

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A. No.651 of 2019 in
C.P. (IB) No.67/BB/2019
U/s 33(1)(a) and 34(1) of IBC, 2016 &
Regulation 4(2) and 4(3) of IBBI
(Liquidation Process) Regulations, 2016

Mr. G. Madhusudhan Rao
D. No.7-1-285, Flat No.103,
Sri Sai Swapna Sampada Apts.,
Balkampet, Hyderabad,
Telangana – 500 038. - Applicant/Resolution Professional

IN THE MATTER OF:

Punjab National Bank
Plot No.4, Dwarka, Sector-10,
New Delhi – 110 075. - Petitioner/Financial Creditor

Versus

M/s. Chincholi Sugar and Bio Industries Ltd.
Sri Laxminarasimha Nilaya,
H. No.15, 5th Main, 13th Cross,
MSR Nagar, Mathikere,
Bangalore – 560 054. - Respondent/Corporate Debtor

Date of Order: 19th December, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

Applicant/RP : Mr. G. Madhusudhan Rao

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A. No.651 of 2019 in C.P. (IB) No.67/BB/2019 is filed by Mr. G. Madhusudhan Rao (hereinafter referred to as 'Applicant/Resolution

Professional') under Sections 33(1)(a) & 34(1) of IBC, 2016 and Regulation 4(2) & 4(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or any other provisions of IBC, 2016, by inter alia seeking to liquidate the Corporate Debtor u/s 33(1)(a) of the Code and to appoint the Applicant/RP herein as Liquidator under Section 34(a) of the Code, etc.

2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:

(1) CP (IB) No.67/BB/2019 filed by Punjab National Bank (hereinafter referred to as 'Petitioner/Financial Creditor') u/s 7 of the I&B Code, 2016 r/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016 seeking to initiate CIRP in respect of M/s.Chincholi Sugar & Bio Industries Limited (hereinafter referred to as 'Respondent/Corporate Debtor') was admitted by this Adjudicating Authority vide Order dated 15.03.2019 by appointing Mr. Madhusudhan Rao Gonugunta as the Interim Resolution Professional and imposing moratorium, etc.

(2) Pursuant to the same, IRP has given public announcement on 23.03.2019 in three newspapers namely Financial Express, Mana Telangana, Vartha Bharathi and also a copy of the announcement has been published in the IBBI website. Subsequently, the IRP has constituted the Committee of Creditors (CoC) as under:

Sr. No.	Name of the Financial Creditor	Voting %
1.	Punjab National Bank	49.80
2.	Oriental Bank of Commerce	22.00
3.	State Bank of India	19.70
4.	Andhra Bank	8.50

It is stated that the IRP is appointed as Resolution Professional with 100% voting approval.

- (3) CoC in its 2nd meeting held on 18.05.2019 has approved the eligibility criteria to participate into the Expression of Interest (EOI), Form G, criteria and weights for Evaluation Matrix and main conditions of RFRP. The Applicant gave public announcement for 'Invitation for Expression of Interest' towards submission of Resolution Plans on 22.05.2019 in 'Business Standard' in English and 'Sakshi' for Telugu in Andhra Pradesh and Telangana and 'Varthabharati' for Karnataka in Kannada with last date as 05.06.2019. Further, the Applicant filed Form G (Invitation for Resolution Plans) to publish the same in IBBI website. The Applicant has received 3 EOIs.
- (4) CoC in its 3rd meeting held on 11.06.2019 has discussed the issues relating to expiry of the Company's land lease renewal, possibility of getting execution of Sale Deed, one prospective Resolution Applicant's email stating some parcel of the Factory is constructed in the land of collateral securities of the promoters, details of collateral security of the promoters given to the lenders as security, etc.
- (5) CoC in its 5th meeting held on 21.08.2019 interacted with the Resolution Applicant i.e. Natem Sugar Pvt. Ltd. officials for understanding about their profile, capacity to revive the Corporate Debtor, post history of their revival capability, basis of Resolution Plan consideration arrived by them, possibility of increasing the Resolution Plan consideration, delinking of the Corporate Debtor Land and collateral land in the Resolution Plan, etc.
- (6) Further, the RP opened the sealed cover received from the Resolution Applicant (RA) in respect of revised resolution plan consideration. RA increased proposed consideration from Rs.20 Crores to Rs.30 Crores to Secured Financial Creditors.



- (7) CoC in its 6th meeting held on 04.09.2019 has approved for extension of CIRP and passed a resolution to this effect. Further, it has discussed about email of RA requesting for completion of the Survey for submission of best bid.
- (8) CoC in its 7th meeting held on 19.10.2019 interacted with RA and it was informed that they are interested to buy CDs assets along with the collaterals of the promoters as the factory was constructed on both the lands and running of the Company will not be possible without the collateral land. All the CoC members felt that the Resolution Plan consideration need to improve in spite of the issues like Sale Deed not executed and complete plant not constructed on the Companies Land and not excised voting.
- (9) CoC in its 8th meeting held on 11.11.2019 suggested the RP, after receiving survey report of government surveyors with maps showing exact location of assets and revised valuation report from valuers based on survey report of government surveyors need to be taken.
- (10) CoC in its 9th meeting held on 21.11.2019 was informed by the RP that as per the revised valuation reports based on the Government Surveyors map, CoC members and RP observed that in terms of quantity 40% of Plant in Promoters land whereas liquidation value wise the same is around 7% only. Further, CoC members informed the RA that within 36 hours, they will provide the final revised offer of Resolution Plan consideration.
- (11) CoC in its 10th meeting held on 27.11.2019, the RA has submitted final Resolution Plan consideration of Rs.46.25 Crores towards total CIRP cost, Operating Creditors and to the Secured Financial Creditors and submitted the unconditional Resolution Plan for CD's assets only on 04.12.2019.



(12) CoC in its 11th meeting held on 04.12.2019 and based on the e-voting held till 07.12.2019, the results are as under in respect of approval of the Resolution Plan of M/s. Natems Sugar Private Limited:

Sr. No.	Name of the CoC Lender	In favour (%)	Against (%)	Not voted/ Abstained (%)
1.	Punjab National Bank		49.80	
2.	Oriental Bank of Commerce		22.01	
3.	Andhra Bank		19.70	
4.	State Bank of India			8.49
	Total	0.00	91.51	8.49

(13) It is stated that the CIRP period including extended period of 270 days have been completed on 09.12.2019 and the Resolution Plan has not been approved by CoC Members having voting rights of 91.51%. Therefore, the Applicant filed the instant IA for liquidation order along with Form-2 to act as Liquidator for the Corporate Debtor.

3. Heard Mr. G. Madhusudhan Rao, learned Resolution Professional. We have carefully perused the pleadings of the party and extant provisions of the Code and the Rules made thereunder and the Law on the issue.
4. Mr. Madhusudhan Rao, learned Resolution Professional, while reiterating the steps he has taken during the process of CIRP, as briefly stated supra, has further submitted that during the 11th CoC Meeting held on 04.12.2019 at 06:00 PM, it was *inter alia* decided to conduct the e-voting for approval of the Resolution Plan of M/s. Natems Sugar Private Limited and subsequently as per the e-voting results held on 07.12.2019, none of the CoC Members have approved the said Resolution Plan. Since no Resolution Plan was approved by the Committee of Creditors during the period of CIRP, it is inevitable to pass



an order for liquidation u/s 33(1) of the I&B Code, 2016. Hence, he requested the Adjudicating Authority to appoint him as Liquidator u/s 34(1) of the Code. Accordingly, he also has filed his written consent in Form 2 dated 09.12.2019, by inter alia stating that he would accept appointment as Liquidator if his appointment is confirmed by the Adjudicating Authority and stated that he is currently qualified to practice as an Insolvency Professional and he is currently serving as IRP/RP/Liquidator in respect of the proceedings of Sri Vinayaka Paper and Boards Ltd., Servomax India Private Limited, Thexa Pharma Private Limited, Chincholi Sugars and Bio Industries Ltd., Titan Energy Systems Limited, Bheema Cements Ltd., Sarda Agro Oils Limited and GKC Projects Limited, and also declared that there are no disciplinary proceedings pending against him either with the Board or ICAI Insolvency Professional Agency.

5. The above facts and circumstances as mentioned above clearly establishes that the efforts of the learned Resolution Professional and the Committee of Creditors to revive the Company by way of Resolution Plan could not succeed and thus there is no other alternative for CoC except to recommend the Corporate Debtor to liquidate in the manner as laid down in Chapter III of the I&B Code. The existing Resolution Professional, Mr. G. Madhusudhan Rao, who is a qualified Insolvency Professional, also has filed his written consent in Form 2 dated 09.12.2019 to act as Liquidator in respect of the Corporate Debtor. Section 33 of the I&B Code provides that if no Resolution Plan is received by the Adjudicating Authority before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the CIRP under Section 12 or the fast track CIRP under Section 56, as the case may be, then order of liquidation has to be



passed against the Corporate Debtor. Therefore, it is a fit case to initiate liquidation in respect of the Corporate Debtor.

6. In the result, the Adjudicating Authority, by exercising powers conferred under Section 33 of the I&B Code, 2016, I.A. No.651 of 2019 in C.P. (IB) No.67/BB/2019 is disposed of the with the following directions:

- (1) We hereby appointed **Mr. Madhusudhan Rao Gonugunta** holding IBBI Registration No.IBBI/IPA-001/IP-P00181/2017-18/10360 as Liquidator to liquidate the Corporate Debtor i.e. **M/s.Chincholi Sugar and Bio Industries Limited** in the manner as laid down in Chapter III of the Code and relevant Rules made thereon by the IBBI from time to time;
- (2) Mr. Madhusudhan Rao Gonugunta is directed to issue public announcement stating that the Corporate Debtor is in liquidation, one in English language and one in Vernacular language, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- (3) The Liquidator is directed to take expedite steps to conclude the liquidation process without waiting statutory period of liquidation to lapse;
- (4) The Liquidator is directed to 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 Board of India (Liquidation Process) Regulations, 2016;
- (5) The Registry is directed to communicate this Order to the Registrar of Companies, Karnataka and to the Insolvency and Bankruptcy Board of India.



- (6) Consequently, I.A. No.613 of 2019 filed by the RP, U/s 12(3) and 60(5) of the Code seeking for exclusion/extension of the CIRP period becomes infructuous, and thus dismissed it as infructuous.
- (7) Post the case for report of the Liquidator on **07th February, 2020**.



**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**



**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**

Krishna