

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

[SPECIAL BENCH]

IA (IB) No. 1478/KB/2020

in

CP (IB) No. 1178/KB/2018

Under section 33 of Insolvency & Bankruptcy Code, 2016

*In the matter of*

J.M. Financial Asset Reconstruction Company Limited

... Financial Creditor

Versus

Aditi Health Oils Private Limited

... Corporate Debtor

And

*In the matter of*

Surendra Kumar Agarwal, Resolution Professional of aditi Health Oils Private Limited

... Applicant

***Coram:***

Shri Rajasekhar V.K., Member (Judicial)

***Appearances (through video conferencing):***

For the Resolution Professional

Mr. Vikash Singh, Advocate

Mr. Surendra Kumar Agarwal, Resolution Professional present in person

Order reserved on: 05.01.2021

Order pronounced on: 12.01.2021

ORDER

***Per Rajasekhar V.K., Member (Judicial)***

1. This court convened *via* video conferencing.
2. This is an application filed by the Resolution professional upon the instructions of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, *viz.*, Aditi Health Oils Private Limited [CIN: U74994WB1999PTC089807], on the ground that no resolution plan had been received.
3. This Adjudicating Authority *vide* its order dated 21.11.2019 on a Petition filed by JM Financial Asset Reconstruction Company Limited (*financial creditor*) under section 7 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed Mr. Debashis Nanda as the Interim Resolution Professional (IRP).
4. The Interim Resolution Professional in terms of section 15 of the Code, made public announcement on 28.11.2019 in *Financial Express* (English) and *Dainik Jugsankha* (Bengali), Kolkata Edition, fixing 11.12.2019 as the last date for submitting the claim.
5. The Committee of Creditors (CoC) was duly constituted with two Financial Creditors, and the Report certifying the constitution of the CoC was filed with the Adjudicating Authority.
6. The first meeting of the CoC was held on 19.12.2019, wherein *inter alia* resolution was passed for replacement of the Interim Resolution Professional and appointing the Applicant as the Resolution Professional.
7. By an order dated 01.01.2020, this Adjudicating Authority allowed CA (IB) No. 1800/KB/2019 for replacement of IRP and appointed Mr. Surendra Kumar Agarwal as the Resolution Professional.

8. The Resolution Professional had published Form G for Invitation of Expression of Interest on four dates i.e. 24.02.2020, 11.03.2020, 25.08.2020 and 10.10.2020 in Business Standard [English] in Kolkata, Orissa and Bihar edition and Bartamaan [Bengali] newspapers. No detailed EOI has been received by the Resolution Professional.
9. In the third CoC meeting held on 21.02.2020, the CoC approved that EOI process document, eligibility criteria document and to extend the time period for EOI receipt last date by 15 days in case no EOI receipt till the end of last date as per 1<sup>st</sup> EOI. the CoC in the fourth meeting held on 07.03.2020, resolved to extend the period for receipt of EOI further by 15 days.
10. At the tenth meeting of the CoC held on 02.12.2020, the Resolution Professional proposed that the Corporate Debtor be liquidated. It was also resolved that the Corporate Debtor should be liquidated. The proposal was approved with 100% voting in favour. The minutes of the said meeting and the voting results have been placed on record and annexed to the IA.
11. The Applicant/Resolution Professional, Mr. Surendra Kumar Agarwal [Regn. No. IBBI/IPA-001/IP-P00825/2017-18/11401] has agreed to act as liquidator to carry on the process of liquidation and has given his consent to act as Liquidator, in the prescribed Form AA, in terms of section 34(1) of the Code and has also filed Form B for Authorisation for Appointment in terms of Regulation 7A the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2019, which is valid till 03.12.2021.
12. I have considered the submission made by the Applicant/RP in person and perused the record.
13. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating authority of the decision of the CoC approved by not less than sixty-six

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percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 100% voting share to liquidate the Corporate Debtor.

14. This Bench, therefore, hereby orders as follows: -

- a. IA No. 1478/KB/2020 filed by Mr Surendra Kumar Agarwal, RP of Aditi Health Oils Private Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;
- b. Mr. Surendra Kumar Agarwal [Regn. No. IBBI/IPA-001/IP-P00825/2017-18/11401], is hereby appointed as Liquidator as provided under section 34(1) of the Code, and he possesses a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which she is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.
- c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, *i.e.*, *Financial Express* (English) and *Dainik Jugsankha* (Bengali), Kolkata Edition, stating that the Corporate Debtor is in liquidation.
- e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. On initiation of the liquidation process but 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, as provided in section 33(5) of the Code read with its proviso.

- h. In accordance with section 33(7) of the Code, this liquidation order 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. In terms of section 33(1)(b)(iii) of the Code, the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.
15. The application bearing **IA (IB) No. 1478/KB/2020** shall stand disposed of in accordance with the above directions.
  16. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Authorised Representative for information and for taking necessary steps.
  17. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
  18. List the main **CP (IB) No.1178/KB/2018** for reporting progress on **23.04.2021**

Rajasekhar V.K.

Member (Judicial)

*Signed on this 12<sup>th</sup> day of January, 2021.*