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19/6/24

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301

IA/264(AHM)2024 in CP(IB) 248 of 2018

Order under Section 35(1)(n) of IBC,2016 r/w Reg 45(3)(a) of IBBI(Liquidation Process) Reg,2016

IN THE MATTER OF:

Abhishek Nagori Liquidator of M/s. Osaka Pharmaceuticals Private Limited ....**Applicant**

........**Respondent**

Order delivered on: 14/06/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

SD/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

SD/-

CHITRA HANKARE
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT No.2

IA 264/NCLT/AHM/2024
IN
CP (IB) 248/9/NCLT/AHM/2018

[An Application filed under Section 35(1)(n) of Insolvency and Bankruptcy Code, 2016 r/w Regulation 45(3) (a) IBBI (Liquidation Process) Regulations, 2016]

In the matter of:
Abhishek Nagori Liquidator of
M/s. Osaka Pharmaceuticals Private Limited

.... Applicant

Memo of the Parties

Abhishek Nagori Liquidator of
M/s. Osaka Pharmaceuticals Private Limited
Having Address at:
330/348, Third Floor,
Tower-A Atlantis K-10,
Opp. Vadodara Central,
Sarabhai Main Road,
Vadodara-Gujarat-390023

And

In the matter of :

Mr. Nimesh Shah of Western Pharma
504, Paras Business Center,
Carter Road No. 1,
Borivali (E), Mumbai-400066 ... Applicant/Operational
Creditor

Versus

M/s. Osaka Pharmaceuticals Private Limited
Old National High Way No. 8
Ahkarba,
Baroda 370007, Gujarat ... Respondent/Corporate Debtor

Order pronounced on 14/06/2024

Coram:

**MRS. CHITRA HANKARE,
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

Appearance:

For the Applicant : Mr. Vishal Dave, Advocate a.w.
Mr. Mayur Jugtawat, Advocate

Per: Bench

JUDGEMENT

1. An Interlocutory Application is filed under Section 35(1)(n) of Insolvency and Bankruptcy Code, 2016 r/w Regulation 45(3) (a) IBBI (Liquidation Process) Regulations, 2016 ("Liquidation Regulation") seeking closure of liquidation process in view of successful sale of Corporate Debtor as a going concern.

2. Brief facts of the case, as averred by the Applicant are that the Operational Creditor i.e. M/s. Western Pharma filed application under Section 9 of the Code for initiation of the Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor, which was admitted vide order dated 10th

October, 2018 and appointed Mr. Hiten M. Parikh as Interim Resolution Applicant ("IRP") of the Corporate Debtor.

That the Applicant has filed an application under Section 22 of the Code to replace the IRP, vide dated 11th January 2019 Mr. Abhishek Nagori appointed as RP of the Corporate Debtor.

3. That in the said Company Petition the RP Mr. Abhishek Nagori filed an IA No. 439 of 2019 under Section 33 of the Insolvency and Bankruptcy Code, 2016 for seeking liquidation of the Corporate Debtor viz. M/s. Osaka Pharmaceuticals Private Limited., and vide order dated 30th September, 2019 an order of Liquidation of the Corporate Debtor was passed, wherein the Applicant was confirmed to act as 'Liquidator'.

That the Applicant made public Announcements dated 5th October, 2019 under Form-B as per Regulation 12 of the Liquidation Regulation whereby claims were received and Stakeholders Consultation Committee ("SCC") was constituted as per Regulation 31A of the Liquidation Regulation.

4. That in the 4th SCC meeting dated 29th September, 2020 it was resolved to sale the Corporate Debtor as going concern or

set of asset collectively at reserve price of Rs. 12.32 Crore and try to dispose of the assets of the Corporate Debtor. In pursuance of that the Applicant made 8th Public Announcement on 30th October, 2020 and e-auction was conducted on 26th November, 2020 and e-auction was extended to 16th December, 2020. The details of assets are as under:

Option	Details of assets Block	Block 1	Reserve Price(Rs.)	Earnest Money Deposit (Rs.)
A	Sale of Corporate Debtor as going concern along with all its assets including land and building, plant and machinery and financial assets	Block 1	12,32,00,000	1,23,20,000
	OR			
B	Sale of set of assets collectively [including all land & building, plant & machinery and securities & financial assets (including receivables, licenses and registrations)	Block 2	12,32,00,000	1,23,20,000

5. That one Mr. Sachin Bhandari was declared as Successful Bidder in the auction dated 16th December, 2020. He has participated in 8th e-auction and made bid of an amount of Rs. 12,32,00,000/- for the Corporate Debtor to purchase Corporate Debtor as a going concern along with all its assets including land and building, plant and machinery and financial assets.

That the Applicant issued letter of Intent and confirmation of sale on 22nd December, 2020 to the successful bidder and also requested to deposit the remaining amount of Rs. 11,08,80,000/- within 90 days i.e. 21st March, 2021 provided that payment made after 30 days i.e. 20th January, 2021 shall attract @12% pa. The successful bidder paid remaining amount on 9th March, 2021. The copy of the sale certificate issued to successful bidder is annexed with the application.

6. That after the successful sale of Corporate Debtor as a going concern, Successful Bidder has filed an IA No. 156 of 2021 seeking certain relief and concessions from this Tribunal, wherein following order is passed on 21st September, 2021.

> *"This application is filed by the Successful auction bidder, which in our view, should be filed by the Liquidator as auction sale is complete. In this situation, we grant liberty to the liquidator to file an appropriate application. This application is not maintainable. Accordingly, IA 156/2021 stands disposed of as it is not maintainable".*

Upon liberty granted the Liquidator filed an application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r.w Regulation 32(e) and 32A of the IBBI (Liquidation Process) Regulations, 2016 and Rule 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 bearing IA No. 731 of 2021 seeking certain reliefs and concessions. The same are granted vide order dated 17th May, 2023.

7. That the Liquidation process of the Corporate Debtor was expired on 14th March, 2024, during the process the Liquidator has taken various extensions/exclusions for the liquidation period. That the Applicant has submitted its progress reports under Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The Applicant also filed its preliminary report & assets memorandum, on 14th December, 2019.

8. That the Applicant distributed realised amount as per Section 53 of the Code, the distribution is mentioned herein below for reference and convenience;

Liquidation Proceeds Received		
Particulars	Amount in INR	
Liquidation Proceeds Realised (including income from interest, bank balance and others)	12,55,50,245	
CIRP cost	9,87,696	
Liquidation Cost	65,91,574	
Total	75,79,270	
Net Proceeds for Distribution	11,79,70,975 (including contingency fund of Rs. 12,00,000)	
Liquidation Proceeds Distributed		
Particulars	Claim Admitted in INR	Amount Distributed in INR

Provident Fund Dues	45,03,956	45,03,956
Gratuity Dues	19,54,818	19,54,818
Amount Distributed to Secured Financial Creditor (Punjab National Bank)	38,02,44,559	11,03,12,201
• The Litigation contingency fund of Rs. 12,00,000 was proposed to be retained for period of two years from the order of this Tribunal for closure of liquidation process of M/s. Osaka Pharmaceuticals Private Limited in the 8th meeting of stakeholder's consultation committee and the same was noted by the members of SCC.		

9. That 8th SCC meeting was conducted on 28th December, 2023 wherein Applicant informed members of SCC that Liquidator shall file an application for closure of liquidation process of the Corporate Debtor, wherein Corporate Debtor is sold as a going concern. Hence, this application is filed praying closure of the liquidation process and reliving liquidator to discharge his duties.

10. As per Regulation 45(3) of Liquidation Regulations, Applicant submitted Form-H along with Final report and Audited financial statements of the Corporate Debtor. The liquidator had filed an application for relief and concessions which was allowed in IA 731 of 2021 and disposed of.

11. Heard Ld. Counsel for the Applicant and perused the facts pleaded.

12. In view of the same, being satisfied with the documents presented, we pass the following orders.

ORDER

1. The liquidation process of the Corporate Debtor is closed in terms of Regulation 45(3)(a) of IBC (Liquidation process)Regulations, 2016 r/w Rule 11 of NCLT Rules 2016.
2. The successful purchaser of the entity who has purchased the Corporate Debtor as "going concern" is directed to take over the entity and file necessary documents to the ROC and other regulatory authorities in compliance with the Companies Act and file compliance in the main petition filed in this matter.
3. The liquidator is discharged of his duties but is directed to complete the residuary issues, if any, in terms of Sec 35(1) of the IBC 2016 and ensure compliance with Para 2 of this order.
4. This application is allowed and stands disposed of.

SD/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

SD/-

CHITRA HANKARE
MEMBER (JUDICIAL)

NATIONAL COMPANY LAW TRIBUNAL * AHMEDABAD *

vc

Prepared by Rohit
Signature Rohit
Date 18/6/24

Certified to be True Copy of the Original
18/6/24
Assistant Registrar
NCLT, Ahmedabad Bench
Ahmedabad