



IN THE NATIONAL COMPANY LAW TRIBUNAL,  
SPECIAL BENCH – II, CHENNAI

IA(IBC)/904/CHE/2023 in IBA/1269/2019

*(filed under Regulation 32A (4) read with Regulation 32 (e) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 r/w Section 60(5) of the Insolvency & Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016)*

*In the matter of Hydrolina Biotech Private Limited*

**Ramela Rangasamy**

Liquidator of Hydrolina Biotech Private Limited

*... Applicant / Liquidator*

-Vs-

**Jetapex Paper Industries Private Limited**

Flat no.302, Fortune Landmark Apartment

Cycle Colony, Narayana Puram, Rajamundry East,

Andhra Pradesh – 533 101

*... Respondent*

*Order pronounced on 27<sup>th</sup> July 2023*

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)**

**SATYA RANJAN PRASAD, MEMBER (TECHNICAL)**

*For Applicant*

*: Ganesh V Arnala Advocate*

*For Respondent*

*: Mumaneni Vazra Laxmi, Advocate*



## COMMON ORDER

*Per: SANJIV JAIN, MEMBER (JUDICIAL)*

IA(IBC)/904(CHE)/2023 is an Application filed by the Liquidator of M/s. Hydrolina Biotech Private Limited under Regulation 32A(4) read with Regulation 32 (e) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 r/w Section 60(5) of the Insolvency & Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016, seeking reliefs as follows;

- a. *The Adjudicating Authority may be pleased to approve the proposal proposed by the prospective investor and permit the applicant to sell the Company under Liquidation to the prospective investor on a "going concern" basis, by which ultimately achieving the motto of the Insolvency and Bankruptcy Code, 2016.*
- b. *Pass such other further directions on the facts and circumstances of the case and thus render justice.*

2. The CIRP in respect of the Corporate Debtor viz. M/s. Hydrolina Biotech Private Limited was initiated by this Tribunal on an Application filed under Section 10 of IBC, 2016 vide its order dated 20.10.2020. The Applicant herein was appointed as the



Interim Resolution Professional. Since there were no Resolution plan received in respect of the Corporate Debtor, the Committee of Creditors (CoC) in its 6<sup>th</sup> meeting held on 12.02.2021 resolved to liquidate the business of the Corporate Debtor.

3. Accordingly, the RP filed IA(IBC)/492(CHE)/2021 before this Tribunal under Section 33(2) of IBC, 2016 and this Tribunal vide an order dated 11.02.2022 ordered for the Liquidation of the Corporate Debtor and appointed the Applicant as the Liquidator.

4. It is stated that in the 6<sup>th</sup> CoC meeting, it was resolved to sell the Corporate Debtor as a going concern under Regulation 32(e) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

5. The Stakeholders Consultation Committee comprises mainly of only two Financial Creditors viz.

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- i. Biotechnology Industry Research Assistance Council (BIRAC), a Section 8 Company under the Companies Act, 2013 and
  - ii. Technology Development Board (TDB) functioning under the Department of Biotechnology, Ministry of Science and Technology, Government of India, in its second meeting conducted on 19.05.2020 appointed the applicant herein as the Resolution Professional.
6. The Liquidation estate consists of the followings:-
- a. Leasehold rights on 12.05 acres of land in plot No. B-7, Bargur SIPCOT Industrial Complex, near Pochampalli, Olaipatti Village, Kallavi Post, Uthangarai Taluk, Krishnagiri District, Tamilnadu 635304 and a building constructed thereon;
  - b. The indigenous/self-designed machines in the manner relevant to the project and embedded in to the earth.
  - c. Intellectual property of two granted patents
    - i. A method of extraction of carotenoids rich in Lycopene from natural source No.277549



(2608/CHE/2008 Patent dated 28.10.2008) granted on dated 23.11.2016.

- ii. A method of extraction of LYCOPENE from natural source using a combination of Enzymatic and Alkali treatments - Patent No. 302524 (1761/CHE/2012 dated 07.05.2012) granted on 29.10.2018 and its future prospects is based on the outcome of the commercial production.

7. It is stated that since all the assets of the Corporate Debtor were hypothecated to two Financial Creditors, both the Financial Creditors relinquished their security interest by indicating their respective claim in Form D. Therefore, the entire assets form part of the Liquidation estate.

8. It is stated that during the liquidation process, considering the uniqueness in operations and the assets of the Company under liquidation, in the 1<sup>st</sup> Stakeholders' consultation committee (SCC) meeting held on 30.03.2022, it was decided to invite expression of interest from the interested parties to submit a scheme for compromise / arrangement with the Creditors of the Company



under liquidation with reserve price of Rs.11 crores and earnest money deposit of Rs.50 lacs. The following points were considered for selling the Company under liquidation as a going concern.

- a. *The factory is on a lease hold land from SIPCOT and building has been constructed thereon by the Corporate Debtor;*
- b. *The Machineries of the Company under liquidation are embedded in the earth / indigenous/self-designed in the manner relevant for the project, which will not fetch much value if sold by dismantling it from the earth as the same will be considered only as scrap.*
- c. *Two registered patents and their future prospects are based on the outcome of the production and since it is not proven by large-scale manufacture, it is difficult to find a buyer in this narrow field.*
- d. *No trial production took place to know the outcome/marketability of its product.*
- e. *The father (idea cultivator) of this patent is the ex- promoter of the Corporate Debtor/Company under liquidation and it is developed by in-house Research and Development of the Corporate Debtor/Company under liquidation. The said two financial creditors financed the Corporate Debtor after evaluating patent and its capacity to perform.*



- f. *The unit is kept stagnant without operation and it needs to be revamped to start up.*
- g. *The ex-promoter L.P. Ravichander only knows the intricate details of the patent and design and entire layout of the machines, its pipe lines/settings engines and its processes. Without his guidance, the handling project will be difficult as he is the only person in the know of the patent details.*
- h. *The shares of the promoters are pledged to TDB to an extent of 7,50,000 equity shares of Rs. 10/- (18.25%).*
- i. *The Company under liquidation is an MSME unit. The ex-promoter is not prohibited under Section 29A of the Code and is eligible to bring suitable investor. The proposed scheme should be submitted to the liquidator with requisition to make application to NCLT.*
- j. *The liquidation values were computed during June 2020 by two independent registered valuers and the liquidation values would have eroded due to depreciation of plant and machinery which are fast deteriorating and losing value. Any further delay in revival of the Corporate Debtor will render all Plant and Machinery as scrap.*
- k. *It can be sold to an investor who is willing to implement the Biotech project on the same lines proposed by the promoters*



*as dismantling the equipment entails huge expenditure and not suitable for using them for any other purposes.*

9. It is stated that the Liquidation value was computed in June 2020 by two independent registered valuers and the average of the liquidation value as arrived by the two independent Registered Valuers is Rs.7,77,53,542/- and the average of the fair values as arrived by the two independent Registered Valuers is Rs.10,51,39,758/-.

10. It is stated that the Liquidator caused the public notice on 31.03.2022 and invited suitable bidders to submit the scheme of compromise and arrangement for taking over the Company under liquidation as a Going Concern for this company under liquidation. The same was published in 'Financial Express' [English] and 'Malai Murasu' [Tamil] on 02.04.2022, 01.05.2022 and 11.05.2022 inviting proposal.

11. It is stated that, in reply to the public notice only Jetapex Paper Industries Private Limited [JETAPEX] expressed its interest,



but had not deposited the EMD amount of Rs.50 Lacs. It is stated that during Covid-19, 10 parties had visited the Corporate Debtor and out of them JETAPEX, was the one.

12. It is stated that the proposed investor was the only investor to express its willingness to run the Company under liquidation as a "Going Concern" and also invest substantial amounts to revamp the project. It is stated that on discussion, the stakeholders being Central Government bodies, who are financial lenders to encourage patent / technology of India, recommended to submit altered scheme along with deposit of EMD of Rs.50 Lakhs on or before 03.06.2022.

13. It is stated that the considering the status of the Corporate Debtor as peculiar, the stakeholders were not interested to contribute interim fund to meet liquidation cost. It is stated that though the fees for the Liquidator is fixed by the CoC and money is contributed by the stakeholders but, it is kept in reserve to meet



the liquidation cost since there will be considerable delay in collecting interim funds from the two government bodies.

14. It is stated that in 3<sup>rd</sup> SCC meeting held on 12.07.2022, the proposal given by JETAPEX was discussed in detail by both the government bodies where following points were considered:

- a. The objective of the Insolvency and Bankruptcy Code - is to maximize the value of assets of Corporate Debtor, promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.
- b. Priority will be given to run the CD as going on concern. This company is of such nature that it will be worth only if run as a going concern.
- c. Time constraint to complete the process within one year from the date of commencement of liquidation i.e. on or before 10th Feb 2023.

15. It is stated that this application under Regulation 32A read with 32(e) of the IBBI (Liquidation Process) Regulations, 2016 read with Sec 60(5) of IBC, has therefore been filed on the above grounds



to consider this Corporate Debtor as a distinct case, where patent is the main assets, which has not yet reached commercial production but is a worth product for the Indian economy to earn foreign exchange.

16. It is stated that two registered patents and their future prospects are based on the outcome of commercial production. Since it is not proven by large-scale manufacture, it is difficult to find a buyer to operate in this niche market (*The proposal submitted by JETAPEX is appended as Annexure 1 to the Application*). It is stated that the proposed investor has deposited a sum of Rs.2,00,50,000/- in the liquidation account maintained by the liquidator on 14.03.2023.

17. The details of amounts claimed and admitted by the Liquidator and the amount proposed to be settled as per Section 53 of IBC, 2016 by the investor are as follows:



S. No.	NAME, NATURE AND CLASS OF CREDITORS	AMOUNT CLAIMED / ADMITTED (Rs.)	PROPOSED TO SETTLE (Rs.)
1	Unpaid Insolvency Resolution Process costs – RP remuneration outstanding	22,23,120	22,23,120
2	INTERIM FINANCE CONTRIBUTION BY THE CREDITORS AS ON 27.04.2022 INCURRED BY		
	Technology Development Board (TDB) contributed till 27.04.2022		11,01,503
	Biotechnology Industry Research Assistance Council (BIRAC) contributed till 27.04.2022		9,54,096
3	SECURED FINANCIAL CREDITOR		
	Biotechnology Industry Research Assistance Council (BIRAC) contributed till 27.04.2022	11,47,89,944	4,41,00,000
	Technology Development Board (TDB)	7,45,18,559	
4	Operational Creditors (Workmen) – T M Vatsala	3,32,247	3,32,247
5	Operational Creditors (other than Workmen, Employees) – State Industrial Promotion Corporation of Tamil Nadu Limited	4,25,209	4,25,209
6	Income Tax Department (Belated claim)	1,32,940	1,32,940
	<b>Total</b>		<b>4,92,69,115</b>

18. It is stated that the said amount of Rs.4,41,00,000/- payable to the secured Financial Creditors, shall be apportioned among them in the ratio mutually determined by them and the amount will be



brought in by the investor within 60 days from the date of the confirmation from each of the secured creditors.

19. It is stated that the balance amount of Rs.51,69,115/- will be brought in by the investor on receipt of the order passed by this Tribunal.

20. In addition to the above, it is stated that a sum of Rs.6,07,30,885/- will be infused as working capital for the purpose of taking over the Corporate Debtor as a going concern.

21. It is stated that on approval of this proposal, the entire paid-up share capital of Rs.4,10,96,210/- comprising of 41,09,621 equity shares with face value of Rs.10/- shall stand cancelled. The existing shareholders will not be paid anything in settlement and their share certificates will become null and void.

22. It is stated that upon settlement as above and on effective date hereof, the share capital of the Company shall be as under:



- a) Authorized Share Capital: Rs.5,00,00,000/- comprising of 50,00,000 equity Shares of Rs.10/- each
- b) Paid up Share Capital of Rs.4,93,00,000/- comprising of 49,30,000 equity shares of Rs.10/- each.

23. It is stated that the Company under liquidation will issue new equity shares for the value equivalent to the equity proposed as above to be infused by the investor / associates / Group Company with face value of Rs.10/- each. The new Board will be constituted as per the new shareholding pattern. The Investor will have the right to include any of its Group/Associate Companies/Promoters to infuse the envisaged equity.

24. Heard the submissions made by the Learned counsel for the Liquidator and Learned Counsel for the successful bidder.

25. The present Application has been filed under Regulation 32(e) of IBBI (Liquidation Process) Regulations, 2016 seeking approval for sale of the "Corporate Debtor as a going concern".



26. The Investor has proposed to pay a sum of Rs.4,41,00,000/- to the secured Financial Creditors. In respect of the other creditors, the entire admitted amount is being paid in full. The Investor has also placed an Affidavit filed under Section 29A of IBC, 2016. The same is appended at page No. 95 to 99 of the Application. The Investor has also proposed to pay the entire CIRP and the Liquidation cost as on the date of approval of this Application and to infuse Rs. 6,07,30,880/- as working capital for taking over the Corporate Debtor as a going concern and future course of action.

27. Taking into consideration the facts and circumstances of the present case, the Application filed by the Liquidator for sale of "Corporate Debtor as a going concern" stands allowed.

28. The Liquidator, after distributing the proceeds to the stakeholders as per Section 53 of IBC, 2016 may file an Application under Regulation 45(3) of the IBBI (Liquidation Process) Regulations, 2016 for closure of Liquidation process.



29. It is made clear that the Respondent shall infuse the balance amount within a period of 60 days from the date of this order, failing which the entire amount paid by the Investor (*including the EMD Amount and a sum of Rs.2,00,50,000/-*) shall stands forfeited, without any recourse to this Tribunal.

30. With the above said directions, IA(IBC)/904(CHE)/2023 stands allowed.

**SATYA RANJAN PRASAD**  
MEMBER (TECHNICAL)

**SANJIV JAIN**  
MEMBER (JUDICIAL)