

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

COURT – IV

16.

IA-64/2023 IN
C.P. (IB)/1442(MB)2020

CORAM:

SHRI PRABHAT KUMAR
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **07.08.2023**

NAME OF THE PARTIES:

Vidya Sahakari Bank Ltd
Vs
Supertharrm Engineers Private Limited

SECTION: 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

1. Mr. Amir Arsiwala a/w Mr. Manoj Kumar Mishra, Ld. Counsel for the Suspended Board of Director present. Mr. S.S. Panchpor, Ld. Counsel for the Financial Creditor present. Mr. Avinash Khanolkar a/w Ms. Surekha Yadav, Ld. Counsel for the Resolution Professional present.
2. During the hearing, the Ld. Counsel Mr. Amir Arsiwala a/w Mr. Manoj Kumar Mishra appeared and sought indulgence of this Tribunal to allow another opportunity to the Suspended Directors by displaying a demand draft of Rs.70 Lakhs and requested to this bench to issue direction to the CoC to consider their plan. The Counsel for the Financial Creditor opposed this request contending that the intervenor had taken six months to

mobilize the amount of Rs. 1 Crore as against his promise to deposit the same by 31.03.2023

3. On perusal of the records, it is noticed that the Suspended Director had filed an IA-3887/2022 and this bench has passed an interim order dated 27.02.2023 allowing the Corporate Debtor to pay 25% of the amount due to the financial creditor 31.03.2023 and balance 75% by 31.04.2023, where after, the financial creditor were to withdraw the petition u/s 12A of the Code. However, on 08.05.2023, the applicant in IA-3887/2023 sought to withdraw their offer for full settlement, and submitted that they are ready to file a resolution plan and deposit Rs.1 Crore as earnest money deposit within two weeks to show their bonafide. It was also clarified that this is a last and final opportunity to the applicant and their EMD shall stand forfeited in case of failure of suspended board to implement the plan after its approval. Thereafter, on 15.06.2023, the applicant in IA-3887/2022 again sought time to pay Rs.75 Lakh after having paid Rs.25 Lakh on that day. Accordingly, 15 days' time was granted, and matter was posted for 12.07.2023. However, on 12.07.2023 the applicant in IA-3887/2022 sought another 10 days as the last opportunity to deposit remaining Rs.75 lakh.
4. On 31.07.2023 the Bench was informed that the intervenor has deposited only a sum of another Rs. 5.00 lakhs today and has failed to deposit the

requisite amount as stipulated by this Bench. Accordingly, this application for liquidation be allowed and the amount of Rs. 30.00 lacs deposited so far may allowed to be forfeited. Later on, Mr. Manoj Kumar Mishra, the counsel for the Counsel for the applicant in IA-3887/2022 appeared before rising of this Bench and requested further time. Accordingly, this matter was against posted on today. Today, the Ld. Counsel for the Applicant produced a demand draft of Rs.75 Lakhs as towards remaining balance of initial deposit. This Bench noted that the applicant initially came with a proposal to settle on 07/12/2022 through this IA and this bench allowed the prayer vide order dated 27.02.2023. Thereafter, the counsel kept on taking time and finally came with new proposal to place a revised plan for consideration of CoC. This prayer is also allowed by this bench on 08.05.2023, however, the applicant took three months to mobilize the 20% of proposed resolution money. This bench is of the considered view that the Counsel for the applicant in IA-3887/2022 has been allowed sufficient time and opportunity to show their bona-fide and capacity to mobilize requisite amount for implementation of plan, if it came to be approved. The failure to deposit even 20% of proposed resolution money, despite having been allowed from 27.02.2023 to deposit the same, clearly demonstrates that the request for reconsideration of its plan was nothing but an attempt to further delay the

CIRP process, and the Counsel for the applicant in IA-3887/2022 may not have sufficient resources to implement the plan, even if it is considered and approved by CoC as the circumstances lead us to conclude. Accordingly, this bench dismisses IA-3887/2022 and proceeds to decide IA-64/2023.

IA-64/2023:

5. This is an application filed for following reliefs:

- i. The Honorable Tribunal may be pleased to order that the Liquidation process in respect of the Corporate Debtor namely Supertharrm Engineers Private Limited be initiated.
- ii. This Hon'ble Tribunal may be pleased to appoint Mr. Sunil Nanal as the Liquidator of the Corporate Debtor at the remuneration as mentioned the Resolution and allowed in terms of the Insolvency and Bankruptcy Code the regulations framed thereunder.

6. After holding so, this Bench proceeds to examine IA-64/2023, which is a liquidation application.

7. This is an application I.A. No. 64/2023 filed on 09/12/2022 by Mr. Sunil G Naval, (hereinafter referred to as the "Applicant") seeking liquidation of Supertharrm Engineers Private Limited (hereinafter referred to as the "Corporate Debtor") under Section 33 (1) of the Insolvency and Code, 2016 (hereinafter called as "the Code").

8. The brief facts of the application are as follows:

- a. The Applicant mentions that this Tribunal vide its order dated 07.06.2022 in Company Petition No. 1442/IBC/MB/2020 admitted the petition under Section 7 of the Code, filed by Vidya Sahakari Bank Limited (hereinafter referred to as the “Financial Creditor”) and Corporate Insolvency Resolution Process (hereinafter referred to as the “CIRP”) was initiated against the Corporate Debtor. Mr. Sunil Gajanan Nanal, was appointed as the Interim Resolution Professional of the Corporate Debtor by this Tribunal. The Applicant was later appointed as Resolution Professional (RP) in the First CoC meeting held on 04.07.2022. which was approved by this Tribunal vide order dated 27.07.2022.
- b. Ld. Counsel for the Applicant submits that pursuant to the publication of FORM-G on 19.08.2022, the Resolution Professional received expression of interest from the 3 bidders. The applications from the interested Resolution Applicants were verified and provisional list of the Resolution Applicants was published on 12.09.2022 and the updated Information Memorandum, Evaluation Matrix and request for Resolution Plan was issued to all provisional Resolution Applicants on 17th September 2022. Out of final Resolution Applicants, the Applicant has received one Resolution from the promoters of the Corporate Debtor.
- c. Subsequently, in the 3rd CoC meeting dated 21.10.2022, the Resolution Plan was represented before the CoC. The CoC pointed out certain

discrepancies in the Resolution Plan and also objected to the hair cut offered by the Resolution Applicant to the secured financial creditor. Thereafter, at the request of the Resolution Applicant vide email dated 09.11.2022, the CoC agreed to offer additional time to submit the revised Resolution Plan.

- d. In the 4th CoC meeting held on 01.12.2022, the Resolution Applicant through its Authorized Representative explained pointwise submissions made in the letter dated 01.12.2022.
- e. Since, the Resolution Applicant explained the Rationale of payment of Rs. 4.15 Crores to sole Financial Creditor as against the claim of Rs. 4,92,81,826/-, the CoC communicated its decisions to the Resolution Applicant and reject the proposed Resolution Plan and resolved to initiate liquidation proceedings. The relevant portion of the resolution is as under:

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“RESOLVE THAT, pursuant to rejection of the Resolution Plan submitted by Mrs. Madhuri Tiwari and Mr. Pankaj Tiwari, the Resolution Applicants, an application be made to the Hon’ble National Company Tribunal, Mumbai Bench for commencement of the Liquidator Process of Supertharm Engineers Private Limited (“Corporate Debtor”) for its consideration as per the provisions of Section 33 of the Insolvency and Bankruptcy Code, 2016 and other applicable provisions, if any.”

“RESOLVE THAT, Mr. Sunil Gajanan Nanal, Resolution Professional, IBBI/IPA-002/IPN00194/2017-18/10560 having

officer at Kanj Co & LLP is hereby appointed as the liquidator to winding up the affairs of the Corporate Debtor.”

9. After the CoC resolution for liquidation the suspended board filed an IA-3887/2022 and this bench allowed sufficient time and opportunity to demonstrate their bonafides. This led to the consideration of present application being kept as pending. It is not in dispute that at the time of filing of the application there was no resolution plan and further attempt by the suspended board to file a plan could not materialized. Accordingly, this bench is left with no option but to allow the prayer.
10. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, this bench is of the considered opinion that the Corporate Debtor is required to be liquidated in the manner as laid down in the IBC 2016.

ORDER

11. The above I.A. No. 64/2023 is allowed and the Corporate Debtor Supertharm Engineers Private Limited, is ordered to be liquidated as a going concern for the first attempt and if it fails, then sale by other methods should be tried.
 - a. Mr. Sunil Gajanan Nanal, Resolution Professional, having Registration No. IBBI/IPA-002/IPN00194/2017-18/10560 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
 - b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.

- c. 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.
- d. The Liquidator 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.
- e. 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.
- f. 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.
- g. 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.
- h. This liquidation order u/s 33(7) 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. The liquidator shall be at liberty to pursue pending the Interlocutory Application pertaining to avoidance transactions, if any.
- j. With the above directions, the IA-3887/2022 and I.A. No.64/2023 filed u/s 33 (1) by the applicant is hereby **allowed and disposed of**.

Sd/-
PRABHAT KUMAR
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)