NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)

IA No. 560/2020
In
CP (IB) No. 153/Chd/Pb/2019
(Admitted Matter)

Under Section 33(1) & (2) of the Insolvency and Bankruptcy Code, 2016

In the matter of:-

Parmod Sharma ….Operational Creditor

Vs.

Emsons Organics Limited …Corporate Debtor

<u>And in the matter of IA No. 560/2020:-</u>

Prem Chand Goyal,
Resolution Professional,
M/s Emsons Organics Ltd. …Applicant-Resolution Professional

Order delivered on 15.12.2020

Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)

<u>Present through Video Conferencing:-</u>

For the applicant-
Resolution Professional : 1). Mr. Pulkit Goyal, Advocate
2). Ms. Komal Abrol, Advocate
3). Mr. Prem Chand Goyal, RP in person

Per: <u>Ajay Kumar Vatsavayi, Member (Judicial)</u>

<u>ORDER</u>

<u>IA No. 560/2020</u>

This application has been filed by Mr. Prem Chand Goyal, the Resolution Professional of M/s Emsons Organics Ltd. (corporate debtor) under

Section 33 (1) & (2) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation in the matter of M/s Emsons Organics Ltd. (Corporate Debtor).

2. CP (IB) No. 153/Chd/Pb/2019 was filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by "Parmod Sharma" to initiate Corporate Insolvency Resolution Process (in short CIRP) against Emsons Organics Ltd. and the same was admitted on 27.09.2019 and Ms. Taruna Goel was appointed as IRP. Subsequently, in the 1st meeting of CoC held on 30.10.2019, it was resolved to replace the IRP with Mr. Prem Chand Goyal as RP and the same was approved by this Adjudicating Authority vide order dated 18.11.2019 in CA No. 1039/2019 attached as Annexure A2 of application.

3. It is submitted that Form-G was published on 11.12.2019 but no Expression of Interest (EOI) was received after publication of the same. In 3rd COC Meeting, it was resolved to republish the Form-G by extending time for submission of EOI by 30 days from the date of publication. Copy of Minutes of 3rd COC Meeting is attached as Annexure A-3 of the application.

4. It is further submitted by the learned counsel that as per order dated 18.03.2020, the Adjudicating Authority has granted an extension of CIRP period for 90 days beyond the original period of 180 days. Copy of order dated 18.03.2020 has been attached as Annexure A5 of the application.

5. It is noted that Resolution Professional has received EOI from prospective resolution applicant but no resolution plan has been received till date. Therefore, in 5th Meeting of COC, it was resolved to liquidate the corporate debtor. Copy of minutes of 5th COC meeting is appended as Annexure A-6 of the application.

6. The Hon'ble NCLAT, in Praveen Kumar Nand Kumar Vs. VSL Securities Pvt. Ltd. in CA No. 1/2020 in CA No. 308/2000, dated 09.06.2020, observed as under:-

> *"Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review."*

7. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

8. The relevant provisions of Section 33 (2) of the Code are as follows:-

> "*Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)."*

9. **Prescribed period for filing application** - In the present case, the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 was admitted on 27.09.2019 and the present application is filed by the Resolution Professional on 27.08.2020. The Adjudicating Authority has also granted extension of 90 days vide order dated 18.03.2020 attached as Annexure A-4 of the application. As per Notification No. IBBI/2020-21/GN/REG059 dated 20.04.2020, the period of Lockdown is excluded for the purpose of calculating the timelines in CIR Process. Hence, after excluding the lockdown period, the present application is filed during CIRP period and conditions provided for Section 33(2) are satisfied.

10. **Appointment of Liquidator –** Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process shall, subject to submission of written consent act as the Liquidator for the purpose of liquidation. The COC in its 5th Meeting held on 25.06.2020, with 100% voting share, resolved to appoint the RP Mr. Prem Chand Goyal, as Liquidator (Annexure A-6). Mr. Prem Chand Goyal, Resolution Professional with IBBI Registration No. IBBI/IPA-001/IP-P01780/2019/2020/12710 has filed his consent in Form AA dated 23.06.2020 (Annexure A-7). The Law Researcher of this Tribunal has checked the credentials of proposed Liquidator and nothing adverse has been found on record. Therefore, Mr. Prem Chand Goyal is appointed as the Liquidator.

11. Regulation 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019.

12. **Liquidation Cost [Regulation 39B of IBBI (IRP for CP) Regulations, 2016]** – As regards to Regulation 39B, the COC in its 5th meeting held on 25.07.2020 has made the estimate of the expenses on the liquidation of the corporate debtor as ₹13,85,000/-. The COC with 100% voting share has approved the estimated liquidation expenses.

13. **Assessment of Sale as a going concern [Regulation 39C of IBBI (IRP for CP) Regulations, 2016]** – The COC has made the assessment of sale as a going concern under Regulation 39C of IBBI (IRP for CP) Regulations,

2016. The Liquidator will, therefore, take necessary action under Regulation 32A (3) of the IBBI (Liquidation Process) Regulations, 2016.

14. **Fees of the Liquidator [Regulation 39D of IBBI (IRP for CP) Regulations, 2016]** – The RP proposed to be appointed as Liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of liquidation estate assets as may be specified by the Board. Rule 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provide for Liquidator's fee. Regulation 4 (2) thereof states that the Liquidator shall be entitled to such fee and in such manner as has been decided by the COC. The COC in its 5th meeting has resolved that the Liquidator shall be entitled to the fee as stated in Regulation 4(2)(b) of the aforesaid Regulations.

15. The COC has recommended that the Liquidator shall be entitled to the fees as stated in Regulation 4(2)(b) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 to conduct the liquidation proceeding of the corporate debtor. The same has been approved in 5th meeting of COC with 100% votes.

16. In view of the satisfaction of the conditions provided under Section 33(2) of the Code, the corporate debtor **Emsons Organics Ltd.** is directed to be liquidated in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:-

(i) That as per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted against the corporate debtor;

Provided that a suit or other legal proceedings may be instituted by the liquidator on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority;

(ii) That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and

(iii) That this order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the liquidator; and

(iv) That all the 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 in the Liquidator; and

(v) That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the Liquidator for references to the Interim Resolution Professional.

(vi) That the Liquidator shall publish public announcement in accordance with Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

(vii) That the announcement shall be published in accordance with Regulation 12(3) of the IBBI (Liquidation Process) Regulation, 2016.

(viii) That in accordance with Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 every fortnightly thereafter.

17. Thus, IA No. 560/2020 stands disposed of.

18. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Punjab and Chandigarh forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

Sd/-

(Raghu Nayyar)
Member (Technical)

(Ajay Kumar Vatsavayi)
Member (Judicial)

December 15th, 2020
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