THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. IV
AT NEW DELHI

IA No. 146/ND/2020
IN
Company Petition No. (IB)-991(ND)/2018

Under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for liquidation of the corporate debtor

In the matter of:

Mr. Jatin Madan

Resolution Professional of Aastha Surgimed Ltd.

...Applicant

In the matter of:

M/s Universal Enterprises

... Operational Creditor

Versus

Aastha Surgimed Ltd. ...Corporate Debtor

Judgment delivered on:23 .02.2021

Coram:
DR. DEEPTI MUKESH
HON'BLE MEMBER (Judicial)
MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (Technical)

Memo of parties

Mr. Jatin Madan

Resolution Professional of Aastha Surgimed Ltd.

Office at: 25 DDA, LSC. Block M-l, Vikaspuri, New Delhi- 110018

...Applicant

M/s Universal Enterprises

Sole Proprietor Mr. Nisheet Bansal, B-4, Usha Kiran Building,

Commercial Complex, Azadpur, New Delhi-110033

... Operational Creditor

Versus

Aastha Surgimed Limited

Registered Office at Shop No. 52, A-1 Block, Local Shopping Complex,

Paschim Vihar, New Delhi-110063

...Corporate Debtor

For Resolution Professional: Mr. Kush Sharma, Advocates

ORDER

Dr. Deepti Mukesh, Hon'ble Member (J)

1. This is an application filed by the Resolution Professional under Section 33 (1) of Insolvency and Bankruptcy Code, 2016 (**hereinafter referred as the "Code")** for issuance of directions for liquidation of the corporate debtor, Aastha Surgimed Ltd. and also appointment of the liquidator thereof.
2. This bench was pleased to admit the captioned application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by Operational Creditor M/s Universal Enterprises and vide its order dated 01.08.2019 appointed Mr. Jatin Madan as the Interim Resolution Professional in the captioned matter.
3. It is submitted that since the very beginning of the CIRP, due to non-cooperation on part of the suspended Directors of the Corporate Debtor, the said process has suffered inordinate delay. That therefore, the Applicant had filed an application under Section 19(2) of the Code seeking cooperation from the suspended Directors. That furthermore, in light of the 180 days of the resolution process coming to end on 06.10.2019 the Applicant herein moved the requisite application under Section 12(2) of the Code seeking extension of the period of the resolution process by a further period of 90 days and the same was allowed by this bench vide its order dated 27.09.2019.
4. It is submitted that in addition to the non-cooperation on part of the suspended Directors, it is submitted that the Applicant herein assumed his role as the new Resolution Professional only with effect from 23.08.2019. It is pertinent to note here that the numerous steps such as appointment of two registered valuers and submission of Information Memorandum to CoC, that ought to have been taken within the first 136 days by the Interim

Resolution Professional were not taken. It is pertinent to state here that the extended period granted by this bench expired on 04.01.2020. That therefore, the Applicant during the fifth CoC meeting proposed to move an appropriate application for the exclusion of 150 days from the CIRP period, however, the members of the CoC voted not to pass the resolution for exclusion of 150 days from the CIRP period.

5. It is submitted that 6th meeting held on 24.12.2019 wherein two Financial Creditors were present and other two were absent. Though their counsel wanted to present them but which was denied, who were allowed to attend without any voting right. in above meeting, the CoC resolving not to extend the CIRP period, seek liquidation of the cd. It is also submitted that during the course of the meeting the Applicant shared his concern that at present the exact status of the assets of the Corporate Debtor was not known due to non-cooperation by the suspended Directors of the Corporate Debtor and that therefore, there were no known assets to be put up for valuation, which raises concerns about who will bear the expenses incurred during the liquidation process of the Corporate Debtor. The Applicant further informed the CoC of his non availability to continue as liquidator due to pre-occupation and further requested to appoint another liquidator.

6. That pursuant to the above discussions the following resolutions were put to vote by the CoC (Item No. 8 of the minutes of the sixth meeting):

> *"**RESOLVED THAT** pursuant to the provision of Section 33 and other applicable provision of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed thereunder and other applicable provisions of the Companies Act, 2013 and Rules framed thereunder. approval of the members is be and hereby accorded that the Aatha Surgimed Limited (Corporate*

Debtor) to be liquidated in the manner as laid down in Insolvency and Bankruptcy Codes 1016.

RESOLVED FURTHER THAT pursuant to the provisions of Section 31, 33 and 34 and other applicable provision of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed thereunder and other applicable provision of the Companies Act, 2013 and Rules framed thereunder, Mr Jatin Madan, Resolution Professional be and is hereby authorized to intimate the decision of Committee of Creditors of liquidation or Aastha Surgimed Limited (Corporate Debtor) to the Adjudicating Authority Hon'ble National Company Law Tribunal, New Delhi Bench and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto"

7. The resolutions proposed during the meeting were put to online e-voting, and which in turn were circulated to them within 48 hours of the meeting. As per the results or e-voting the CoC has resolved, by 75.61% voting share has resolved in favour of the resolution for liquidation of the corporate debtor and Mr. Jatin Madan, Resolution Professional be and is hereby authorized to intimate the decision of Committee of Creditors or liquidation of Aastha Surgimed Limited to the Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto.

8. That in light or the above, the resolution to initiate the liquidation of the Corporate Debtor has been approved by the CoC by more than 66% of the voting share and the Applicant

herein has been further authorised to intimate the said decision or the CoC to this bench by way of this Application.

9. The CIRP period the 270 days of CIRP expired on 04.01.2020 during which period no resolution was received and CoC were not in favour of availment of total CIRP period of 330 days, the only option was left of liquidation of the cd. under the provisions of section 33 of IBC, 2016 read with regulations mentioned in the code of which the relevant sub-section 1 of section 33 is reproduced hereunder ;

> "33. (1) Where the Adjudicating Authority, —
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> (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or
>
> (b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall—
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> (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
> (ii) issue a public announcement stating that the corporate debtor is in liquidation; and
> (iii) require such order to be sent to the authority with which the corporate debtor is registered."

10. Taking into consideration the provisions of law as well as on facts we allow the present application and order for liquidation of the corporate debtor and in the circumstances the corporate debtor stands liquidated and the incidence of liquidation to follow, on and from the date of this order in terms of the provisions of IBC, 2016 and more particularly as given in Chapter – III of IBC, 2016 and also in terms of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 along with the following directions:

   a. Since the RP herein Mr. Jatin Madan Resolution Professional has declined to act as a liquidator, the bench hereby appoint Mr. Alok Kaushik holding registration no. IBBI/IPA- 002/ IP-N00253/2017-18/ 10767 as liquidator from this date of this order who shall comply with the liquidation regulation and should give consent to act as the liquidator under section 34 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

   b. Mr. Alok Kaushik 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;

   c. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;

   d. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. Similarly, to other fiscal and regulatory authorities which governs the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation

e. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

f. This order is deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

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

h. 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.

i. I.A. 146(ND) /2020 filed in IB 991(ND)/ 2018 is disposed of in the aforesaid terms.

j. The office is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor and the Liquidator at the earliest but not later than seven days from today. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

SD/-

(MS. SUMITA PURKAYASTHA)
MEMBER (T)

SD/-

(DR. DEEPTI MUKESH)
MEMBER (J)