

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

CORAM: SHRI DEEP CHANDRA JOSHI,  
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,  
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 574/JPR/2022  
In CP No. (IB)- 213/9/JPR/2019

**IN THE MATTER OF:**

MR SOHAN LAL

...Operational Creditor

VERSUS

M/S JAIPUR SCIENTIFIC AGRICULTURE SOLUTION

...Corporate Debtor

**MEMO OF PARTIES**

**IA (IBC) No. 574/JPR/2022:**

M/S JAIPUR SCIENTIFIC AGRICULTURE SOLUTION PVT. LTD.

*Through its Resolution Professional*

*Mr. Sudhir Bhansali*

(IBBI/IPA-001/IP-P1109/2017-2018/11799)

Office: 52, Sangram Colony, C-Scheme,  
Jaipur-302001.

...Applicant

FOR THE APPLICANT: Mr. Narendra Singh Adha, Adv.

**Order Pronounced On: 15.12.2023**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. The present Application bearing *IA (IBC) No. 574/JPR/2022* has been filed by the *Mr. Sudhir Bhansali*, Resolution Professional ('Applicant'/'RP') for

*M/s Jaipur Scientific Agriculture Solution Pvt. Ltd.* ('Corporate Debtor') under Section 33 and Section 34 of the Insolvency and Bankruptcy Code, 2016 (the 'IBC'/'Code') seeking necessary directions for initiation of process if Liquidation of the Corporate Debtor and appointment of the Liquidator.

2. This Adjudicating Authority *vide* order dated 28.04.2022 had admitted the Application filed by *Mr. Sohan Lal*, Operational Creditor under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and as a consequence thereof, appointed *Mr Sudhir Bhansali* as Interim Resolution Professional ('IRP') who was later confirmed as the Resolution Professional ('RP').
3. During the course of CIRP, the 2<sup>nd</sup> Committee of Creditors ('CoC') was conducted on 15.07.2022 where the Expression of Interest ('EOI'), Form G where the eligibility criteria of a Prospective Resolution Applicant was passed and subsequently, EOI publication was done in Indian Express and Mahanagar Times on 17.07.2022 and 19.07.2022 respectively. It has been submitted that only one EOI was received against the publication done in the newspapers.
4. Subsequently, the 3<sup>rd</sup> meeting of the CoC was conducted on 29.08.2022 wherein the content for the Request for Resolution Plan ('RFRP') was

Sd-

Sd-

approved by the majority of the CoC and the extension of time for RFRP was also approved. Later on, in the 4<sup>th</sup> meeting of the CoC conducted on 12.10.2022, the Resolution Plan received was put forth before the CoC for approval but only 14.79% voted in favour of the Resolution Plan. Hence, the Resolution Plan was declared as rejected. In the 4<sup>th</sup> meeting itself, an extension of timeline of the CIRP was also put forth for voting, wherein it was resolved by majority of the voters to not vote in favour of the resolution.

5. In the 5<sup>th</sup> meeting of the CoC held on 25.10.2022, the resolution to re-consider the Resolution Plan received by the Eligible Resolution Applicant was put forth, but only 40.29% voted in favour of the same and 59.71% voted in dissent. Similarly, only 60.54% votes were in favour of the resolution for approval and extension of timeline of the CIRP beyond 180 days, which expired on 25.10.2022. The Resolution for appointment of the RP as the Liquidator was also not approved with 63.88% voting in favour, 33.33% voting in dissent and 2.79% being absent. Hence, the present Application has been filed on 04.11.2022 seeking Liquidation of the Corporate Debtor in compliance with the provisions of the Code.
6. We have heard the parties and perused the averments made in the Application along with the documents enclosed therein. Taking into

Sd-Sd-

consideration the above facts concerning the affairs of the Corporate Debtor, the provisions of Section 33 of IBC, 2016 are as follows:

“33. *Initiation of liquidation.* —

(1) *Where the Adjudicating Authority, -*

- (a) *before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast-track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or*
- (b) *rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall -*
  - (i) *pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*
  - (ii) *issue a public announcement stating that the corporate debtor is in liquidation; and*
  - (iii) *require such order to be sent to the authority with which the corporate debtor is registered.*

(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 creditor 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-clause (i), (ii) and (iii) of clause (b) of sub-Section (1).”*

7. The Hon’ble National Company Law Appellate Tribunal (‘NCLAT’), in *Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 308 of 2020* observed as under:

*“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of the corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review”.*

Sd-

Sd-

However, whether the relevant Application is filed within stipulated timelines as per the applicable procedure is to be seen.

8. ***The prescribed period for filing Application*** – In the present case, the application under Section 9 of the Code was admitted on 28.04.2022. In the 5<sup>th</sup> meeting of the CoC dated 25.10.2022, the CoC neither approved the Resolution Plan nor passed the resolution for extension of CIRP timeline. Since, the CIRP period concluded on 25.10.2022, therefore, the resolution for extension of timeline was proposed, but the same was not resolved. The CIRP period concluded on 25.10.2022 and the resolution plan was not approved, hence, the RP has filed the present application on 04.11.2022 in accordance with Section 33(1)(a) of the Code. Thus, the present application is filed within the prescribed period. In view, the Application under consideration is taken up under Section 33(1)(a) of the Code.
9. ***Appointment of Liquidator and fee to be paid*** – The RP in the 5<sup>th</sup> meeting of the CoC dated 25.10.2022 presented the said agenda before the Committee for appointment as Liquidator. The resolution could not be passed in absence of 66% voting in favour. Section 34(1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the Corporate Insolvency Resolution Process

Sd-

Sd-

shall, subject to submission of written consent act as the Liquidator for liquidation. The relevant provisions of Section 34(1) of the Code are as follows:

*“Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4)”*

10. *Mr Sudhir Bhansali* is eligible to be appointed as Liquidator and by virtue of Section 34(1) of the Code, shall be deemed to be the Liquidator in the present matter. *Mr Sudhir Bhansali* registered with IBBI, holding registration No. IBBI/IPA-001/IP-P1109/2017-2018/11799 has already filed his Written Consent to act as Liquidator in the present matter. Thus, *Mr Sudhir Bhansali* is appointed as the Liquidator.
11. It is also seen that Regulations 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted *via Notification No. IBBI/2019-20/GN/REG/048* dated 25.07.2019 along with Regulation 39BA of the CIRP Regulations, 2016 inserted *vide Notification No. IBBI/2022-23/GN/REG093*, dated 16.09.2022. The relevant aspects in this respect are examined hereunder.
12. **Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)** – The estimated liquidation expenses were not voted upon. The estimated

liquidation cost has not been presented before this Adjudicating Authority.

The Liquidator is directed to estimate the Liquidation Cost and present the same before the Stakeholder Creditors Committee for due consideration.

The Liquidator is directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.

13. ***Assessment of Compromise or Arrangement (Regulation 39BA of CIRP Regulations, 2016)***- As per Regulation 39BA of the CIRP Regulations, 2016 an opportunity to explore the compromise or arrangement may be explored by the Liquidator during the Liquidation of the Corporate Debtor.
14. ***Assessment of Sale as a going concern (Regulation 39C of CIRP Regulations, 2016)*** – Under Section 35 of the Code, the Liquidator shall have the power and duty to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified. In furtherance to the same, regulation 32A of the Liquidation Regulations, 2016 lays down the mode of sale by the Liquidator and subsequently Regulation 33 of the Liquidation Regulations, 2016 provides that the

Sd-

Sd-

Liquidator has powers to sell the Corporate Debtor by means of private sale with the prior permission of the Adjudicating Authority.

15. ***Fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016)***– The committee is required to approve the fee of the proposed Liquidator in terms of Regulation 4 of the Liquidation Process Regulations, 2016. The remuneration of the proposed liquidator was not approved by the CoC till the date of filing of Liquidation application. Therefore, the fees of the Liquidator shall be in accordance with the limit prescribed under the Regulations.

16. ***Decision for liquidation (Regulation 40D of CIRP Regulations, 2016)***– The committee shall consider the factors, including but not limited to non-operational status for preceding three years, goods produced or service offered or technology employed being obsolete, absence of any assets, lack of any intangible assets or factors which bring value as a going concern over and above the physical assets like brand value, intellectual property, accumulated losses, depreciation, investments that are yet to mature. Since, no resolution plan was received and the CIRP period concluded on 25.10.2022, therefore, the Order of Liquidation is being passed as per the mandate of law.

Sd-

Sd-

17. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor, *M/s Jaipur Scientific Agriculture Solution Pvt. Ltd.* is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include:

17.1. As per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor;

Provided that a suit or other legal proceedings may be instituted by Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;

17.2. The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings concerning such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

17.3. This order of liquidation under Section 33 of the Code shall be deemed as notice of discharge to the officers, employees and workmen of the Corporate Debtor;

17.4. All the 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 an effect and shall be vested in the Liquidator;

Sd-

Sd-

- 17.5. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor, and provisions of Section 19 of the Code shall apply concerning the liquidation process as they apply with Corporate Insolvency Resolution process with the substitution of references to the Resolution Professional for the Liquidator;
- 17.6. The Liquidator shall publish a public announcement per Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stakeholders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date;
- 17.7. Under Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and regular progress reports according to Regulation 15.
18. In view of the foregoing, *IA No. 574/JPR/2022* is disposed of. Copy of this order be supplied to the Liquidator as well as to the Registrar of Companies forthwith.

A yellow rectangular stamp containing the handwritten signature 'Sd-' in black ink.

A yellow rectangular stamp containing the handwritten signature 'Sd-' in black ink.

19. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

Sdr

**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

Sdr

**RAJEEV MEHROTRA,  
TECHNICAL MEMBER**