IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

M.A. 2702 OF 2019

Under Section 33 & 34 of Insolvency & Bankruptcy Code, 2016 for initiation of Liquidation

Filed by
Mr. Dilipkumar Natvarlal Jagad
Resolution Professional of:
Atlantis Life Sciences Pvt. Ltd.
Shop No. 4, The Gorai Indraprastha CHSL,
RSC-37, Gillary Gunj, Plot No-90, Gorai-2,
Borivali (W), Mumbai-400092
…Applicant

In the matter of
C.P. No. 65 of 2018

Pariman Enterprises Pvt. Ltd.

239, A-2, Shah and Nahar Industrial Estate, Sitaram Jadhav Marg, Lower Parel (W), Mumbai-400013
…Operational Creditor

versus

Atlantis Life Sciences Pvt. Ltd.

Shop No. 04, The Gorai Indraprastha Chsl,
RSC-37, Gillary Gunj, Plot No-90, Gorai-2,
Borivali (W), Mumbai-400092
…Corporate Debtor

Order delivered on: 05.03.2021

Coram:
Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance:
For the Resolution Professional: Adv. Durgaprasad Halwai and RP Mr. Dilip Kumar Jagad, CA, present in person.

Per: Shri Shyam Babu Gautam, Member

ORDER

1. It is an application filed by Resolution Professional, Mr. Dilipkumar Natvarlal Jagad seeking liquidation of Atlantis Life Sciences Private Limited (hereinafter referred as "Corporate Debtor") under Section 33(1) read with Section 60 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:
   a. *This Hon'ble Tribunal may be pleased to allow the present Application under Section 33 of the Insolvency and Bankruptcy Code, 2016;*
   b. *This Hon'ble Tribunal may be pleased to pass appropriate orders permitting the initiation of liquidation process of the Corporate Debtor;*
   c. *That this Hon'ble Tribunal be pleased to appoint applicant as Liquidator under Section 34(1) of the Insolvency and Bankruptcy Code, 2016;*
   d. *Any other orders/directions as deemed fit and necessary by this Hon'ble Tribunal in the interest of justice and equity.*

2. The counsel for the Applicant submitted that this Tribunal vide an order dated 07.08.2018 admitted the captioned company petition filed under Section 9 of the Code by Pariman Enterprises Pvt. Ltd. (hereinafter referred to as the "Operational Creditor") and Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor. One Mr. Dhananjay Kumar Vatsyayan was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor. The IRP had made

public announcement under Section 13 of the Code on 13.10.2018 and later the CoC was formed on 15.11.2018.

3. During the 1st meeting of the CoC held on 05.11.2018, CoC had passed a resolution for replacement of the IRP and appointment of the applicant as the Resolution Professional (RP). Later, this Tribunal vide its Order dated 14.12.2018 passed in M.A. 1426/2018, confirmed the replacement of the IRP with the applicant to perform duties of the RP.

4. During the 2nd meeting of the CoC which was held on 15.01.2019, it was resolved to extend the period of CIRP by 90 days and accordingly M.A. 214 of 2019 was filed before this Tribunal which was partly allowed vide Order dated 31.01.2019 whereby CIRP period was extended by 90 days inter alia directing that the last date for the completion of the CIRP is 04.07.2019.

5. The counsel for the RP mentioned that valuation was conducted by two Registered valuers and the summary of the valuation of plant and machinery is as follows:

Particulars	**Amount in RS**		
	Fair Value	**Liquidation Value**	**Average Value**
Kakode and Associates	386,55,000	270,58,500	328,56,750
Aarch Consultants and Valuers	422,28,000	295,60,000	358,94,000
Difference Percentage (%)	**8.46**	**8.46**	**8.46**

The applicant has annexed and marked as Exhibit H-1 and H-2, the copies of the Valuation Reports of amalgamated shop No. 3 & 4 on Ground Floor & Basement Level, Bldg. known as "Gorai Indraprastha CHSL" situation at Plot NO. 90, RSC-37, Gorai-II of village Borivali, Near Mumbai Bank, MHADA Layout, Borivali (W), Mumbai-400092

6. The 3rd CoC meeting was held on 15.03.2019 wherein further claims were received and considered and thereafter the list of creditors was prepared which is as follows:

Particulars	**Amount Admitted (Rs.)**	**Amount Admitted (Rs.)**
Financial Creditors	9,30,44,303	9,30,44,303
Operational Creditors	44,69,888	29,49,797
Total	**9,75,14,191**	**9,59,94,100**

The claim of original petitioner i.e. Pariman Enterprise Pvt. Ltd. included interest of Rs.15,20,090 @24% which is not admitted. CoC took note of the same:

a. List of CIRP cost was updated and was considered by CoC;
b. It was decided to defer the agenda of further course of action through inviting resolution plan, as CoC requested resolution professional to obtain additional information on current state of the business.

7. The counsel further submitted that post the meeting, the RP was evaluating the details of intangible assets and completion of accounts for the year ended on 31.03.2019 and audit thereof. He, on notice of inconsistency in stock items, sought further clarification from the suspended director to which the suspended director replied on 20.06.2019.

8. Later, 4th CoC meeting was held on 21.06.2019 at Bank of Baroda, Zonal Stressed Asset Recovery Branch, Meher Chambers, Dr. Sunderlal Behel Marg, Ballard Pier, Mumbai-400001. The same was attended by the Financial Creditors namely Bank of Baroda representing 100% of Financial Creditors. The CoC considered the following relevant points:

    a. I say that the Financial Creditors present in the meeting noted the current state of Business Operations of the Corporate Debtor and the Assets of the Company. At present, there is no operation in the Corporate Debtor and the only asset with the Company is its office. The Company was engaged in trading business and hence does not have any manufacturing facility. A list of trademark certificates registered in INDIA, list of products registered in Kenya and Nigeria were provided. The said registrations remain valid upto 2018-19 and the Company is in the process of renewing the same. The value of these Product Registrations cannot be ascertained.

b. The Letter dated 20.06.2019 was submitted by suspended director Mr. Dilip Muchalla which was read by chairman and brief discussion on the same was made. Further evaluation on supporting submitted along with letter containing matters related stock destruction, rent and liquidation was to be considered for which CoC requested RP to adjourn the meeting for gathering further information.

9. Accordingly, the meeting was adjourned and thereafter and was convened on 27.06.2019 at 05:00 PM at the same venue and the following major points were discussed:

   a. Transaction regarding stock destruction was discussed based on the records provided by the Company. Based on examination of supporting documents produced by the Resolution Professional, it was concluded that the company has fraudulently prepared the books of accounts. The CoC was requested to pass resolution to take suitable action under applicable sections of IBC, 2016 for fraud and falsification of accounts. After considering the above facts, CoC decided to call for next CoC meeting before the expiry of CIRP period to take suitable actions.
   b. As the Corporate Debtor has indulged in falsification of accounts, the Corporate Debtor has been also declared as wilful defaulter by Financial Creditor

(Bank of Baroda), the product registration of the company in Nigeria and Kenya are expiring in 2018/19 and as such the product registrations may not fetch any value. Except shop at Borivali, Mumbai the Corporate Debtor does not have any other assets. Looking at the above facts, the CoC has decided not to invite for Resolution Plans for the Corporate Debtor due to zero viability, the CoC unanimously decided to liquidate the Corporate Debtor. Resolution was passed by the CoC for the same.

10. The suspended director of the Corporate Debtor has filed its reply opposing this application and in consequence, opposing liquidation of the Corporate Debtor. He has alleged that the applicant is guilty of *suggestion falsi* and *supressio very*. He further alleged that throughout the CIRP, there has been no action and/or attempt made by the applicant herein to revive the Corporate Debtor and which inaction is in complete violation of the provision of the Code and the Regulations framed thereunder.

11. He has further alleged that during the course of CIRP process of the Corporate Debtor, total 5 CoC meetings were held and in none of the meetings, it was decided to find a resolution plan for the Corporate Debtor. Neither was any advertisement published for inviting the Expression of Interest nor was any attempt made to invite Resolutions plans. Thus, the CIRP was carried out in a completely

bogus and improper manner thereby flouting and violating the principles of the Code.

12. The suspended director further submitted that in the 3rd meeting of the CoC which was held on 15.03.2019, the RP had asked the CoC to consider the further course of action through preparing Information Memorandum and invitation of Expression of Interest and Resolution plan. The CoC members decided to defer this item to the next meeting of the CoC and requested for additional information on the current state of business. However, no meeting of the CoC was then held for the next 3 months.

13. He also submitted that vide an email dated 07.06.2019, the Corporate Debtor had informed their Financial Creditor that they have identified an investor who was desirous and keen to acquire the Corporate Debtor. However, since the Bank of Baroda, representing 100% of the Financial Creditors had not advised and/or invited any Expression of Interest, the investor was not able to submit a Resolution Plan or be given an adequate opportunity to revive the Corporate Debtor. Also, the voting which was held for putting the company into liquidation was a mere formality because only Bank of Baroda is the 100% creditor who wanted the company to be into liquidation on the ground that there are no assets in the company and therefore, the said voting does not hold any merit. He also alleged that the applicant’s conduct is such which clearly indicates that

he is hand in glove with the CoC and has robbed the Corporate Debtor of an opportunity of a fair resolution. Therefore,

14. He submitted that the Corporate Debtor is capable of operating as a going concern. It has all along operated as a profit generating company, however due to the market fluctuations, it defaulted in its payments. The applicant and the CoC has taken the decision of liquidating the company on a pretext that the Corporate Debtor is a trading company and cannot carry on business any further. Therefore, it is in the interest of justice and equity that the Corporate Debtor is granted an opportunity to arrive at a Resolution Process. No harm, loss or prejudice would be caused to the applicant or the CoC if the said opportunity is granted. Along with the above, the suspended director of the Corporate Debtor has also prayed for excluding a period of 270 days since effectively the CIRP was not conducted in a manner envisaged in the Code. The Corporate Debtor had also filed an application bearing number MA No. 2739/2019 seeking an exclusion of time on certain grounds as stated therein.

ORDER

15. We have heard the Applicant and the suspended director of the Corporate Debtor and also perused all the documents submitted by them. It is observed from the minutes of the 4nd CoC meeting that the CoC has, with

100% majority, decided to liquidate the Corporate Debtor. The suspended director of the Corporate Debtor has raised objections for allowing this application on the ground that the manner in which the CIRP of the Corporate Debtor has been conducted is erroneous, illegal, flawed and deserves to be set aside. He has also asked for exclusion of a period of 270 days from computing it in the total CIRP period. For this, an application bearing MA No. 2739/2019 was also filed by them which was dismissed in default by this Tribunal vide an order dated 25.01.2021 as nobody has pursued it.

16. The applicant has conducted valuation of the assets of the Corporate Debtor and after doing so, has reached to a conclusion that there are no assets with the Corporate Debtor and therefore, there is no possibility of any revival. Also, the CoC upon careful assessment of the situation have decided to liquidate the company with 100% majority. We have carefully perused the record available and have reached to a conclusion that the Corporate Debtor is non-operational for last two years and the only asset left with it is a shop at Borivali. The promoter of the Corporate Debtor had also given proposal for One Time Settlement through Asset Purchase by Asset Reconstruction Company which is not acceptable to the CoC.

17. Having considered the facts and circumstances, we believe it is a settled principle of law regarding the Commercial

Wisdom of the CoC to liquidate the Corporate Debtor and we cannot interfere in the same if it is allowed with the requisite majority. Here we would like to refer to the decision of the Hon'ble Supreme Court of India in the matter of ***K. Sashidhar vs Indian Overseas Bank 2019 SCCOnline SC 257*** wherein it was held that:

> *"53. Significantly, the report mentions that the empirical record suggests that the apprehension regarding companies are being put into liquidation by minority creditors is pre mature and further that the objective of the Code is to respect the commercial wisdom of the CoC."*

Also, it was decided by the Apex Court in the matter of ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. [Civil Appeal No. 8766-67/2019]***

> *"Since it is the commercial wisdom of the Committee of Creditors that is to decide on whether or not to rehabilitate the corporate debtor by means of acceptance of a particular resolution plan, the provisions of the Code and the Regulations outline in detail the importance of setting up of such Committee, and leaving decisions to be made by the requisite majority of the members of the aforesaid Committee in its discretion."*

In this case, the CoC has, with 100% majority, passed resolution for liquidation of the Corporate Debtor and hence it is the commercial wisdom of the CoC and we cannot interfere. Also, it is pertinent here to mention that in this case, the maximum period for computing in the CIRP period has already lapsed and we are left with no option but to allow liquidation. Therefore, the attempts of the suspended director are futile and would only result in wasting of more time with no yielding benefits as such.

18. With these observations, we hereby allow this Miscellaneous Application bearing Number I.A. 2702 of 2020 with the following directions:

a. **Mr. Dilipkumar Natvarlal Jagad,** having Registration No. IBBI/IPA-001/IP-P00233/2017-2018/10462, 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. Will have 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. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.

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.

With the above directions, this application i.e. I.A. No. 2702 of 2019 is hereby allowed and disposed of.

M.A. 2839 of 2019 which was filed by the RP under Section 66 of the Code has been kept pending to be pursued by the liquidator appointed by this order.

Sd/-	Sd/-
SHYAM BABU GAUTAM	**H.V. SUBBA RAO**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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