

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD  
Court 2**

Free of Cost Copy

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05/02/2021

**IA/37(AHM)2021 in CP(IB) 554/NCLT/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 27.01.2021**

Name of the Company: Shalabh Kumar Daga RP For Silver  
Proteins Pvt Ltd  
V/s  
Silver Proteins Pvt Ltd & Anr  
Section 33 & 34 of IBC,2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.  
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**ORDER**

(Through Video Conferencing)

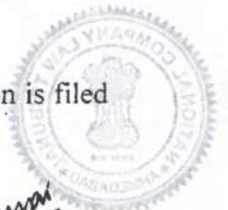
Advocate, Ms. Nitu Chaturvedi is present on behalf of the applicant / RP. Advocate, Ms. Khyati Punjabi is present on behalf of the Suspended Management

- 1) The instant application is filed under Section 33 and Section 34 of the Insolvency and Bankruptcy Code, 2016, by the RP, viz., Mr. Shalabh Kumar Daga, of M/s. Silver Proteins Pvt. Ltd., with following prayers:-
  - a) To allow the liquidation of the CD as the 180 days has completed on 29.12.2020
  - b) To approve the appointment of Mr. Shalabh Kumar Daga as Liquidator pursuant to the third CoC Meeting.
- 2) Notice was sent to the Suspended Management. On behalf of the Suspended Management, Advocate, Ms. Khyati Punjabi is present.
- 3) On receipt of notice, well in time, as on today, no reply / representation is filed by the Suspended Management.



*Shalabh Kumar Daga*

*Manorama Kumari*



Free of Cost

- 4) On perusal of the records it is found that main IB Petition, being numbered as CP (B) 554 of 2018, was admitted on 29.06.2020. Consequently, Expression of Interest (EoI) was invited from potential resolution applicants who wished to submit resolution plans for the revival of the corporate debtor company. However, the RP has received two EoI, but none of the Resolution Applicants, who have shown their interest, have filed Resolution Plan within stipulated period of 90 days.
- 5) Therefore, the Committee of Creditors, in their third meeting dated 24.12.2020, passed resolution, wherein they have decided to go for liquidation of the corporate debtor company due to want of any viable Resolution Plan. Further, they have also passed resolution that the present RP shall continue as liquidator to that effect the RP has given his consent, vide his letter dated 24.12.2020
- 6) The applicant has annexed copy of minutes of the third CoC meeting dated 24.12.2020 along with voting sheet, resolution pertaining to the appointment of Liquidator and written consent of the liquidator, along with the instant application, as Exhibit-G (page 53 to 63).
- 7) Since the CoC has taken its decision based on the commercial wisdom with 100% voting in favour of the liquidation of the corporate debtor, as such, this Adjudicating Authority is of the opinion that the corporate debtor company may be allowed to go for liquidation, under such circumstances.
- 8) It is also pertinent to mention herein that recently the Hon'ble Supreme Court of India in its judgement passed in Civil Appeal No.8766-67 of 2019- *Committee of Creditors of Essar Steel India Limited through Authorised Signatory vs. Satish Kumar Gupta & Ors* observed as follows:

*The commercial wisdom of the Committee of Creditors cannot be interfered into by the Adjudicating Authority. The Hon'ble Supreme Court also affirmed in case of K. Sashidhar's judgement that neither the Adjudicating Authority nor the Appellate Authority has been endowed with the jurisdiction to reverse the commercial wisdom of the CoC.*



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*The Hon'ble Supreme Court took the view that the commercial wisdom has been exercised by the CoC after taking into count all the factors leading to maximisation of asset value of the Corporate Debtor, but the ultimate discretion of what to pay and how to pay each class or sub-class of creditors lies with the CoC.*

- 9) In view of the above, the application so filed by the applicant / RP, is allowed, with following observations:-
- a) The moratorium declared under Section 14 of the IB Code shall cease to have effect from the date of the order of liquidation.
  - b) The Liquidator is further directed to issue public announcement stating that the Corporate Debtor is in liquidation.
  - c) The Liquidator is required to send certified copy of this order to the authority with which the Corporate Debtor is registered.
  - d) Subject to Section 52 of the IB Code, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
  - e) This Authority makes it clear that para (d) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
  - f) The Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
  - g) All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the Company Liquidator. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the IB Code, 2016, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
  - h) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

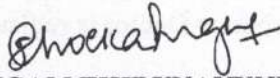


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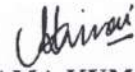
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- i) The Company Liquidator shall be entitled to charge such fee for the conduct of the liquidation proceedings in such a proportion to the value of the liquidation estate assets as may be specified by the Board.
  - j) The Registry is directed to communicate this order with immediate effect to the concerned Registrar of Companies, registered office of the Corporate Debtor and Company Liquidator for information and compliance.
- 10) The RP appointed for the CIRP, shall act as the Liquidator for the purpose of liquidation of the Corporate Debtor.
- 11) Accordingly, the instant IA is allowed and disposed of with the above observations.




  
**CHOCKALINGAM THIRUNAVUKKARASU**  
**MEMBER (TECHNICAL)**

Dated this the 27<sup>th</sup> day of January 2021  
sudha

  
**MANORAMA KUMARI**  
**MEMBER (JUDICIAL)**

**Certified to be True Copy of the Original**

  
**Assistant Registrar**  
**NCLT, Ahmedabad Bench**  
**Ahmedabad**

