



**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA No. 2593/MB-IV/2022

In

CP (IB) No. 1454/MB-IV/2020

Under Section 33(1) of Insolvency & Bankruptcy Code, 2016

Mr. Indrajit Mukherjee

...Resolution Professional/Applicant

In the matter of

CP (IB) No.1454/MB-IV/2020

ICICI Bank Limited

...Financial Creditor

Vs.

Sanvi Milk and Milk Products Private Limited

[CIN: U15549PN2017PTC171097]

...Corporate Debtor

IA No. 17/MB-IV/2022

In

CP (IB) No. 1454/MB-IV/2020

Mr. Sadashiv Deshmukh

Erstwhile Promoter of the Corporate Debtor

.... Intervening Applicant

V/s

Mr. Indrajit Mukherjee

.... Resolution Professional/ Respondent

Order delivered on: 24.02.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)



Appearances (via videoconferencing):

For the Applicant/RP : Ms. Suyesha Kakarla i/b
Apex Law Partners Advocate.

For the Applicant in IA 17/2022 : Seetalaxmi Swamy, Advocate
a/w Mr. Raghunath
Sarangapani,
PCA

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an Application filed by Mr. Indrajit Mukherjee, Applicant/ Resolution Professional, seeking liquidation of Sanvi Milk and Milk Products Private Limited, (hereinafter referred as Corporate Debtor) under Section 33(2) of Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”).
2. The brief facts of the Application, as submitted by the Applicant, are as follows:
 - a) This Tribunal, vide an order dated 18.11.2021 in Company Petition No. 1454/MB/C-IV/2020, admitted the petition under Section 7 of the Code, filed by ICICI Bank Limited (hereinafter referred to as the “Financial Creditor”) and Corporate Insolvency Resolution Process (CIRP) was initiated against Sanvi Milk and Milk Products Private Limited, (hereinafter called as the “Corporate Debtor”). The Applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor by this Tribunal vide this Order and later on confirmed as Resolution Professional.



- b) The Applicant had made Public announcements through two Form G in two Local newspapers namely English, “Financial Express” and Marathi, “Lokmat”, Mumbai and Pune Edition, as per the Regulation 6(3) of the Insolvency and Bankruptcy Board of India (Insolvency Regulation Process for Corporate Persons) Regulations, 2016.
- c) The Statutory period of 180 days of the CIRP ended on 04.06.2022 and was further extended till 02.09.2022 vide order dated 11.07.2022 passed by this Tribunal.
- d) No Resolution Plan was received by the Applicant pursuant to the Publication of EOI on both the occasions. Subsequently, with the approval of the CoC, the Applicant reissued Form G for the third time on 21.06.2022 in the same newspapers.
- e) Only one EOI was received from the suspended director of the Corporate Debtor named Mr. Sachin Sadashiv Deshmukh (hereinafter referred as “Prospective Resolution Applicant or PRA”) in response to Form G issued on third occasion. On the last day appointed for submission of the Resolution Plan i.e. 20.07.2022, the PRA sought additional time to submit its Resolution Plan.
- f) In the sixth CoC Meeting held on 29.07.2022, the Applicant placed this request before CoC, this request was considered. It was resolved not to grant additional time for the submission Resolution Plan since the EOI has been issued for three times and any additional time would only cause delay in the CIRP of the Corporate Debtor.



- g) Consequently, the CoC voted with 100% majority in favour of liquidation of the Corporate Debtor and appointing the Applicant as the Liquidator. The said Resolution of the 6th CoC Meeting is as under:

“Resolved that pursuant to Section 33 (2) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016 and IBBI (Liquidation Process), Regulation, 2016, approval of Committee of Creditors (CoC) be and is hereby accorded to approve the Liquidation process in respect of Sanvi Milk and Milk Products Pvt. Ltd. (Corporate Debtor) as well as to recommend the Liquidation to the Adjudicating Authority.”

- h) In pursuance of CoC’s resolution in its 6th CoC Meeting to Liquidate the Corporate Debtor, the present Application has been filed by the Applicant in terms of Section 33 (2) of the Code, which reads as follows:

33. (2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent. of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to



liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.

3. We have heard the Counsel and the perused material available on record.
4. We noticed that one Intervention Application No. 17 of 2022 has been filed by erstwhile promoter of the Corporate Debtor who was also one of successful Resolution Applicant pursuant to issuance of third EOI. In the said Application, the Applicant has stated that the Resolution Professional delayed the supply of Information Memorandum by two days (it was supplied on 14.07.2022). it is further stated that he had sought extension for submission of Resolution Plan till 05.08.2022 which was expiring on 20.07.2022 vide his letter even date on the ground that preparation of Resolution Plan requires co-ordination between specialised professionals. Respondent-Resolution Professional has filed reply dated 13.01.2023 supporting the decision of CoC to liquidate the Corporate Debtor and raising the issue of non-cooperation of Applicant in CIRP process; existence of preferential and fraudulent transaction as asserted by transactional auditor (IA No. 2975 of 2022 is already pending before this Bench); inefficiency of the Applicant as he failed to respond on prior two occasions and request at the fag end of the timeline for submission of Resolution Plan under third EOI is nothing but merely an tactic to delay the liquidation process. We have perused the Application as well as reply of the Respondent RP, we are of the view



that the CoC has taken a decision after appreciation of complete facts and the Applicant has not brought on record any evidence to demonstrate malicious or biased exercise of commercial wisdom by the CoC in its decision-making process. Hence, we find this Intervention Application has no merit and liable to dismissed.

5. We find that the section 33(2) of the Code mandates liquidation of the Corporate Debtor in case COC resolves to do so and we have not found any prima-facie material on record to interfere with the commercial decision of the CoC, as also explained by this Bench in the proceeding paragraphs. Liquidate the Corporate Debtor. Accordingly, in view of forgoing discussion, we order as follows:

ORDER

6. IA No. 2593/MB-IV/2022 filed by Mr. Indrajit Mukherjee, Applicant for the Liquidation of Sanvi Milk and Milk Products Private Limited is **Allowed**.
7. In view of the above observations, Mr. Indrajit Mukherjee, Resolution Professional having Registration No. IBBI/IPA-001/IP-P-01533/2018-2019/12450 is appointed as the Liquidator to conduct Liquidation process of Sanvi Milk and Milk Products Private Limited as provided under Section 34(1) of the Code.
8. That the Liquidator would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016 to conduct the liquidation proceedings.



9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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. With the



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above directions, the IA No. 2593/MB-IV/2022 filed under section 33(2) by the Applicant is hereby **Allowed and Disposed of**.

15. IA No. 17 of 2022 is dismissed.

Sd/-

Prabhat Kumar
Member (Technical)

24.02.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)