BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

IA 439 of 2019 in C.P.(I.B) No. 248/NCLT/AHM/2018

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 30.09.2019

Name of the Company: Abhishek Nagori RP for Osaka Pharmaceuticals Pvt. Ltd.

Section of the Companies Act : Section 33(1) & 33(2) of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Akshat Khetan with Romini Purohit for Musale Experts	Advocate	RP	Purohit Romini
2.				

ORDER

The RP is represented through learned counsel.

The Order is pronounced in the open court, vide separate sheet.

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 30th day of September, 2019

BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

I.A. No. 439 of 2019
in
CP(IB) No. 248 of 2018

In the matter of:

IA 439/2019

Abhishek Nagori
RP for Osaka Pharmaceuticals Private Limited
(Under Corporate Insolvency Resolution Process)
3rd Floor, Tower A, Atlantis K-10,
Opp. of Vadodara Central,
Sarabhai Main Road,
Vadodara – 390 023.
Gujarat ...Applicant

in

CP(IB) No. 248 of 2018

Western Pharma ...Applicant

Vs.

Resolution Professional,
Osaka Pharmaceuticals Pvt. Ltd. ...Respondent

Order delivered on 30th September, 2019

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance : Advocate Mr. Akshat Khare is present for the Petitioner

ORDER

[Ms. Manorama Kumari, Member (Judicial)

1.1 CP(IB)No. 248/2018 was filed by the Proprietor of M/s Western Pharma under section 9 of the Insolvency and Bankruptcy Code, 2016 hereinafter referred to as IB Code, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authorities) Rules, 2016 seeking reliefs under section 9 of the IB Code in respect of M/s. Osaka Pharmaceuticals Private Limited, a company having its registered office at Ahkarba, Dist. Baroda treating as a Corporate Debtor.

1.2 This Adjudicating Authority admitted the said CP(IB) No. 248/2017 on 10.10.2018 and appointed Shri Hiten M. Parikh, as the Interim Resolution Professional (hereinafter referred to as "IRP"). However, CoC, in its first meeting held on 12.11.2018 replaced the IRP, so appointed by this Adjudicating Authority, unanimously and appointed Mr. Abhishek Nagori, as the Resolution Professional, hereinafter referred to as "RP".

2. The RP of the Corporate Debtor Company filed IA No. 439 of 2019 in the aforesaid Company Petition (IB) No. 248 of 2018 for liquidation of the Corporate Debtor Company Osaka Pharmaceuticals Limited under section 33(1) and 33(2) of the Insolvency and Bankruptcy Code, 2016 and for the appointment of the Liquidator.

3. It is stated in the application that CIRP expired on 06.07.2019 after expiry of the extension of 90 days granted by this Adjudicating Authority in its order 05.04.2019 in IA No. 190 of 2019

4. The RP has stated in the application that since no resolution plans were received in response to first invitation of EoI, the RP with the approval of CoC in its 4th meeting held on 09.05.2019 published 2nd invitation for EoI in Business Standard (English) and Sandesh (Gujarati) Newspaper on 10th May, 2019 with last date of receipt of EoIs as 25.05.2019 and the date of issuance of the final list of the prospective resolution applicants as 29.05.2019 and the last date for submission of the resolution plan was fixed as 03.07.2019.

5. The RP submits that even after publication of the second invitation of EoI, no resolution was received from any resolution applicant and which resulted into failure of resolution process.

Bhattacharyya Hamsari

6. It is submitted that RP called 6th meeting of CoC on 06.07.2019 seeking direction of CoC for initiation of liquidation proceedings by filing application before NCLT, Ahmedabad. The CoC under agenda item No. 08 approved filing of an application liquidation before the NCLT and proposed the name of RP as Liquidator in the present case.

7. Accordingly, as per the decision of meeting of CoC taken in its 6th meeting, the RP addressed a letter dated 8th July, 2019 to this Bench inter alia giving his consent and willingness to act as the Liquidator in the present matter and filed the instant with the following prayers:

   (a) To pass an order for liquidation of Corporate Debtor M/s. Osaka Pharmaceuticals Private Limited under Sec. 33(1) & 33(2) of the Insolvency and Bankruptcy Code, 2016 and

   (b) To appoint Mr. Abhishek Nagori, the RP, as the liquidator of M/s. Okaka Pharmaceuticals Private Limited as resolved by the Committee of Creditors in its Sixth meeting held on 06.07.2019 under the Insolvency and Bankruptcy Code, 2016.

8. Considering all the above facts and documents annexed with the application, this Adjudicating Authority is of the considered view to pass an order of Liquidation in respect of the Corporate Debtor Company i.e. M/s Osak Pharmaceuticals Private Limited and hereby appoints the Resolution Professional as 'Liquidator' under Section 34(1) of the IB Code.

9. In view of the order of the Hon'ble Supreme Court in the case of ***Allahabad Bank vs. ARC Holding Ltd.***, {[2000] 28 SCL 394 (SC) (para 19)}, we pass the following orders:

   a) The Liquidator, as far as possible, shall try to dispose of the Corporate Debtor Company as a going concern after publication of notice in newspaper with the reserve price which shall be equal to the total debt amount including interest and in the absence of good offer, the Liquidator shall try maximum to recover over and above the liquidation value and allow maximum period applicable for the sale of the Corporate Debtor Company as a going concern, which will be applicable for three months only from the date of the order.

If the process of sale as a going concern is failed during this period, then process of sale of the assets of the Corporate Debtor Company will be according to the provisions contained in Chapter VI of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. In case it is not concluded within this period, the order of this Tribunal directing the sale of the Corporate Debtor Company as a going concern shall stand set aside and Corporate Debtor Company to be liquidated in the manner as laid down in chapter III of the Liquidation Process as provided in IB Code.

b) The Liquidator is further directed to issue public announcement stating that the Corporate Debtor is in liquidation.

c) It is also ordered that copy of the order be sent to the Registrar of Companies with which the Corporate Debtor is registered.

10. Accordingly, the instant IA stands disposed of with the above observations.

Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

LCT