

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

I.A. 2972 OF 2022

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

Mr. Vivek Murlidhar Dabhade

Resolution Professional/
...Applicant

And

I.A. 872 OF 2023

Under Section 33(7) of Insolvency &
Bankruptcy Code, 2016

IDBI Bank Limited

...Applicant/
Financial Creditor

In the matter between

Mr. Vivek Murlidhar Dabhade

Resolution Professional
And

I.A. 3372 OF 2022

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

**Punjab National Bank International
Limited**

...Applicant/
Financial Creditor

Vs.

Mr. Vivek Murlidhar Dabhade & Ors.

..... Respondents

And

I.A. 464 OF 2023

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

Namdeo Hindurao Patil

...Applicant/

Vs.

1. **Mr. Vivek Murlidhar Dabhade**
2. **IDBI Bank Limited**
3. **Punjab National Bank (International Limited) London**
4. **Shree Warana Mahila Sahakari Panth Sanstha Limited Warananagar**
5. **Amrut Sevak Sah Pat Sanstha Limited**

..... Respondents

In the matter of

C.P.(IB) No. 477/MB/2020

Punjab National Bank International Limited

..... Financial Creditor

Vs.

M/s Warana Dairy and Agro Industries Limited

[CIN: U15203PN2008PLC132174]

..... Corporate Debtor

Order delivered on: **19.04.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant/RP

:

Mr. Prakhar Tandon i/b Mr. Agam H Maloo, Applicant in IA/2972/2022 and Respondent No. 1 in IA/464/2023 and IA/3372/2022. Mr. Viraj Parikh, Resolution Applicant. Mr. Mithilesh Kumar Pandey, Financial

Creditor. Ms. Vinita
Hombalkar, on behalf of the
IDBI Bank Limited and
Respondent No. 2 in IA-464
of 2023 Respondent No. 3 &
6 in IA-3372 of 2022.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an Application filed by the Resolution Professional, Mr. Vivek Murlidhar Dabhade (hereinafter referred to as the “Applicant”) seeking liquidation of M/s Warana Dairy and Agro Industries Limited (hereinafter referred to as the “Corporate Debtor”) under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”).

The brief facts of the Application are as follows:

2. That this Tribunal vide an Order dated 16.09.2021 in C.P.(IB)477(MB)/2020 admitted the Petition under section 7 of the Code, filed by Punjab National Bank International Limited (hereinafter referred to as the “Financial Creditor”) and Corporate Insolvency Resolution Process (CIRP) was initiated against M/s Warana Dairy and Agro Industries Limited, (hereinafter called as the “Corporate Debtor”). The Applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor by this Tribunal.
3. The 1st CoC meeting was held on 02.11.2021 for substitution of IRP with the RP (Mr. Vivek Murlidhar Dabhade). Thereafter, the Committee of Creditors (CoC) was filed an

Application i.e. IA-2795/2021 for replacement of IRP. The same was allowed on 07.01.2022 by this Bench.

4. The Applicant submitted that the erstwhile IRP Form-G was published on 24.12.2021 for inviting the Expression of Interest (EOI). The last date of submission of EoI on 23.01.2022. In response to the same, eight participants have shown their interest in submitting the EoI. However, two Applicants have submitted the EoI and only one applicant i.e. M/s Nalwa Steel and Power Limited, was eligible as per the criteria set by the CoC.
5. The Applicant submits that the 4th meeting of the CoC was held on 08.02.2022 and obtained the approval of CoC for publishing another EoI by e-voting mode. Thereafter, the Applicant was published again Form-G on 19.02.2022 for invitation of EoI and the last date of submission of EoI on 06.03.2022. In response to, the Applicant received EoI from five Prospective Resolution Applicants (PRAs).
6. However, only two PRAs submitted their Resolution Plans on 12.05.2022 and 13.05.2022. The Resolution Plans were kept for discussion before the CoC Members in the 11th CoC meeting was held on 26.05.2022. Thereafter, the Resolution Plans were discussed and deliberated in various CoC meetings.
7. The Applicant submits that the 21st meeting of CoC was held on 06.10.2022 and 07.10.2022, respectively and following resolution in relation to Plan of Mr. N. H. Patil was proposed for voting of CoC.

1. Non-consideration of the Resolution Plan submitted by Mr. H. N. Patil

The Chairman stated that the majority of the CoC Members i.e., PNB and IDBI having voting percentage of more than 66% were unwilling to consider the Resolution Plan submitted by the PRA Mr. N. H. Patil, after taking into consideration the relevant provision of the code and his status as a wilful defaulter. The following resolution to be passed:

“RESOLVED THAT the CoC members be and hereby decided that Mr. N. H. Patil shall be considered ineligible as resolution applicant because of his wilful defaulter status.

RESOLVED FURTHER THAT the resolution plan submitted by him shall not be considered and put forth for e-voting as it does not comply with the requirements of the Insolvency and Bankruptcy Code, 2016”.

2. Approval/ Rejection of the Resolution plan submitted by Mr. N. H. Patil

It was discussed in the CoC meeting that if the aforesaid resolution No. 1 was not passed with 51% in favour of the same, then thereafter only the below mentioned resolution NO. 2 shall be kept for e-voting. The following resolution to be passed:

“RESOLVED THAT the amended Resolution Plan submitted by Mr. N. H. Patil be and is hereby approved.

RESOLVED FURTHER THAT the Resolution Professional Mr. Vivek M. Dabhade, be and is hereby authorised to incur costs of the said application and the legal fees including advocate's fees and is hereby ratified and shall form part of the CIRP costs."

8. The CoC Members proceeded with the e-voting on the aforesaid Resolution. As per e-voting result of the Resolution No. 1 was approved by 66.37% vote (PNB & IDBI Bank voting in favour), accordingly, the CoC did not vote on Resolution No. 2 and Mr. N. H. Patil was declared as ineligible as the Resolution Applicant, due to his wilful defaulter status. In view of this, CoC resolving not to keep the Resolution Plan submitted by the Resolution Applicant for consideration, the CoC approved resolution for Liquidation of the Corporate Debtor by 66.37% vote, however, the Resolution for approving the appointment of Mr. Ram Ratan Kanoongo as the Liquidator of the Corporate Debtor, was not passed in view of PNB with vote share of 30.71% only voted in favour and all other CoC members voted against it. The relevant extract of the Resolution for liquidation is reproduced herein below for reference :-

***“RESOLVED THAT** pursuant to the provision of section 33 of the IBC, 2016 the Committee of Creditors hereby confirm to liquidate- Warana Dairy and Agro Industries Limited in this meeting held on 6th and 7th October, 2022 respectively.”*

9. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material

available on record, this Bench note from the minutes of CoC meeting held on 06.10.2022 and 07.10.2022 that the CoC had negotiated the Resolution Plan of Mr. N. H. Patil and conditions contain therein. Finally, Mr. Sachin Jindal of the PNB said that *he didn't see much improvement in the plan and the amount provided to the Creditors was very less, again what was due and security value was more than this and the amount proposed doesn't meet their expectations*. Further, Mr. Aditya of IDBI Bank stated that *whatever offer given by the PRA was very less as compared to the admitted amount and also considering the value available to the secured creditors and hence, they are expecting substantial improvement and that the tenure of resolution plan was also not reduced and no payment period envisaged & further release of security pending receipt of entire payment was not agreeable to them*. Mr. Rohan of PRA stated that this is the final proposal, however, sought some time to convey, if *they are willing to reduce the tenor for full repayment under resolution plan from 5 years to 4 years*. Finally, the RP asked the CoC members to take the final decision considering the time limit. At this the Members acknowledged that *even though the CoC members discussed the resolution plan continuing the Corporate Debtor as a going concern and liquidation as the last resort and considering the commercial wisdom and business decision, but there was no eligibility and that needs to be checked, as the action of the IDBI Bank had not been dismissed by the Civil Court as of now*.

-
10. This Bench feels that CoC has discussed the eligibility and Resolution Plan of Mr. N. H. Patil and finally the issue of eligibility prevailed on their decision. This Bench finds that the Court permits sale of Corporate Debtor as going concern under Liquidation process and the SRA, in question, is still not cleared from his status as wilful defaulter because the matter is still sub-judice before the Hon'ble Civil Court. Accordingly, at the moment he cannot be said to be eligible u/s 29A of the Code, and the CIRP process cannot be put to halt for this matter alone. Hence, this Bench is of the considered view that the decision of CoC does not require any interference. Accordingly, this Bench is of the opinion that the Corporate Debtor is required to be liquidated in the manner as laid down in the IBC 2016.
11. In view of our observation in Para 10 in CoC decision rejecting Mr. N. H. Patil as the Resolution Applicant, **the IA-3372/2022 become infructuous** as PNB has sought directions restraining RP and CoC to entertain Mr. N. H. Patil as a Resolution Applicant eligible u/s 29A of the Code.
12. In view of discussion at Para 9 and 10 above, this Bench feels that CoC is decision does not require any interference, hence, this Bench cannot allow the prayer sought by the PRA in IA-464/2023 for directions to RP and CoC to consider his Plan. Accordingly, **the IA-464/2023 is dismissed.**
13. We also note that the IDBI Bank (holding vote share of 35.66%) has filed Interlocutory Application Numbered as IA-872/2023 proposing name of Mr. Vijendra Kumar Jain as a Liquidator of the Corporate Debtor, while PNB (with vote

share of 30.71%) voted in favour of the appointment of Mr. Ram Ratan Kanoongo as the Liquidator of the Corporate Debtor. This Bench also finds that none of the members of the CoC has considered the name of Resolution Professional for acting as the Liquidator. This Bench also finds, there is a conflict between two largest Financial Creditor and the CoC had considered six Insolvency Professionals for recommending to act as a Liquidator. The Chairman of the meeting had suggested name of Mr. Indrajit Mukherjee in view of least fee quoted by him. This Bench also finds that he is empanelled with PNB as well as IDBI and has sufficient experience in liquidation process also. Accordingly, this Bench appoints him as a Liquidator of the Corporate Debtor. This Bench also finds that CoC had agreed on the fee to be paid to the prospective Liquidator and the same is stated in details in the table at page No. 149 and 150 of IA-2972/2022. Accordingly, this Bench orders that he shall be paid the same remuneration and out pocket expenses as stated in said table. In view of this, **IA-872/2023 becomes infructuous and disposed of** accordingly.

ORDER

14. The above I.A. No. 2972/2022 is allowed and the Corporate Debtor i.e. M/s Warana Dairy and Agro Industries Limited is ordered to be liquidated in the manner specified under the Insolvency and Bankruptcy Board of India (Liquidation Process Regulations) Regulations, 2016.
 - a. **Mr. Indrajit Mukherjee**, having Registration No. No IBBI/IPA-001/IP-P-01533/2018-2019/12450 is hereby

appointed as the Liquidator as provided under Section 34(1) of the Code.

- b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. The Liquidator appointed under section 34(1) of the Code. All 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 with the liquidator.
- e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- f. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor

save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.

- h. This liquidation order u/s 33(7) shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
- i. The liquidator shall be at liberty to pursue pending the Interlocutory Application pertaining to avoidance transactions, if any.
15. With the above directions, the I.A. No. 2972/2022 filed u/s 33(1) by the applicant is hereby **allowed** and **disposed of**.
16. **IA-3372/2022** & **IA-872/2023** become **infructuous**. **IA-464/2023** is **dismissed**. **I.A. No. 2972/2022** is **allowed**.

Sd/-

PRABHAT KUMAR
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)