



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA(IBC)/2378(CHE)/2023 in CP(IB)/61(CHE)/2022
(Filed under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016)

In the matter of M/s. Gonglu Agro Private Limited

Lalit Kumar Dangi
Resolution Professional of
Gonglu Agro Private Limited

... Applicants

Order Pronounced on 5th January 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : Pawan Jhabakh, Advocate

ORDER

(hearing conducted through VC)

The present Application has been filed by the Resolution Professional of M/s. Gonglu Agro Private Limited under Section 33(1)(a) of IBC, 2016 seeking relief as follows;

- a. Liquidate the Corporate Debtor i.e. Gonglu Agro Private Limited having CIN: U15500TN2013PTC090649 in accordance with Section 33(1)(a) of Insolvency and Bankruptcy Code, 2016;*
- b. Appoint the applicant i.e. Mr. Lalit Kumar Dangi having Registration Number: IBBI/IPA-001/IP-P01821/2019 – 2020/12859 as Liquidator of the Corporate Debtor in accordance with the*



provisions of Section 34(1) of Insolvency and Bankruptcy Code, 2016;

- c. Direct the applicant to cause the Public Announcement stating that the Corporate Debtor is in liquidation;*
- d. Direct the Applicant to serve a copy, of order initiating liquidation, to the Registrar of Companies, Chennai;*
- e. Declare that all the powers of Board of Directors, Key Managerial Personnel, as the case may be, shall cease to have effect and be vested with the applicant in his capacity as Liquidator of the Corporate Debtor;*
- f. Direct the personnel of the Corporate Debtor to extend full co-operation and assistance to the Applicant in carrying out the Liquidation process;*
- g. Pass any other order(s) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.*

2. The Corporate Insolvency Resolution Process ('CIRP') in respect of Corporate Debtor was initiated on 30.05.2022 and the applicant herein was appointed as the "Interim Resolution Professional".

3. 1st CoC meeting was held on 29.06.2022 wherein the Applicant was confirmed to act as the Resolution Professional in respect of the Corporate Debtor. Thereafter, in the 2nd CoC meeting held on 02.08.2022,



the eligibility criteria were discussed and approved by the members of the CoC.

4. Form – G was published by the Applicant on 12.08.2022 in “Thinaboomi” (Tamil) & “Business Standard” (English) and “Deshdoot” (Marathi) and “Deshdoot Times” (English). Pursuant to the same, the Applicant received Expression of Interest from 11 (Eleven) Prospective Resolution Applicants (PRAs) and received only 1 Resolution Plan from the Consortium of Maa Kudargarhi Steels Private Limited and BM Foods.

5. It is stated that the 180 days CIRP period came to an end on 26.11.2022 and the RP filed an application for extension of 90 days vide IA(IBC)/1434(CHE)/2022 and this Tribunal vide its order dated 23.11.2022 allowed the said application and as such the 270th day of CIRP was extended till 13.03.2023.

6. It is stated that in the 10th CoC meeting held on 18.01.2023, the CoC members considered the Final Resolution Plan. The Resolution Plan submitted by Consortium of Maa Kudargarhi Steels Private



Limited and BM Foods was rejected by the CoC. Thereafter, the CoC in the 11th meeting held on 14.02.2023, decided to issue fresh invitation for Expression of Interest in Form – G. Accordingly, the Applicant again published Form – G inviting Expression of Interest on 21.02.2023 in “Thinaboomi” (Tamil) & “Business Standard” (English) and “Deshdoot” (Marathi) and “Deshdoot Times” (English), with the last date for submission of Expression of Interest on 08.03.2023.

7. In the meantime, since 270 days CIRP period was about to come to an end, the Applicant moved IA(IBC)/463(CHE)/2023 seeking extension of 60 days. Accordingly, this Tribunal vide its order dated 20.04.2023, extended the 330-day CIRP period till 12.05.2023.

8. Pursuant to second Form – G, the Applicant received Expression of Interest from 4 (four) PRAs and received only one Resolution Plan from Consortium of Maa Kudargarhi Steels Private Limited and BM Foods, who had submitted the Resolution Plan earlier. The said Resolution Plan was put for vote before the CoC and it garnered only 43.05% of the vote in its favour.



9. Since the 330-day CIRP in respect of the Corporate Debtor came to an end on 12.05.2023, RP moved IA(IBC)/1067(CHE)/2023 before this Tribunal seeking liquidation of the Corporate Debtor. In the said Application, this Tribunal vide its order dated 12.09.2023 observed that the Corporate Debtor is a subsidiary of M/s. Capricorn Food Products India Limited in respect of which the Resolution Plan was approved and as such there are much more prospects for the Corporate Debtor to evince a better Resolution Plan. Further, it was observed that the CoC with 98.59% majority has also approved for issuance of fresh Form – G. Thus, this Tribunal extended the CIRP period of the Corporate Debtor for 60 days.

10. Thereafter, the Applicant published a fresh Form – G again for inviting Expression of Interest on 18.09.2023 in Thinaboomi (Tamil) and Business Standard (English in Chennai Edition) and Deshdoot (in Marathi) & Deshdoot Times (in English in Nashik Edition), with the last date for submission of EoI as 03.10.2023. Pursuant to the same, the Applicant received EoI from 9 PRAs. Out of these 9 PRAs, the RP found



that 1 PRA was not eligible since it did not meet the criteria decided by the CoC under Section 25(2)(h) of IBC, 2016.

11. The Applicant / RP issued Information Memorandum, Request for Resolution Plan (RFRP) and Evaluation Matrix to the PRAs on 06.10.2023. The last date for receipt of Resolution Plan was 05.11.2023 and the last date for completion of CIRP was 11.11.2023. Hence, during the 17th CoC Meeting held on 23.10.2023, it was decided to file an application for the extension of CIRP period for further 30 days to decide on the Resolution Plan. IA(IBC)2133/CHE/2023 was accordingly filed and the same was allowed by this Tribunal vide order dated 07.11.2023.

12. It is stated that only one Resolution Plan was received from Fortune Infra Services Private Limited on 05.11.2023. In the 20th CoC meeting held on 23.11.2023, the COC members considered the Resolution Plan and the same was put to vote. The E-Voting concluded on 09.12.2023 at 05:00 PM and the Resolution Plan submitted by the Fortune Infra Services Private Limited was **not approved** by the COC.



The summary of voting on the Resolution Plan is mentioned in the table below;

S. No.	NAME OF CoC MEMBER	VOTING SHARE (%)	ASSENT / DISSENT / ABSTAINED / NOT VOTED
1	Axis Bank Limited	55.54%	Dissent
2	Areion Finserve Pvt. Ltd.	43.05%	Assent
3	State Bank of India	1.41%	Not Voted
TOTAL		100%	

13. Under this circumstances, since no Resolution Plan was approved by the CoC before the expiry of the CIRP period, in terms of Section 33(1)(a) of IBC, 2016, the Corporate Debtor is required to be liquidated. Hence the RP has filed the present Application.

14. Heard the submissions made by the Learned Counsel for the RP and perused the records.

15. It is seen that the Resolution Plan submitted by the PRA did not garner the requisite vote of 66% and hence in terms of Section 33(1)(a) of IBC, 2016, the Corporate Debtor is required to be liquidated. Further, the Hon'ble Supreme Court in the matter of **K. Sasidharan –Vs– Indian Overseas Bank (2019) SCC OnLine SC 257** has held that the commercial wisdom of CoC in approving / rejecting a Resolution Plan or for



recommending for Liquidation of the Corporate Debtor cannot be subjected to judicial review by the NCLT. We therefore order for Liquidation of the Corporate Debtor.

16. In relation to the appointment of Liquidator, it is seen that IBBI vide its power vested under Section 34(4)(b) has recommended that an Insolvency Professional other than the RP / IRP shall be appointed as Liquidator, in all the cases where an order of Liquidation is passed.

17. As a consequence, the Corporate Debtor is ordered for liquidation as per Section 33(1)(a) of IBC, 2016. From the latest list furnished by IBBI for the period from 01.01.2024 to 30.06.2024, we appoint **S R SHRIRAM SHEKAR** with *Reg. No. IBBI / IPA-003 / IP-N000144 / 2017 – 2018 / 11598* (**email:- shekhershiraam@gmail.com**) as the Liquidator of the Corporate Debtor, to carry out the liquidation process subject to the following terms of the directions.

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.



- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.

- d) 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.

- e) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.

- f) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

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18. The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;

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

20. Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

21. With the above said directions, this IA(IBC)/2378/CHE/2023 filed for Liquidation of the Corporate Debtor stands **allowed**.

— Sd —

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

— Sd —

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond