

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

5. M.A. 362/2020 I.A. 1929/2020 IN CP(IB)-4324(MB)/2018

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)
SHRI SHYAM BABU GAUTAM, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **15.12.2020**

NAME OF THE PARTIES: Bank Of India

V/s

Sahyadri Agro Industries & Foods Private Limited.

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

The matter is taken up through virtual hearing (VC).

M.A. 362/2020

Ms. Prajakta Menezes, counsel for the Bank of India and Ms. Bindu Bhatia, counsel for the Resolution Professional are present.

Order pronounced vide separate order. In the result, the Misc. Application is allowed.

I.A. 1929/2020

The above Interlocutory Application bearing no. 1929/2020 is not on record neither in soft nor in hard copies made available to this Bench despite repeated request and Hence, there is no occasion to hear this application.

List this matter on 29.01.2021.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

Sd/-
H.V. SUBBA RAO
Member (Judicial)

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

**I.A. No. 362 of 2020
In
C.P. No. 4324/IB/2018**

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

In the matter of

Bank of India ... Financial Creditor

V/s.
Sahyadri Argo Industries & Food Pvt. Ltd.
... Corporate Debtor

I.A. No. 362/2020

Mr. Ankur Kumar

... Applicant/
Resolution Professional

Order delivered on 15.12.2020

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Ms. Bindu Bhatia, Advocate

Per Shri Shyam Babu Gautam, Member (Technical)

ORDER

1. It is an application filed by the Resolution professional seeking liquidation of the Corporate Debtor namely (M/s. Sahyadri Agro Industries & Food Pvt. Ltd.) on the ground that no resolution plan has been received by him, hence this application under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016, praying following reliefs:

- a. *To pass an order under Section 33(1)(a) of the Code for liquidation of the Corporate Debtor;*
- b. *To appoint the Liquidator of the Corporate Debtor and fix the fees;*

2. The Adjudicating Authority vide its order dated 21.01.2019 on a Petition filed by the Financial Creditor under Section 7 of the Code directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely M/s. Sahyadri Agro Industries & Food Pvt. Ltd., wherein Mr. Ankur Kumar, was appointed as Interim Resolution Professional (IRP). Thereafter, in the 1st Committee of Creditors (CoC) meeting held on 21.02.2019, Mr. Ankur Kumar, was resolved to be appointed as Resolution Professional (RP). and the same was approved by this Bench.
3. The RP submits that the public announcement was made on 26.01.2019, in "Economics Times" (Pune edition) in English and in regional language in "Loksatta" (Ahmednagar edition) in Marathi, the last date for submission of claims was 04.02.2019.
4. It is further submitted that an advertisement, inviting Expression of Interest (EoI) in Form G was published on 10.04.2019 in "Free Press Journal" (Mumbai edition), "Business Standard" (Pune edition), "Kesari" (Ahmednagar edition), "Navshakti" (Mumbai edition) and also published on IBBI Website. Thereafter, an addendum to Form G was published on 09.05.2019 in "Free Press Journal" (Mumbai edition), "Business Standard" (Pune edition), "Kesari" (Ahmednagar edition), "Navshakti" (Mumbai edition) and also published on IBBI Website.
5. The CoC in its 2nd meeting held on 16.03.2019 decided to appoint a Valuer. The RP accordingly appointed two registered valuers as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016 and the Information Memorandum was prepared as provided under Regulation 36(1) of the said regulation.
6. The RP submits that the 5th CoC meeting held on 28.05.2019, in response to the publication of an addendum to Form G an invitation for Expression of Interest on 09.05.2019, only one Expression of Interest was received from Omkara Asset Reconstruction Company. Thereafter, the prospective resolution applicant was provided with the information, evaluation matrix and others necessary documents and given time submit Resolution plan. But no Resolution Plan was however received

within the stipulated period from the above Prospective Resolution Applicant.

7. It is submitted that the CIRP period 180 days ended on 21.07.2019 and further extension has been sought for another 90, which ended on 29.10.2019.
8. It is further submitted that the 7th CoC meeting held on 20.07.2019, decided to issue fresh Form G. Accordingly, the Form G was published in two news paper i.e. "Business Standard" (Pune edition) and "Loksatta" (Ahmednagar edition) and also published on 31.7.2019. 11.08.2019 being the last date for submission of expression of interest from prospective Resolution Applicant. Thereafter, pursuant to fresh publication of Form G, two fresh EOI was received.
9. It is submitted that the among the 3 prospective Resolution Applicants only Mr. Pravin Deshmukh, the Promoter and Suspended Director of the Corporate Debtor along with Mr. Adi Dara Dubash has submitted the prospective Resolution plan. The CoC in its 13th meeting held on 19.11.2019 decided to give further time to provide requisite information, accordingly, this Tribunal vide its order dated 11.11.2019 allowed the Applicant to convene the CoC meeting beyond a period of 270 days of CIRP to consider the Resolution Plan. However, no information/ documents was received from the Resolution Applicants till 21.12.2019.
10. The CoC in the 15th CoC meeting held on 21.12.2019, it was informed in the meeting that there are no chance of revival of the Corporate debtor Company. The following Resolution was passed;

"Resolved that in the absence of the approval of the Resolution plan due to lack of requisite information's from the Resolution Applicant and as the maximum period of 330 days of CIR process is over, committee be and hereby recommends the liquidation of Sahyadri Agro Industries and Food Private Limited, the Corporate Debtor under Section 33 of Insolvency & Bankruptcy Code, 2016 subject to approval of Hon'ble National Company Law Tribunal, Mumbai."
11. Hence, the CoC in its 15th meeting held on 21.12.2019, with 85.57% voting rights passed a resolution for liquidating the company.

Accordingly, the Resolution Professional filed this application for liquidation of the Company as provided u/s. 33 of the Insolvency & Bankruptcy Code, 2016 (Code).

12. The Applicant/ Resolution Professional Mr. Ankur Kumar, has agreed to act as liquidator to carry on the process of liquidation.
13. Upon hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein it is found, the RP has complied with the procedure laid down under the Code; Regulations made thereunder. On verification, we are of the considered view that this is a fit case to pass liquidation order under sub-section 1 of section 33 of the Code for liquidation in the absence of any resolution plan. Hence ordered;

ORDER

- a. The Interlocutory Application is hereby allowed.
- b. Mr. Ankur Kumar, Registration No. IBBI/IPA-002/IP-N00113/2017-2018/10283, herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- d. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e. The Liquidator appointed under section 34(1) of the Code. Will have all 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 liquidator.

- f. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- g. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- h. That 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.
- i. That on having liquidation process initiated, 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.
- j. 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.

Sd/-
SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)