

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT III
NEW DELHI

IA-889/2020 filed under Section 33 of the IBC
Code, 2016 in CP (IB)-728(ND)/2018.

In the matter of Arinits Sales Private Limited.

M/s Atagus Chemicals PTE Limited

.....Operational Creditor

Versus

Arinits Sales Private Limited

.... Corporate Debtor

In the matter of IA-889/2020 filed under section 33

Mr. Sandeep Goel
Resolution Professional for
Arinits Sales Private Limited (Corporate Debtor)

.... Applicant

Order delivered on 21st Dec, 2020.

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

Shri, NARENDRA KUMAR BHOLA, MEMBER (TECHNICAL)

For Applicant: Mr. Rishi Kumar Singhal (Advocate)

ORDER

(Through Video Conferencing)

Per. CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL).

1. Under consideration is an Application filed by the Resolution Professional viz., *Mr. Sandeep Goel* (hereinafter referred as "Resolution Professional"), under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as

the "IBC, 2016") seeking liquidation of the Corporate Debtor viz., *Arinits Sales Private Limited*, based on the resolution passed by the Committee of Creditors in its 7th Meeting on 11.12.2019. The other prayers made in the Application are:

- "2. To Discharge the Resolution Professional Mr. Sandeep Goel.*
- 3. To direct the COC to pay CIRP cost.*
- 4. To appoint the liquidator from the IBBI Panel and fix his remuneration.*
- 5. To pass such other Orders as may be deemed fit and proper in the facts and circumstances of the case."*

2. On perusal of the Application, it appears that CP IB-728(ND)/2018 was filed by the Operational Creditor viz., *M/s Atagus Chemicals PTE Limited* against the Corporate Debtor viz., *Arinits Sales Private Limited*, under Section 9 of IBC, 2016 to initiate Corporate Insolvency Resolution Process (hereinafter referred as "CIRP"), declare moratorium and appoint Interim Resolution Professional (hereinafter referred as "IRP"). This Adjudicating Authority vide Order dated 28.01.2019, admitted the Application, initiated the CIRP against the Corporate Debtor and appointed one Mrs. Santosh Goel as IRP.

3. It is averred that pursuant to the Order of this Authority, which was received by the IRP on 27.03.2020, the public announcement was made in the newspapers on 29.03.2019. The IRP filed an application before this Authority for exclusion of time period, vide Order dated 16.04.2019 exclusion of 59 days was granted. Consequently, CIRP was extended up to 24.09.2019.

4. The IRP collated all the claims submitted by the creditors in response to the public announcement and constituted the Committee of Creditors (hereinafter referred as "CoC"). The CoC comprises of - Two Financial Creditors viz., PNB & DBS Bank Ltd., having 87.67% and 12.55% respectively. The 1st CoC meeting was convened on 26.04.2019. In the 2nd CoC Meeting convened on 06.5.2019, it was resolved to replace the IRP and appoint Mr. Sandeep Goel as the Resolution Professional and was confirmed vide Order dated 03.06.2019.

5. The Resolution Professional received the Order dated 03.06.2019 on 18.07.2019 and the IRP handed over the charge to the Resolution Professional on 22.07.2019. The 3rd CoC Meeting was convened on 01.08.2019 wherein the COC approved payment of total fee of Rs. 3,00,000/- for CIRP period plus applicable taxes billed as Rs.50,000/-p.m. plus applicable taxes to be paid to the Resolution Professional. The Resolution Professional Appointed Transaction Auditor on 08.08.2019 and after receiving additional claim from the Financial Creditor, reconstituted the COC on 12.08.2019 which was also communicated to the members of the COC and the reconstituted CoC comprises of three financial creditors viz., PNB, DBS Bank Ltd and India Bulls Consumer Finance Ltd. The Resolution Professional on approval of COC moved an application for the extension of period as the CIRP period was ending on 24.09.2019. This Authority vide Order dated 24.09.2019 granted the extension of the period of CIRP by 90 days.

6. It is averred that the Resolution Professional while complying with the various provisions of the Companies Act, 2013 filed an application for extension of Annual General Meeting under Section 96 of the Companies Act, 2013 to Registrar of Companies Delhi on 26.09.2019 which is still pending. The Resolution Professional has also filed an application on 10.10.2019 and 26.09.2020 respectively under Section 19, 43 & 66 of IBC, 2016 for seeking appropriate directions from this Authority.

7. The Resolution Professional in pursuance of Regulation 27 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 appointed two valuers on 04.09.2019 viz., Mr. Amit Bindlish and Mr. Devender Lodha and as per the valuation report the Average Fair Value is Rs. 1,81,96,106/- (Rupees One Crore Eighty-One Lakh Ninety-Six Thousand One Hundred and Six) and the Average Liquidation Value is Rs. 72,09,396/- (Rupees Seventy-Two Lakhs Nine Thousand Three Hundred and Ninety-Six).

8. The 6th CoC Meeting was convened on 17.10.2019 wherein the eligibility criteria for prospective resolution Applicants for submission of Expression of Interest was discussed alongwith other items. The Resolution Professional on 19.10.2019 published Form G in two newspapers, thereby calling expression of Interest. In the

7th CoC Meeting convened on 11.12.2019 the Resolution Professional apprised the CoC that no resolution Plan has been received from any Resolution Applicant, there are no assets that may generate future income and no records are available. The Corporate Debtor be a trading Company with no technology and is not doing business since 31.03.2018, there is less expectancy of revival of business of the Corporate Debtor, therefore, the members of the CoC resolved as under:

“RESOLVED THAT there is no Resolution Plan has been received against the publication of Form-G for Arinits Sales Private Limited therefore, Resolution Professional is required to file appropriate Application before the Hon’ble NCLT to give the direction under Section 33 of the Insolvency and Bankruptcy Code, 2016 to initiate Liquidation Process against the Corporate Debtor.”

The members of the CoC with 100% voting share resolved to liquidate the Corporate Debtor.

9. The 8th CoC meeting was convened on 20.02.2020 as per the Order dated 14.02.2020, during which the cost of CIRP and the Liquidation cost were discussed and the following resolutions regarding the cost of CIRP and the Liquidation cost were passed:

“RESOLVED THAT members of the CoC approved and ratify the estimated liquidation cost of Rs. 4,60,000/- (Rupees Four Lakh Sixty Thousand Only) plus Liquidator’s fee as per schedule in Regulation 4 of the IBBI (Liquidation Process), 2016 on Actual basis and shall be shared in the ratio of admitted shares of Financial Creditors be and hereby approved.”

“RESOLVED THAT the members of the CoC approved and ratify the balance estimated CIRP cost of Rs. 1,08,909/- (Rupees One Lakh Eight Thousand Nine Hundred and Nine Only) till approval of liquidator by Hon’ble NCLT and to share the total CIRP cost in proportion to claims admitted be and is hereby approved which will be treated as part of Corporate Insolvency Resolution Process Cost.”

The members of the CoC resolved the above stated with 99.21% and 100% voting share, respectively.

ORDER

10. In view of the facts and circumstances, this Authority is satisfied that the Application **IA-889/2020** filed for initiation of Liquidation proceedings against the Corporate Debtor is a fit case for ordering **liquidation** of the Corporate Debtor namely, *Arinits Sales Private Limited* in the manner laid down in the Chapter III of Part II of IBC, 2016 and is **allowed** with the directions as follows:

- I. This Authority appoints the Insolvency Professional Mr. Arun Kumar Goyal as liquidator whose name appears in the list of the Insolvency Professionals provided by the IBBI to NCLT Delhi, having Registration number: IBBI/IPA-001/IP-P01325/2019-2020/12575; E-mail ID: arung1008@gmail.com; Address: B-252, Vivek Vihar, East, NCT of Delhi, 110095.
- II. The Resolution Professional viz., *Mr. Sandeep Goel* is discharged as he has not given consent and is directed to handover the charge to the Liquidator appointed by this Authority.
- III. Mr. Arun Kumar Goyal is appointed as Liquidator in terms of Section 34 (1) of IBC, 2016 therefore, all the powers of Board of Directors, key Managerial Personnel and partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be hereby vested with the Liquidator. The Personnel of the Corporate Debtor are hereby directed to extend all corporations to the Liquidator as may be required in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as Liquidator will charge fees for the conduct of liquidation proceedings in the proportion to the value of the liquidation estate assets as specified under Regulation 4

of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under section 53 of IBC, 2016.

IV. Mr. Arun Kumar Goyal is directed to issue Public Announcement stating that the Corporate Debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

V. Since this Liquidation Order has been passed, no suit or other legal proceedings shall be initiated by or against the corporate Debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of the Section 33 of the Code

VI. This Authority makes it clear that Para (V) herein above shall not apply to legal proceedings in relation to such transactions as notified by Central government in consultation with any financial sector regulator.

VII. The liquidation Order shall be deemed to be the notice of discharge to the officers, employees, workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

VIII. The Registry and the Counsel for the applicant is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana, to the Insolvency and Bankruptcy Board of India and IT Department including Assessing IT Officer of the IT Circle.

IX. The Order of Moratorium passed under Section 14 of the IBC, 2016 shall cease to have its effect from the date of the order and that a fresh Moratorium under Section 33(5) of IBC, 2016 shall commence.

X. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.

XI. The Liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (l) of the Code.

XII. The Liquidator shall also follow up the pending applications for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.

XIII. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

XIV. Copy of this order shall be sent by the Registry to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

11. In terms of the above, IA-889/2020 filed in IB-728(ND)/2018 is allowed.

12. Order is pronounced through video conferencing.

Sd.
NARENDRA KUMAR BHOLA
Member (Technical)

Sd.
CH. MOHD SHARIEF TARIQ
Member (Judicial)

IA-889/2020

The order of the Bench consisting of the above-mentioned Hon. Members was pronounced by one of the Member on behalf of the Bench under Rule 151 of the NCLT Rules, 2016.

Court officer
21/12/21