



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

I.A. No. 3790 of 2023
In
C.P. No. 90(IB) of 2021

Under Section 33 & 34 of
Insolvency & Bankruptcy Code,
2016

Mr. Anurag Jain

..Applicant/
Resolution Professional

In the matter of

**India SME Asset
Reconstruction
Company Ltd.**

.... *Financial
Creditor*

vs.

**Siddharth Natural
Food Resources
Limited**

Private

.... *Corporate Debtor*

Order Dated: 05.01.2024

Coram:

Reeta Kohli, Hon'ble Member (Judicial)
Madhu Sinha, Hon'ble Member (Technical)



Appearance in Physical Mode/VC Mode/Hybrid Mode:

For the Applicant/Resolution Professional: Adv Aniruth Purusothaman.

ORDER

Per: Reeta Kohli, Member (Judicial)

1. This is an Application filed under Section 33 of the Insolvency and Bankruptcy Code, 2016 (Hereinafter referred to as the Code) by the Applicant who was also the Resolution Professional (RP) of the Corporate Debtor seeking the following reliefs: -

- a) *Pass an order directing the initiation of liquidation of the Corporate Debtor in accordance with Chapter III of part II of the Code;*
- b) *Appoint Mr. Anurag Jain i.e., Applicant herein, having IP Registration Number IBBI/IPA-001/IP-P01049/2017-2018/11732 as the liquidator of the Corporate debtor in accordance with Section 34 of the Code; and*
- c) *Pass such other order(s) and/or direction(s) in the interest of justice which this Hon'ble Tribunal deems fit.*

The Brief facts of the Applicant are as follows:

- i. The Applicant submitted that the Corporate Debtor is presently undergoing Corporate Insolvency Resolution Process (CIRP) with effect from 17.10.2022 as per the order of this Hon'ble Tribunal. The aforementioned order

appointed Mr. Salil Kumar Basu, having Registration No. IBBI/IPA-001/IP-P00036/2016-2017/10097 as Interim Resolution Professional (IRP) of the Corporate Debtor.

- ii. The IRP issued Public Announcement in Form A in accordance with Section 15 of the Code and Regulation 6 of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 dated 22.02.2023 in 4 newspapers namely The Goan Everyday INDIA (Goa Edition in English), Bhaangarbhuin (Goa edition in Marathi) and Financial Express (Pune edition in English) Lok Satta (Maharashtra edition in Marathi).
- iii. In pursuance of the aforementioned Public Announcement, the IRP admitted total claim of Rs. 5,86,05,88,602/- which was filed by India SME Asset Reconstruction Company. After collation of the aforementioned claim received against the Corporate Debtor and determination of the financial position of the Corporate Debtor, the IRP constituted the Committee of Creditors (CoC) of the Corporate Debtor. An Interlocutory Application (IA) bearing No.1457 of 2023 under Regulation 17 of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 was allowed by this Hon'ble Tribunal vide an order dated 19.04.2023 taking the Constitution of CoC on record of this Hon'ble Tribunal.
- iv. The first CoC Meeting was conducted by the IRP on 20.03.2023 in which the CoC resolved to replace the IRP with appointment of the Applicant as the RP and the same

was allowed by this Hon'ble Tribunal through an order dated 10.02.2023 in IA No. 488 of 2023.

- v. The Applicant further submitted that the IRP conducted the second CoC Meeting on 11.05.2023 and the CoC approved and finalized the terms of issue regarding the "Invitation for Expression of Interest" including the eligibility criteria, refundable deposit if any, and the cost of publishing.
- vi. Form G as per the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 was published on 21.05.2023 by the Applicant in 4 newspaper Financial Express in (English language) in Mumbai, Navkaal (Marathi Language) in Mumbai, The Goan Everyday INDIA (Goa Edition in English) in Goa and in Bhaangarbhuin (Goa edition in Konkani) inviting Expression of Interests (EOIs) from various Prospective Resolution Applicants (PRA's). however, there were no queries or EOI's received from any party or investor until the last date for the receipt of the EOI, which was, 07.06.2023.
- vii. In pursuance of the above mentioned non-receipt of any EOI or inquiry pertaining to the resolution plans for the Corporate Debtor. The CoC in its Third meeting conducted on 26.06.2023 resolved to prefer the liquidation proceedings against the Corporate Debtor. The Resolution for liquidation was put up for e-voting which was closed on 05.07.2023 and the resolution was passed by 100% of voting the members of

CoC.

- viii. The CoC in its Third meeting dated 26.06.2023 resolved to appoint the Applicant as the Liquidator of the Corporate Debtor.
- ix. It is further submitted that as per the regulation 39B of the CIRP Regulations the CoC members approved the estimated liquidation cost of Rs. 5,06,500/- which is to be contributed by them in ratio of the claim admitted.
- x. It is submitted that as per the regulation 39C of the CIRP Regulations, the applicant has put the resolution for voting on sale of the Corporate Debtor and for the sale of the business of the Corporate Debtor. The same was approved by the CoC members of Corporate Debtor.
- xi. It is further submitted that as per the regulation 39D of the CIRP Regulations, the CoC members approved the fee of the liquidator as per the table in Regulation 4(2)(b). Professional fee payable to IPE associated with liquidator for infrastructural support was also approved at Rs. 50,000/- per month.
2. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, the Counsel for the Applicant submits that no EOI and Resolution Plan has been received. In view of the fact that the Corporate debtor is not operational and does not have assets that can be realised as observed from the Minutes of the third CoC Meeting, there is no option except to put the Corporate Debtor Company into Liquidation as per the Code. It




is observed from the minutes of the 3rd CoC meeting that the CoC with required mandate has approved to liquidate the Corporate Debtor in view of their not getting any Expression of Interest and Resolution Plan. This Tribunal has very limited judicial review in such matters of commercial wisdom Therefore there is no option except to allow the above Liquidation Application. This Bench, therefore feels this is a fit case for ordering Liquidation of Corporate Debtor.

3. However, in compliance with the IBBI Circular dated 18.07.2023 which provides that the Resolution Professional of the Corporate Debtor cannot act as its Liquidator this bench hereby appoints Mr. Hari Kishan Bhoklay having IP Registration Number IBBI/IPA- 003/IP-N00228/2019-2020/12696 as Liquidator to carry on the process of Liquidation of the Corporate Debtor we reject the Prayer-B of the present application. Accordingly, the prayer for the Liquidation is allowed and prayer for allowing the RP to appoint as liquidator is rejected. IA stands disposed of in terms of the aforesaid.

ORDER

- a. The above I.A. No. 3790 of 2023 is allowed and the Corporate Debtor **Siddharth Natural Food Resources Private Limited** is ordered to be liquidated.
- b. Mr. Hari Kishan Bhoklay, having IP Registration Number IBBI/IPA-003/IP-N00228/2019-2020/12696, is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.

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- c. That the Liquidator for conduct of the liquidation proceedings would be entitled for fees as per table mentioned in Regulation 4(3) of the IBBI (Liquidation Process Regulations), 2016.
- d. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e. The Liquidator is appointed under section 34(1) of the Code. All 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 liquidator.
- f. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- h. That on having liquidation process initiated, 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.

- i. 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.

Sd/-

**MADHU SINHA
MEMBER (TECHNICAL)**

//Priyanka//

Sd/-

**REETA KOHLI
MEMBER (JUDICIAL)**