

THE NATIONAL COMPANY LAW TRIBUNAL
COURT-IV
AT NEW DELHI

I.A. 3589/ND/2020

IN

Company Petition No. (IB) -1311 (ND)/2018

Under Section 33(1) (a) of the Insolvency and Bankruptcy Code, 2016 for liquidation of the corporate debtor

In the matter of:

M/s FE Agrochem Private Limited

Deepak Khandelwal

...Petitioner/Financial Creditor

Versus

M/s FE Agrochem Pvt. Ltd

....Respondent/ Corporate Debtor

Order delivered on: 21.02.2022

CORAM:

DR. DEEPTI MUKESH, HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

ORDER

Per SMT. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

1. This is an application filed by the Resolution Professional under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the Corporate Debtor.

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2. Mr. Deepak Khandelwal, one of the Operational Creditor of the Corporate Debtor, filed an application before this Tribunal under Section 9 of the Code read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating the Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor. The said application was admitted by this Tribunal, vide order dated 03.09.2019, appointing Mr. Prabhakar Kumar as Interim Resolution Professional.
3. Subsequently, on an application filed by the sole CoC member of the Corporate Debtor, Canara Bank this Tribunal appointed the applicant as the Resolution Professional vide order dated 13.01.2020.
4. In compliance of Regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the applicant published the Form G for invitation of Expression of Interest on 06.02.2020 in Business Standard English and Business Standard Hindi covering Delhi- NCR and whole of Rajasthan. The Expression of Interest "CEOI" on Form G, the eligibility criteria of Prospective Resolution Applicant ("PRA"), Evaluation matrix and Request for Resolution Plan ("RERP") was got approved from CoC in the 4th CoC meeting held on 06.02.2020.
5. After receiving no resolution plan on the Form G published on 06.02.2020, the CoC of the Corporate Debtor in 7th CoC meeting

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resolved to publish another revised Form G as per the regulations. The fresh Form G, inviting EOI, is published on 12.03.2020 in Financial Express English and Jansatta Hindi covering Delhi - NCR and Times of India English and Arun Prabha Hindi covering whole Rajasthan, with last date of receipt of EOI as 27.03.2020.

6. Due to the Covid-19 and subsequent lockdown declared by the Government of India and the notification no. IBBI/2019-20/GN/REG059, dated 29.03.2020, passed by the Insolvency and Bankruptcy Board of India, the last date of submission of EOI was extended by the Resolution Professional, from 27.03.2020 to 03.06.2020. It is also pertinent to mention herein that the Hon'ble National Company Law Appellate Tribunal passed the *suo-moto* order, dated 30.03.2020, directing that the period of lockdown shall be excluded for the purpose of counting of the period for "Resolution Process under Section 12 of the Code, in all cases where CIRP has been initiated and pending before any bench of the National Company Law Tribunal or in Appeal before the Appellate Tribunal.
7. Thereafter, in the 9th of COC meeting, held on 29.07.2020, the Resolution Professional informed COC, that the sole Proporesed Resolution Applicant on the date of submission of Resolution plan, sent an email requesting for removal of the stipulated condition in Request for Resolution plan i.e. depositing of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) with Resolution Plan and requested that it will be complied once the plan is approved by COC and LOI is issued in his favour.

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8. However, the COC member decided if the conditions stipulated in the Request for Resolution Plan are not fulfilled, then same will be questionable in the eyes of law. Furthering, considering that there is no scope in again publishing FORM G, as the extension period of CIRP is going to expire soon. Therefore, the COC rejected the request of the Proposed RA and decided to call the next meeting to propose for liquidation of the Corporate Debtor.
9. In 10th CoC meeting, held on 04.08.2020, it was observed by the CoC that there is no feasibility and viability in continuing with the CIRP of the Corporate Debtor, and the CoC advised the Resolution Professional to move an application before this Hon'ble Tribunal for liquidation of the Corporate Debtor under Section 33(1) of the Code.
10. In the same meeting, the appointment of the Resolution Professional as the Liquidator of the Corporate Debtor was also confirmed.
11. In view of the submission made by the parties, the liquidation has to follow as recommended by the Committee of Creditors in terms of provisions of Section 33 (1) of the Code. Adherence to statutory requirement has to be in toto. When the language of the Code is clear and explicit the Adjudicating Authority must give effect to it whatever may be the consequences and in present case the consequence is liquidation of Corporate Debtor.
12. In the factual background, since there is no resolution plan, period of CIRP has since been ended without any approved resolution

Signature

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plan, the payer for liquidation of the corporate debtor under Section 33 of the Code is hereby allowed.

13. Resultantly, the present application IA No. 3578/ND/2020 stands allowed and hereby it is ordered that liquidation of the corporate debtor, namely M/s. FE Agrochem Pvt. Ltd. shall be commenced in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

- a. The present RP Mr. Akarsh Kashyap, having registration number IBBI/IPA-001/IP-R00566/2017-18/11042, is appointed as Liquidator in terms of Section 34(1) of the Code.
- b. Mr. Akarsh Kashyap, is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Regulations);
- c. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d. The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Code shall commence;

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- e. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Code and in accordance with the relevant regulations.
- f. The liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (l) of the Code.
- g. The liquidator shall also follow pending application, if any, for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor 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 Regulations.

Resultantly the present application stands allowed

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

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(SUMITA PURKAYASTHA)

MEMBER (T)

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(DR. DEEPTI MUKESH)

MEMBER (J)

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