

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA**

IA(IBC)/106/KOB/2021

IN

IBA/52/KOB/2019

(Under Section 33(1) of the Insolvency and Bankruptcy Code, 2016)

Order delivered on: 18.11.2021

Coram:

**Hon'ble Mr. Rajesh Sharma
Member (Technical)**

**Hon'ble Mr. Ashok Kumar Borah
Member (Judicial)**

Mr. George Varkey,
Resolution Professional of
M/s. Propyl Packaging Limited,
Building No. 110, Ground Floor,
Surabhi Nagar, Kakkanad,
Kochi 682 030.

... Applicant

In the matter of:

Prayag Polytech Private Limited

... Operational Creditor

Versus

Propyl Packaging Limited

... Corporate Debtor

Appearance – (through video conferencing)

For Applicant
For Promoter

... Shri. Vinod P.V., Advocate.
... Shri. Aditya Venugopal, Advocate.

ORDER

Per: Ashok Kumar Borah, Member (Judicial)

1. this Interlocutory Application has been filed under Section 33(1) of IBC, 2016 by Mr.George Varkey, Resolution Professional in the matter of M/s. Propyl Packaging Limited seeking the following reliefs: -

(a) Pass an order liquidating the Corporate Debtor under Section 33(1) of IBC, 2016;

(b) Appoint the Resolution Professional Mr.George Varkey, having IP registration Number IBBI/IPA-001/IP-P00433/2017-2018/10756 as the Liquidator of the Corporate Debtor under Section 34 of the Insolvency and Bankruptcy Code, 2016;

The facts in brief are as under: -

2. This Tribunal vide order dated 17.02.2020 in IBA/52/KOB/2019 admitted the application filed by M/s. Prayag Polytech Private Limited under Section 9 of the Insolvency and Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor, M/s. Propyl Packaging Limited and appointed the Applicant as the Interim Resolution Professional. In the second meeting of Committee of Creditors (CoC) held on 03.08.2020, COC appointed the Applicant as the Resolution Professional("RP"). On 20.02.2020 the Applicant made public announcement in Form-A inviting claims from the Creditors.

3. It is stated that vide order dated 10.11.2020 in MA/169/KOB/2020 this Tribunal granted exclusion of 192 days from the CIRP period i.e., from 23.03.2020 to 30.09.2020 in view of lock down imposed by the State and Central Governments. Though the RP has received Expression of Interest from two Prospective Resolution Applicants, they did not submit the Resolution Plan. Hence the Committee of Creditors in its meeting held on 01-01-2021 resolved to invite further Expression of Interest. Accordingly, revised Form-G was published on 03.02.2021. It is stated that pursuant to the Expression of Interest invited on 03.02.2021 Resolution Applicant has received expression of Interest from the following two Prospective Resolution Applicants (PRAs):

- 1) Mr. Sooraj A. V., Proprietor of Vector Surgical Disposables, Kuruppumpady, Perumbavoor.
- 2) Mrs. V.Bhagyalakshmi, Proprietor of Sri Balaji Plastics, Coimbatore.

4. It is further stated that since 180 days period for completing the CIRP was expiring on 20.02.2021, Committee of Creditors in its meeting held on 03.02.2021 resolved to seek extension of further 90 days to complete the CIRP from this Tribunal under Section 12(2) of the Insolvency and Bankruptcy Code, 2016. This Tribunal vide order dated 18.02.2021 in IA(IBC)/50/KOB/2021 granted extension of further 90 days to complete the CIRP and permitted the Applicant to complete the CIRP by 23.05.2021. Both the Resolution Applicants did not submit the Resolution Plan on the last date of submission of the Resolution Plan and requested time for submitting Resolution Plan. But again, the CoC in its

9th meeting held on 24.02.2021 decided to invite fresh EOIs. Accordingly, revised Form-G was published on 25.02.2021. In response to the revised EO1, the applicant received expression of interest from the following three Prospective Resolution Applicants:

- 1) Mr. Sooraj A. V., Proprietor of Vector Surgical Disposables, Kuruppumpady, Perumbavoor.
- 2) Mrs. V. Bhagya Lakshmi, Proprietor of Sri Balaji Plastics, Coimbatore.
- 3) Mr. Rajesh K. S., on behalf of the Corporate Debtor.

5. It is also stated that since the Promoter Mr. Rajesh K.S submitted the EOI in the name of the Corporate Debtor and was not meeting the net worth criteria, the Applicant rejected the EOI submitted by Mr. Rajesh K.S. Aggrieved by the said rejection, the promoter of the Corporate Debtor filed an Interlocutory Application No. IA(IBC)/64/KOB/2021 before this Tribunal for a direction to the Resolution Professional and CoC for relaxing the eligibility criteria and also for a direction to the RP to accept his EOI and for Registration of Corporate Debtor as an MSME. This Tribunal vide its order dated 20.04.2021 allowed the Application filed by the Promoter. Pursuant to the said order, the Applicant issued the RFRP to the Promoter on 29.04.2021 and the Promoter submitted the revised EOI on 03.05.2021. Again, the, Promoter filed an Interlocutory Application i.e., IA(IBC)84/KOB/2021 seeking further 30 days to submit the Resolution Plan on the ground that PRA is entitled to 30 days for filing the Resolution Plan under Regulation 36B of IBBI (Corporate Insolvency Resolution Process) Regulations, 2016. This Tribunal after considering the said

application vide order dated 31.05.2021 directed the Promoter to file the Resolution Plan within one week from the date of receipt of the order. It is stated that the order was received by mail on 02.06.2021.

6. It is further stated that despite granting sufficient opportunity to the Promoter, he has not submitted the Resolution Plan. The other two PRAs also not submitted the Resolution Plan. Accordingly, the Applicant has convened the meetings of CoC on 11.06.2020 and 16.06.2021 for initiating Liquidation Process. However, in view of lock down the financial creditors were not in a position to take decision on Liquidation Process. Hence the meeting was adjourned to 18.06.2021 and then to 25.06.2021. On 25.06.2021, the CoC in its 11th meeting resolved to approve the filing of an application before this Tribunal for Liquidation of the Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code and recommended the name of Applicant for appointment as the Liquidator. The Committee with 100% voting rights passed the following resolution:-

"RESOLVED THAT in pursuant to Section 33 of IBC 2016 and the rules made thereunder, the consent of members of the CoC be and is hereby, accorded to approve the filing of application with Hon'ble NCLT, Kochi Bench, regarding the initiation of liquidation of Corporate Debtor and to appoint the Resolution Professional Mr. George Varkey, as the liquidator of the CD

RESOLVED FURTHER THAT in pursuant to Regulation 4 of IBBI (Liquidation Process) Regulations, 2016, the liquidator shall be entitled to a fee of Rs. 12,00,000 (Rupees Twelve Lakhs only).

RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorized to submit an application before the Hon'ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto.

RESOLVED FURTHER THAT the fees for the liquidator for

- a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013 is Rs. 1,80, 000;*
- b) the period, if any, used for sale under clause (e) & (f) of Regulation, 32 of the IBBI (Liquidation Process) Regulation, 2016 is Rs.4,20,000;*
- c) If the compromise or sale as going concern not happening, for the sale of assets and distribution, the total fees is Rs. 12,00,000."*

RESOLVED THAT in pursuant to the provisions of Regulations 39C of IBBI (CIRP) Regulations, 2016, the consent of members of COC be and is hereby accorded to sale of Corporate Debtor as a going concern

7. Hence, the Applicant has filed this IA with the aforesaid prayers.

8. On 14.07.2021 this Tribunal directed the Resolution Professional to submit the Balance Sheets, assets and liabilities and Income and Expenditure account of the Corporate Debtor for the Financial Years 2014-2015, 2015-2016, 2016-2017, 2017-2018 with a comparative chart. We have perused the compilation of the Balance Sheets and Profit and Loss Accounts filed by the Applicant.

9. The consent of the Resolution Professional in accepting appointment as the Liquidator of the Corporate Debtor has been produced. In aforesaid consent the Applicant certified that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of Institute of Chartered Accountants of India where he is a member.

10. This Tribunal heard the learned counsel appearing for the Resolution Professional as also the learned counsel who appeared on behalf of the Promoter and had gone through all the case records.

11. Upon perusal of the documents, and records made available and hearing the submissions of the learned counsel for the Applicant. It is seen that in the 11th CoC meeting held on 26.05.2021, the CoC with majority of 100% voting rights approved to apply before the Adjudicating Authority for liquidation of the Corporate Debtor under section 33 (2) of the IBC.

12. In view of the resolution of the CoC, we are inclined to allow the IA(IBC)/ 106/KOB/2021 in IBA/52/KOB/2019 to initiate liquidation process against the Corporate Debtor. Accordingly, the Adjudicating Authority Orders for initiation of Liquidation of the Corporate Debtor, in the following observations: -

- a) This Bench hereby appoints Mr. George Varkey having [Reg No.IBBI/IPA-001/IP-P00433/2017-2018/10756], office at Building No. 110, Ground Floor, Surabhi Nagar, Near Collectorate, Kakkanad, Kochi 682 030, email- geovaktm@gmail.com , as Liquidator in terms of Section 34(1) of the Code.
- b) That the Corporate Debtor be liquidated in the manner as laid down in Chapter III by issuing a Public Notice in two newspapers one in English and one in Malayalam stating that the Corporate Debtor is in liquidation. It is also directed that the Applicant shall send this order to ROC under which this Company has been registered.
- c) Whenever the Liquidator issues any publication in the newspapers, the said shall be published in widely circulated newspapers in the State in which the Registered office of the Company is incorporated.

- d) The Fees payable to the Liquidator shall be in compliance with Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016;
- e) All the powers of the Board of Directors and key managerial persons of the Corporate Debtor shall cease to exist. All these powers shall henceforth be vested with the Liquidator;
- f) The personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor;
- g) 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 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;
- h) This liquidation order shall be deemed to be a 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;
- i) The Registry shall forward a copy of this Order to (i) the Liquidator and (ii) the Registrar of Companies, Ernakulam, Kerala, immediately upon pronouncement of this Order; and
- j) A copy of this order shall additionally be served by the Applicant/ RP on the Registrar of Companies, Ernakulam, Kerala, within whose

jurisdiction the Corporate Debtor has been registered, for updating the Master Data of the Corporate Debtor.

k) Moratorium declared vide Order dated 17.02.2020 in IBA/ 52/KOB/2019, henceforth ceased to exist.

13. With the above orders, IA (IBC)/106/KOB/2021 is disposed of.

Dated this the 18th day of November, 2021

Sd/-
Rajesh Sharma
Member (Technical)

Sd/-
Ashok Kumar Borah
Member (Judicial)