

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA
(Special Bench)

IA No. 1027/KB/2020
In
CP (IB) No.440/KB/2018

Under section 33 of Insolvency & Bankruptcy Code, 2016

In the matter of

Huvepharma Sea (Pune) Private Limited

...Operational Creditor

Versus

Amrit Feeds Limited
[CIN:U15339WB1994PLC064082]

...Corporate Debtor

And

Pankaj Kumar Tibrewal
RP of Amrit Feeds Limited

... Applicant

Order reserved on: 18.12.2021

Order pronounced on: 19.02.2021

Coram:

Shri Rajasekhar V.K. : Member (Judicial)

Appearances (through video conference):

For the Applicant : Mr. Arik Banerjee, Advocate
Mr. Naresh Kumar Agarwal, Advocate
Mr. Arun Kumar Gupta, PCA
Mr. Pankaj Tibrewal, RP in person

For the members of suspended : Mr. D.N. Sharma, Advocate
board of directors : Mr. Nirmalya Dasgupta, Advocate
Mr. Shwetaank Nigam, Advocate

ORDER

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

1. This court convened *via* video conference today.

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2. This is an application filed by the Resolution Professional (RP) seeking liquidation of the corporate debtor, *viz.*, Amrit Feeds Limited, (CIN: U15339WB1994PLC064082) on the ground that no Resolution Plan was received.
3. This Adjudicating Authority *vide* its order dated 22.10.2019 on a Petition filed by Huvepharma Sea (Pune) Private Limited (operational creditor) under section 9 of the Insolvency and Bankruptcy Code, 2016 ('the Code') directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the corporate debtor and appointed the Applicant herein as the Interim Resolution Professional.
4. In terms of section 15 of the Code, on 26.1.2020 the IRP made public announcement in Form 'A' in 'Financial Express' (English) and 'Ekdin' (Bengali) of Kolkata edition fixing the last date of receipt of claim as 05.11.2019. Copies of said publications are annexed to the application and marked as Annexure-2 at pages 60 and 61.
5. Pursuant to the said public announcement, claim were received by the RP and the RP constituted the Committee of Creditors (CoC) initially with four financial creditors and the first CoC meeting was conducted on 19.11.2019 wherein the CoC confirmed the IRP as the Resolution Professional (RP). The Applicant was confirmed as the RP by this Adjudicating Authority *vide* order dated 29.11.2019. The minutes of first CoC meeting is annexed to the application and marked as Annexure-3 at pages 62 to 85 and the order dated 29.11.2019 is annexed to the application and marked as Annexure-4 at page 86.
6. Further, on receipt of claims from two more financial creditors, the CoC was reconstituted and the RP issued a notice dated 03.12.2019 for convening the second CoC meeting on 06.12.2019.
7. In the second CoC meeting held on 06.12.2019, the CoC approved the proposal of publication of Form G. Accordingly, invitation for Expression of Interest

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- (EoI) was published in Form 'G' on 11.12.2019 in all India edition of 'Financial Express' (English) and 'Jansatta' (Hindi), and in Kolkata edition of 'Ekdin' (Bengali) fixing the last date for receipt of EoI as 27.12.2019. Copies of said publications are annexed to the application and marked as Annexure -8 at pages 134 to 136.
8. No EoI was received by the RP in response to the publications made. Therefore, in the third CoC meeting held on 14.01.2020, the CoC decided to republish the Form G. Accordingly, on 17.01.2020, the RP republished the Form G fixing the last date for receipt of EoI as 16.02.2020. Copies of CoC meeting and said republication of Form G are annexed to the application and marked as Annexure-9 at pages 137 to 148 and Annexure-10 at pages 149-151, respectively.
9. In the fifth CoC meeting held on 24.02.2020, the RP informed the CoC that one EoI was received from Anmol Feeds Private Limited and that upon verification of the documents received from the prospective Resolution Applicant, it was declared eligible; the last date for submission of Resolution Plan was fixed on 27.03.2020. However, no Resolution Plan was received by the RP. In the sixth CoC meeting held on 04.04.2020, in view of the lockdown imposed due to the Covid-19 pandemic, it was decided that the prospective Resolution Applicant would be given an extension of five days after the lockdown gets lifted.
10. In the eighth CoC meeting held on 08.07.2020, the RP informed the CoC that the prospective Resolution Applicant had withdrawn its interest and that the RP had received emails from few other prospective Resolution Applicants interested in submitting their EoIs. The CoC, in the said meeting, passed a resolution to publish the Form G for a third time. Accordingly, on 14.07.2020, the RP republished the Form G in all India edition of 'Financial Express' (English) and 'Jansatta' (Hindi), and in Kolkata edition of 'Ekdin' (Bengali) fixing the last date for receipt of EoI as 20.07.2020.

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11. In the ninth CoC meeting held on 10.08.2020, the RP apprised the CoC that one EoI was received from a prospective Resolution Applicant and that the last date for submission of Resolution Plan was 03.08.2020. A prospective Resolution Applicant had sought for extension of to submit its Resolution Plan. However, in absence of ratification by the CoC of the extension of time to submit the Resolution Plan, no Resolution Plan was received.
12. The RP from time to time kept informing the CoC of the non-cooperation from the members of the suspended board of directors of the Corporate Debtor, the applications filed before the Adjudicating Authority in that regard and the progress thereof. The RP apprised the CoC of the same even in the tenth CoC meeting held on 25.08.2020. The said meeting was adjourned to 28.08.2020.
13. In the said meetings held on 25.08.2020 and 28.08.2020, the CoC decided against applying for extension of CIRP period and decided to go ahead with the liquidator. Punjab National Bank, one of the members of the CoC proposed the name of Mr. Avishek Gupta to be appointed as the liquidator of the Corporate Debtor. This was put to vote and as per the request from the CoC, the e-voting lines were to be open from 15.09.2020 to 16.09.2020. However, on 08.09.2020 the Punjab National Bank withdrew the name of Mr. Avishek Gupta and proposed the name of Mr. Pratim Bayal to appoint as the Liquidator. Resultantly, the RP did not initiate the e-voting on the proposed dates.
14. In the twelfth CoC meeting held on 25.09.2020, the CoC with 93.21% of votes in favour approved the resolution to liquidate the Corporate Debtor. It was further resolved, with 93.21% of votes in favour, that Mr. Pratim Bayal (Regn. No. IBBI/IPA-003/IP-N00213/2018-2019/12385) be appointed as the liquidator.
15. During the hearing of the present application, learned counsel appearing for the members of suspended board of directors submitted that the present CoC comprises mainly of Punjab National Bank, therefore, the choice of liquidator is swayed by Punjab National Bank's choice. Relying on an Order dated 25.02.2020 in CP (IB) No. 803/KB/2018, by this Adjudicating Authority, the

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learned counsel prayed for appointment of an independent person from the panel of Insolvency and Bankruptcy Board of India (IBBI).

16. Learned counsel appearing on behalf of the Applicant responded to this by submitting that if there is any objection to the appointment of the proposed professional as liquidator then the present RP, the Applicant, may be appointed as the liquidator instead.
17. I have heard the Id. Counsel appearing for the applicant as well as the Id. Counsel representing the members of the suspended board of directors, and perused the record.
18. 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 percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 93.21% voting share to liquidate the Corporate Debtor.
19. So far as the question of appointment of the proposed professional as the liquidator is concerned, Punjab National Bank indeed comprises majority of the CoC with 63.76% voting share. However, we do not see how the decision of appointment of the said professional can be swayed by the said Bank. The said professional has been proposed to be appointed only after a resolution by 93.21% votes in favour of the same, just as the resolution to liquidate the corporate debtor has been resolved.
20. As far as reliance on the order dated 25.02.2020 in CP (IB) No. 803/KB/2018 by the learned Counsel appearing on behalf of the suspended board of director is concerned, the factual matrix of the said case is entirely different from the present case. In that order, this Adjudicating Authority did not appoint the professional proposed by one of the members of CoC that coincidentally

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happens to be Punjab National Bank, because in that case, Punjab National Bank had held 99.83% share of votes in the CoC. Other members of the CoC could not have had any say had there been any resolution passed in that regard, since the decision by Punjab National Bank would always meet the majority required by the Code. Moreover, in the said case, as this Adjudicating Authority had observed, the said member (PNB) had misguided the IRP during the CIRP. However, the factual matrix of the present case do not reflect any such incongruity.

21. Be that as it may, this entire squabble over the appointment of liquidator is not only misconceived but also unwarranted. Section 34(1) of the Code envisages that subject to the submission of a written consent by the resolution professional, the Adjudicating Authority *shall* appoint the RP as the Liquidator. The only procedure under the Code for appointment of a Liquidator in an application filed under section 33 of the Code is this, that the RP shall be appointed as the liquidator unless replaced by the Adjudicating Authority under section 34(4), subject to his/her consent to act as such liquidator.
22. In the present case, the RP wanted to continue as the liquidator. This fact finds its support first from the Resolution No.1 under Agenda Item No. 2 of the twelfth CoC meeting for appointment of the RP as the Liquidator which was voted against by 93.21% votes of the members of the CoC.¹ Resolution No. 2 which was for the appointment of Mr. Pratim Bayal as the Liquidator was approved by 93.21% votes. Second, from the submission made by the Ld. Counsel appearing for the Applicant during the hearing of this Petition that if there is any objection to the appointment of the proposed professional as Liquidator then the present Applicant, *i.e.*, the RP, may be appointed as the Liquidator. However, instead of filing his written consent to be appointed as the Liquidator of the Corporate Debtor with this Adjudicating Authority, the RP chose to seek approval from the CoC that has no authority to appoint the Liquidator in the first place. Section 34 of the Code does not envisage any role

¹ At page 328 of the IA (IB) No. 1027/KB/2020.

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for the CoC in appointment of the Liquidator. Both the resolutions under Agenda Item No. 2 of the twelfth CoC meeting are, therefore, misconceived and should have never been put up for discussion, let alone for vote.

23. Therefore, under the said circumstances, neither Mr. Pratim Bayal, whose appointment has been approved by the CoC by drawing authority from a source that is certainly not the Code, nor Mr. Pankaj Kumar Tibrewal, who has failed to submit his written consent under sub-section (1) of section 34 of the Code, can be appointed as the Liquidator of the corporate debtor in the present case.
24. This Bench, therefore, hereby orders as follows: -
- a. IA No.1027/KB/2020 filed by Mr. Pankaj Kumar Tibrewal, RP of Amrit Feeds 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. Invoking the powers conferred by section 34(4)(c) of the Code, this Adjudicating Authority hereby appoints Mr. Sunil Mohan Acharya (Regn. No. IBBI/IPA-003/IP-N000174/2018-2019/12120, email: sunilmohanacharya58@gmail.com as the liquidator of the Corporate Debtor.
 - 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., in 'Financial Express' (English) and 'Ekdin' (Bengali) of Kolkata edition of the said newspapers 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.

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- 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), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the corporate debtor is been registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.
25. The application bearing **IA (IB) No. 1027/KB/2020** shall stand disposed of in accordance with the above directions.
26. **CP(IB) No. 440/KB/2018** to come up for filing of periodical report on **13.05.2021**.
27. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Id. Counsel for information and for taking necessary steps.
28. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Rajasekhar V.K.
Member (Judicial)

19.02.2021

SR (LRA)