file an application for extension of CIRP period by 90 days and IA (IBC) 32/2022 was filed before this Tribunal.
9. Subsequently, this Adjudicating Authority *vide* order dated 13.05.2022 in IA (IBC)/32/GB/2022, allowed the IA for extension of CIRP period of Corporate Debtor by 90 days, thereby extending the CIRP period till 20.08.2022.
10. On 13.05.2022, 8th CoC meeting was held wherein the resolution plans received were opened in the CoC meeting. Due deliberation on the plan submitted and negotiation with the Resolution Applicant was undertaken by the CoC during its 9th, 10th, 11th, 12th and 13th meeting.
11. Since, the CIRP period was going to expire on 20.08.2022 and as the resolution plans received for the CD were under consideration, on 12.08.2022, during the 14th meeting of the CoC it was resolved to seek extension of the CIRP period by another thirty (30) days so that there is sufficient time to deliberate on the resolution plans. Subsequently,

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the CoC passed a resolution authorizing the RP to file application before this Tribunal for seeking extension of CIRP period by 30 (Thirty) days after 20.08.2022 (i.e. the 27th day of the CIRP). The said resolution was approved by 87.26% voting by members of CoC. In view of the same, the Applicant herein filed IA No. 60 of 2022, before this Tribunal for seeking extension of 30 days. This Tribunal *vide* order dated 25.08.2022, was pleased to allow the said application thereby extending the CIRP period by 30 days i.e. till 20.09.2022.

12. It is stated that against the Order dated 25.08.2022, one of the unsecured financial creditors i.e. Dyna Roof Pvt Ltd (holding 2.55 % voting share) filed Writ Petition bearing WP(C) No. 6003 of 2022, titled "*Dyna Roof and Anr vs Purshottam Gaggar and Ors*" before the Guwahati High Court. Hon'ble Guwahati High Court *vide* order dated 16.09.2022, passed the following order

"Having regard to the facts and circumstances of the case, it is hereby provided that further proceeding in connection with IA(IBC) No. 60/GB/2022 in C.P.(B) No. 18/GB/2021 shall remain suspended till the returnable date."

13. In view of the abovementioned order passed by the Hon'ble High Court, the Applicant herein could not convene the 15th CoC Meeting scheduled on 17.09.2022 to deliberate on the resolution plans for the CD. Thereafter, the order dated 25.08.2022 passed by this Tribunal, *vide* which the CIRP was extended to 20.09.2022 was set aside by the Hon'ble Guwahati High Court *vide* order dated 22.12.2022.
14. It is stated by the RP that in view of the fact that no resolution plan has been approved by the Committee of Creditors and the fact that the time for CIRP has ended, the present Application has been filed praying for liquidation of the Corporate Debtor in accordance with Section 33 of the Insolvency and Bankruptcy Code, 2016.
15. The Applicant/RP, being eligible for appointment as Liquidator under Section 34 of the Code has expressed his interest and willingness to be appointed as the Liquidator for

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carrying out the liquidation process. The Consent Letter of the Liquidator has been enclosed with the application.

16. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, this bench is of the opinion that the Corporate Debtor is required to be liquidated in the manner as laid down in the IBC 2016.
17. For the aforesaid reasons, **IA (IBC)/03/GB/2023 is ALLOWED**. We observe, that RP has given his consent to act as the Liquidator of the CD. However, in view of directions contained in IBBI Circular dated 18.07.2023 *vide* no. Liq-12011/214/2023-IBBI/840 for appointment of Liquidator other than IRP/RP under Section 34(4)(b) of the IBC, we are appointing Ms. Sudha Sarma having IBBI Registration IBBI/IPA-002/IP-N01251/2022-2023/14266 as the Liquidator.
18. **As aforesaid, IA (IBC)/3/GB/2023 is ALLOWED with the following directions:**
 - i. The Corporate Debtor, RSH Agro Products Limited, is ordered to be liquidated with immediate effect under Section 33(2) of IBC, 2016.
 - ii. Ms. Sudha Sarma having IBBI Registration IBBI/IPA-002/IP-N01251/2022-2023/14266, having address at SUDHA and Associates, 18, MRD Road, Bamunimaidam, Guwahati- 781021, e-mail ID- sudha.sarma@yahoo.com, is appointed as Liquidator of the CD. This appointment is subject to her possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which she is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. The Liquidator is directed to submit her consent to act as Liquidator within 10 days of receipt of this order. The erstwhile RP shall handover all papers and documents in his possession concerning the Corporate Debtor to the Liquidator appointed in this matter within 10 days. The Liquidator's fee shall be paid in accordance with relevant law, and in particular, as per Regulation 4 of the

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- Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- iii. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
 - iv. The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time. The CoC under Regulation 39C has recommended that the sale of CD should be a going concern. The Liquidator is directed to adhere to it.
 - v. Public Notice as contemplated under Section 33(1) of the Code shall be issued in in the same newspapers in which advertisements were issued earlier during the CIRP, stating that the Corporate Debtor is in liquidation.
 - vi. All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel shall cease to exist in accordance with Section 34(2) of the Code. These powers shall henceforth vest in the Liquidator.
 - vii. The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by her in the Liquidation process of the Corporate Debtor.
 - viii. On initiation of the Liquidation process but 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 a suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.
 - ix. In accordance with Section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the

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- Corporate Debtor, except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
- x. In terms of Section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Guwahati, Assam, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this order to the Registrar of Companies, Guwahati, Assam.
- xi. The application bearing IA (IBC)/3/GB/2023 shall stand disposed of in accordance with the above directions.
19. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
20. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
21. File be consigned to records.

Sd/-

**Satya Ranjan Prasad
Member (Technical)**

Sd/-

**H.V. Subba Rao
Member (Judicial)**

Signed this on 18th day of December 2023