IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

IA No. 1247/KB/2020
in
CP (IB) No. 201/KB/2019

Under section 33 of Insolvency & Bankruptcy Code, 2016

*In the matter of*

Nu Shri Shyam Pharmaceuticals Private Limited
(CIN: U51909WB2013PTC193074)

...Operational Creditor

*Versus*

Gems Care & Cure Health Center Private Limited
(CIN: U85110WB2009PTC138062)

...Corporate Debtor

*And*

Rajesh Lihala
RP of Gems Care & Cure Health Center Private Limited

… Applicant

Order reserved on: 14.12.2020
Order pronounced on: 13.01.2021

*Coram:*

| | | |
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| Shri Rajasekhar V.K. | : | Member (Judicial) |
| Shri Harish Chander Suri | : | Member (Technical) |

*Appearances (through video conferencing):*

| | | |
|---|---|---|
| For the Applicant | : | Mr Rahul Auddy, Advocate<br>Mr Patatree Roy, Advocate |

ORDER

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

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

2. This is an application filed by the Resolution Professional seeking liquidation of the Corporate Debtor, *viz.,* Gems Care & Cure Health Center Private Limited [CIN: U85110WB2009PTC138062], on the ground that the only Resolution Plan received by him was rejected by 100% votes of the CoC.

3. This Adjudicating Authority *vide* its order dated 29.08.2019 on a Petition filed by Nu Shri Shyam Pharmaceuticals 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 (IRP).

4. In terms of section 15 of the Code, public announcement in Form 'A' was made on 02.09.2019.

5. CoC was duly constituted on 20.09.2019 and the Report certifying the constitution of the CoC was filed with the Adjudicating Authority on 23.09.2019.

6. The first meeting of CoC was held on 27.09.2019, wherein the IRP was appointed as the RP and the same was confirmed by this Tribunal vide an order dated 30.09.2019.

7. Invitation for EoI was published in Form 'G' on 08.11.2019 in *Financial Express* (English) and *Aajkal* (Bengali), Kolkata edition, fixing the last date for receipt of EoI as 27.11.2019. Upon approval from the CoC, the said last date of receipt of EoI was extended twice and revised Form 'G' were published in the same newspapers, first

on 27.11.2019 fixing the last date for receipt of EoI as 16.12.2019 and then on 20.12.2019 fixing the last date for receipt of EoI as 02.01.2020.

8. The Applicant received an EoI from one Eskag Sanjeevani Private Limited. Request for Resolution Plan (RFRP) was issued to the said Resolution Applicant on 04.01.2020 fixing the last date for submission of the Resolution Plan as 05.02.2020. The said last date of submission on the Resolution Plan was extended twice, first to 21.02.2020 and then to 02.03.2020.

9. The period of CIRP was to expire on 24.02.2020, therefore, as per the decision of and authorisation from CoC in the 10$^{th}$ meeting held on 12.02.2020, the RP had filed an application for extension of CIRP period. The said period was extended for 90 days by this Tribunal *vide* its order dated 20.02.2020.

10. On 02.03.2020 a Resolution Plan was received from Eskag Sanjeevani Private Limited and the same was discussed at length by the CoC, and negotiated by and between the CoC and the Resolution Applicant in 13$^{th}$, 14$^{th}$, 15$^{th}$, 16$^{th}$, 17$^{th}$, 18$^{th}$, and 19$^{th}$ meeting of the CoC.

11. In 20$^{th}$ CoC meeting held on 01.10.2020, the revised Resolution Plan submitted by the aforementioned Resolution Applicant was discussed once again and rejected by the CoC with 100% votes favouring rejection.

12. We have considered the submission made by the ld. Counsel appearing for the Applicant and perused the record.

13. This is a case where the sole Resolution Plan received after several extensions was rejected by the CoC on 01.10.2020, after elaborate discussions spread over 8 CoC meetings. There is no other plan under consideration by the CoC. Extended period of CIRP has expired on 24.05.2020. Therefore, there is no alternative but to order the liquidation of the Corporate Debtor.

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

    a. IA No. 1247/KB/2020 filed by Mr Rajesh Lihala, RP of Gems Care & Cure Health Center 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. Surya Kanta Satapathy [Reg. No. IBBI/IPA-001/IP-P00598/2017-2018/11050], is hereby appointed as liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he 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 *Aajkal* (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.

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.

15. The application bearing **IA (IB) No. 1247/KB/2020** shall stand disposed of in accordance with the above directions.

16. **CP (IB) No. 201/KB/2019** to come up for filing of periodical report on **26.04.2021**.

17. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their ld. Counsel for information and for taking necessary steps.

18. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

13.01.2021

*SR (LRA)*