IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT II

IA. No. 2756/2022

In

CP(IB)No. 344/MB/C-II/2019

Application filed under section 33 of Insolvency and Bankruptcy Code, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016.

Mr. Laxmikant Yeshwant Desai, RP of

Elexir Distributors Private Limited

…Applicant

In the matter of

Glance Investments (India) Private Limited

…Financial Creditor

V/s

Elexir Distributors Private Limited.

…Corporate Debtor

Order Pronounced on: - 01.01.2024

Coram:

Anil Raj Chellan	**: Kuldip Kumar Kareer**
Member Technical	**: Member Judicial**

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT II

IA. No. 2756/2022

In

CP(IB)No. 344/MB/C-II/2019

Appearances :-

For the Applicant **:** Aniruth Purusothaman

ORDER

Per : Coram

1) This is an application filed u/s 33 of the Insolvency and Bankruptcy Code, 2016 ("the Code") by Mr. Laxmikant Yeshwant Desai, Resolution Professional (RP) of Elexir Distributors Private Limited ("the Corporate Debtor") seeking liquidation order based on the resolution passed by the Committee of Creditors (CoC)**in its 4th meeting held on 12.09.2022**

2) On perusal of this application, it appears that CP No. (IB)-344 (MB)/2019 was admitted by this Tribunal on 22.03.2022 and Mr. Laxmikant Yeshwant Desai was appointed as Interim Resolution Professional (IRP) of the Corporate Debtor. The Applicant issued a public announcement inviting proof of claims and the same was published on the website of the IBBI on 22.01.2021 and in the newspapers Free Press Journal and Navshakti on 23.03.2021.

3) In the 1st CoC meeting held on 19.04.2022, the Insolvency Resolution Professional (IRP) had informed the CoC that he had received five claims

out of which 4 were from Financial Creditor and 1 from Operational Creditor. It was also briefed to the CoC regarding the Interlocutory Application filed by IRP in respect of error in name of Corporate Debtor in Admission order which was allowed and disposed of. Further it was voted upon to appoint the current Interim Resolution Professional as Resolution professional for Corporate Insolvency Resolution Process (CIRP).

4) In the 2nd CoC meeting held on 12.05.2022, Mr. Manoj Kumar Jain and Mr. Hiren Prajapati had been appointed as the valuers to value the assets of the Company. The Applicant Informed the CoC that Information Memorandum was prepared by the Applicant pursuant to Regulation 36(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016. Information Memorandum's (IM) access is subject to signing the "Confidentiality undertaking". The CoC authorized the Applicant to invite quotations for publication of Expression of Interest (EOI). The Applicant made a paper publication in Form G in the Free Press Journal (English) and in Navshakti (Marathi) on 13.05.2022 as approved in the meeting.

5) In the 3rd CoC meeting held on 06.07.2022, as the Form G was published on 13.05.2020, the CoC was informed that the last date for the receipt of EOI was 30.05.2022 and the last date for submission of Resolution Plan is 11.07.2022. The Applicant had further informed the CoC that he had

received 5 separate EoI which were not as per the format. The applicant shared the EoI format with each one of them and requested them to execute confidentiality undertaking to enable sharing request for Resolution Plan and if in the event of continued interest to submit the Resolution Plan, to deposit the required EMD. However, none of the said participants showed any further interest, neither they executed the confidentiality undertaking nor they tried to seek any further information from the Applicant.

6) In the 4th CoC meeting held on 12.09.2022, the Applicant informed the members about the Valuation report from the valuers. The Applicant also showed the members the Audit report received from Mr. Rishi Sekhri and associates dated 07.09.2022. As the Applicant had not received any Resolution Plan, the Applicant requested CoC to consider two options namely -

A. To Publish Fresh invitation (EOI) to seek fresh bids towards Expression of Interest and Resolution Plan from prospective resolution applicants, or

B. To approve initiation of Liquidation Proceedings against the Corporate debtor.

7) As the Applicant explained that there was no business operation of the Corporate Debtor ever since 2017-2018 and no revenue was generated, the RP had not received any Resolution plan till date and the CIRP period was

ending on 18.09. 2022.Considering the above CoC, unanimously resolved for Option B to approve and initiate Liquidation proceedings U/s 33 of Insolvency and Bankruptcy code 2016 against the Corporate Debtor namely Elexir Distributors Private Limited. Further, in the said CoC meeting it was also decided to appoint Mr. Laxmikant Yeshwant Desai to act as Liquidator for the Liquidation process. The Applicant tabled the estimated Liquidation costs amounting to 35,70,000 with the Liquidation fees being 15,00,000. The relevant extracts of the resolution passed in 4th CoC meeting held on 12.09.2022 are as follows:

> **RESOLVED THAT,** the Corporate debtor namely, Elexir Distributors Private Limited be and is hereby approved for being Liquidated as per provisions of IBC,2016.
>
> **RESOLVED FURTHER THAT** Laxmikant Yeshwant Desai, Resolution Profesional for the Corporate debtor, be and is hereby authorized to file for Liquidation application at the earliest, with the appropriate adjudicating authority, for the commencement of Liquidation proceedings in respect of the Corporate Debtor under section 33 of the Insolvency and Bankruptcy Code, 2016.

Further, the members of the CoC also approved and resolved to appoint the Resolution Professional as the Liquidator of the Corporate Debtor and passed the following resolution:

RESOLVED THAT the consent of members be and is hereby accorded to appoint Mr. Laxmikant Yeshwant Desai having registration No. (IBBI/IPA-001/IP-P01669/2019-2020/12641) as the Liquidator of the Company and the Liquidator's fee will be as per Regulation 4(2)(b) of the of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

8) As per Additional Affidavit filed by the Applicant, Applicant wants to withdraw his consent in Form-2 which was given in the 4th CoC meeting to perform his duties as Liquidator reason being certain urgent medical emergencies occurred in family. Further one of the members of CoC namely M/s Aurum Platz Private limited approached Ms. Nishi Jain to act as Liquidator. Ms Nishi Jain accepted the offer and provided her consent form.

9) Looking at the application and averments made therein, we are of the considered opinion that this is a fit case for liquidation. Therefore, we hereby order the liquidation of the Corporate Debtor the following terms:

a. The **Ms. Nishi Jain**, holding Registration **No. IBBI/IPA-001/IP-P01662/2019-2020/12664**, is appointed as the Liquidator in terms of

Section 34 of the Code;

b. Registry is directed to communicate this Order to the Registrar of Companies, Mumbai and to the Insolvency and Bankruptcy Board of India;

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

d. This order shall be 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;

e. 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 rules and regulations.

f. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.

g. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor if any as per law.

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. Copy of this order be sent to the financial creditors, corporate debtor, the Liquidator for taking necessary steps.

10) The **IA-2756/2022** filed by the RP for Liquidation of the Corporate Debtor stands **allowed accordingly in aforesaid terms.**

Sd/-	**Sd/-**
ANIL RAJ CHELLAN	**KULDIP KUMAR KAREER**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**