(404)

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH - II, CHENNAI

CA (CAA)/11(CHE)/2023
IN
IBA/1017/2019

(Filed under Sections 230 to 232 and 66 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and Rule 11 of NCLT Rules, 2016)

In the matter of **SHREE AMBIKA SUGARS LIMITED**

MR.ANURAG GOEL
Liquidator of
Shree Ambika Sugars Limited,
Plot No.6, First Floor, State Bank Nagar,
Outer Ring Road, New Delhi – 110063.
Also at:
No.112, Eldorado Building,
4th Floor, Nungambakkam High Road,
Chennai – 600034. ... *Applicant / Liquidator*

Order Pronounced on 13th April, 2023

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant: Mr.Anant Merathia, Advocate
Mr.Anurag Goel, Liquidator

ORDER

***Per:* SAMEER KAKAR, MEMBER (TECHNICAL)**

Under consideration is a Company Application filed by the Liquidator of Shree Ambika Sugars Limited (for brevity "Corporate Debtor") under sections 230 – 232 and 66 of the Companies Act, 2013, read with the applicable provisions of Insolvency and Bankruptcy Code, 2016, the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Companies

(Compromises, Arrangements and Amalgamations) Rules, 2016 and Rule 11 of NCLT Rules, 2016 in relation to the Scheme of Arrangement (hereinafter referred to as the "SCHEME") proposed by the SNJ Distillers (P) Ltd (hereinafter referred to as the "Scheme Proponent"). The said scheme is placed in Annexure-10.

2. An Affidavit in support of the present Application is sworn by the Applicant/Liquidator. The prayers under the present Application are reproduced as under:

> *"A. Direct the Creditors and all other Stakeholders being Secured Financial Creditors, Unsecured Financial Creditors, Operational Creditors and other Operational Creditors, be represented in the same manner as stipulated in Paragraph No. 74 of this Application and pass necessary orders to that effect as this Hon'ble Bench deems fit and proper.*
>
> *B. Permit the Applicant/ Liquidator to cause paper publication of Notice for conducting meetings in Newspapers in English and vernacular language in Chennai Edition.*
>
> *C. Permit the Applicant to convene the meeting of Creditors / Stakeholders of the Corporate Debtor by video conference/ electronically with 15 days notice.*
>
> *D. Permit the Applicant/Liquidator to call for a meeting through Video Conference and E-voting*
>
> *E. Direct the Applicant/Liquidator to take notices to the authorities contemplated under Section 230(5) of the Companies Act, 2013.*
>
> *F. Dispense with calling for a meeting of the Shareholders of the Corporate Debtor.*
>
> *G. Pass any other Order/directions which are necessary to empower the Applicant/Liquidator to discharge his functions effectively.*

H. To approve the Scheme submitted by the Liquidator for and on behalf of the Corporate Debtor as preferred by Scheme Proponent SNJ Distillers Private Limited annexed to this application in the interest of justice,

I. To grant and confirm that the benefits available to a Resolution Plan and the provisions of Section 31 of the Insolvency and Bankruptcy Code 2016, shall apply mutatis mutandis to this Scheme.

J. To grant all the reliefs & concessions sought for in the Scheme."

3. Learned Counsel for the Applicant submitted that CIRP in respect of the Corporate Debtor was initiated on 18.12.2019. Subsequently, this Adjudicating Authority vide order dated 20.06.2022 in IA/1263/2021 ordered the Liquidation of the Corporate Debtor and appointed the Applicant herein as the Liquidator.

4. Pursuant to that the Applicant issued an invitation for proposing a Scheme of Compromise on 05.07.2022 under Regulation 2B of IBBI (Liquidation Process) Regulation, 2016. In turn, the Applicant received an Expression of Interest (EoI) from three bidders. SNJ Distillers (P) Ltd and Raja Laxmi Wind Energy Limited submitted their Scheme on 10.08.2022 and 11.08.2022 respectively.

5. It is submitted that the Stakeholders Consultation Committee (hereinafter referred to as the 'SCC') was duly constituted in terms of Regulation 31A of the IBBI (Liquidation Process) Regulations,

2016. As per the application, the list of the Stakeholders contemplated under Regulation 31 as on 19.08.2022 is placed at Annexure-& which is extracted as under:

Sl. No.	Category of creditor	Summary of claims received		Summary of claims admitted	
		No. of claims	Amount	No. of claims	Amount
1	Unpaid Insolvency Resolution Process Cost		6,30,37,989.00		6,30,37,989.00
2	Liquidation Costs Incurred till date		23,30,186.00		23,30,186.00
3	Secured Financial Creditors	11	14,08,91,15,123.23	10	13,72,03,97,739.20
4	Unsecured Financial Creditors	3	1,36,65,44,847.61	3	1,32,51,86,255.86
5	Operational Creditors (Workmen)	437	43,77,43,701.26	437	7,75,16,967.22
6	Operational Creditors (Employees)	82	9,86,18,265.00	63	2,15,78,154.00
7	Operational Creditors (Government Dues)	7	93,31,90,829.00	7	93,31,90,829.00
8	Operational Creditors (Cane Dues)	8655	50,56,67,650.00	8655	50,56,67,650.00
9	Operational Creditors (other than Workmen and Employees and Government Dues)	36	39,18,33,935.12	31	3,95,44,033.00
10	Other Stakeholders, if any, (other than financial creditors and operational creditors)	2	89,15,07,367.78	1	17,53,20,320.00
	Total	**9,233.00**	**18,77,95,89,894.00**	**9,207.00**	**16,86,37,70,123.28**

6. It is further submitted that in the 6th SCC meeting held on 14.02.2023, the SCC with the requisite majority gave consent to the Scheme Submitted by SNJ Distillers (P) Ltd.,. The relevant extract of minutes of the 6th SCC is reproduced hereunder.

Conclusion on filing the Scheme with the Hon'ble NCLT

The Liquidator also stated that since Liquidation being a time bound process to be completed within a expected timeframe of 1 year, he would take the necessary steps in filing the scheme with the NCLT shortly.

Ultimately, all members present were of the view that the Liquidator may proceed with the filing of the scheme with the Hon'ble NCLT for further directions.

7. Hence, the Applicant Liquidator has now filed the present Company Application before this Tribunal on 22.02.2023 seeking

dispensation of meeting contemplated under Sections 230 – 232 of the Companies Act, 2013.

8. Heard the submissions made by the Learned Counsel for the Applicant. On the perusal of the documents it is seen that the Liquidation commencement date of the Corporate Debtor was 20.06.2022. The present application has been filed on 22.02.2023, which is beyond the time period prescribed under the Regulation 2B of IBBI (Liquidation Process) Regulation, 2016. However, in view of the Hon'ble Supreme Court decision in the case of ***Pioneer Urban Land Infra Ltd & Anr Vs. Union of India & Ors*** **[WP (Civil) No. 43 of 2019, decided on 09.08.2019]** and on the judgement of the Hon'ble NCLAT in the case ***Standard Surfa Chem India Private Limited Vs. Mr. Kishore Gopal Somani*** **[Company Appeal (AT) (Insolvency) No. 684 of 2021, decided on 14.02.2022]** the timeline under the said regulation is construed as a directory and the application is taken for consideration.

9. With respect to the proposed Scheme, *prima facie* it is seen that the stakeholders in relation to the Corporate Debtor are agreeable to the scheme proposed by the Scheme Proponent. Considering this factual matrix leading to the present Company Application, we are inclined to issue directions for convening the meetings of the stakeholders; however, suitably modified to suit the

present instance taking into consideration the facts and circumstances of the case.

10. The Liquidator of the Company under liquidation shall place the Scheme of Arrangement before the Stakeholders Committee of the Company in liquidation at their meeting to be called, convened and held, which is as follows: -

(a) The Liquidator is directed to constitute a Stakeholders Committee in terms of Regulation 31A of IBBI (Liquidation Process) Regulations, 2016 as prevalent on the date of liquidation for the consideration of the Scheme and voting thereon.

(b) However, the said Regulation shall not apply *mutatis mutandis* as the following exceptions are required to be made taking into consideration the fact that even though the company is in liquidation, since a Scheme is under contemplation as envisaged under Rule 2B of IBBI (Liquidation Process) Regulations, 2016 and in view of the absence of substantive provisions or rules or regulations, save the judicial precedent for consideration of the Scheme without any commensurate procedure prescribed and the primacy of Secured Creditors is required to be maintained as the liquidation process as such is kept in abeyance.

(c) Save the individual secured financial creditors, all the other stakeholders, be it financial creditors forming part of promoters or otherwise, the respective group of operational creditors, namely employees, statutory dues and other operational creditors and shareholders' shall be represented only by their respective Authorized Representative (AR) to be chosen for each class in the manner as contemplated under sub-section (6) and sub-section (6A) of Section 21 of IBC, 2016 read with Regulation 4A and Regulation 16A of IRPCP Regulations, 2016 as applicable during the CIRP of a Corporate Debtor. The exercise shall be completed by the Liquidator within a period of 15 days from the date of this Order.

(d) Immediately after the AR is chosen by the respective group, the Stakeholders Committee Meeting shall be convened by the Liquidator within 45 days thereof not exceeding 60 days from the date of this Order wherein the Secured Financial Creditors will be entitled to participate and vote on an individual basis and other stakeholders to be represented only by their respective Authorized Representatives and the voting shall be done similar to the one contemplated for the approval of a Resolution Plan under IBC, 2016 read with attendant regulations after proper circulation of notice to the individual stakeholders at their last known e-mail address along with a synopsis of the Scheme as proposed by the 3rd Respondent. The notice of the meeting shall be issued to the

Stakeholders at least not less than 30 days prior to the date fixed for the meeting.

(e) The Liquidator is directed to cause publication of notice in "Business Standard" (English, All India Edition) and in "Dinamani" (Tamil, Chennai Edition) within 7 days from the date of this order.

(f) The voting share shall be determined in accordance with Section 5(28) of IBC, 2016 save instead of 'financial creditors', `financial debt' and 'committee of creditors' specified therein, it shall be substituted with the term `stakeholders', `debt' and `stakeholders committee'.

(g) The notices shall be sent to all the authorities without fail by the Applicant and in addition, notice is also directed to be issued to the concerned RoC, RD and Income Tax Department including the Jurisdictional Assessing Officer mentioning clearly the PAN number as well as others as contemplated under Section 230 (5) of Companies Act, 2013. The said authorities to whom notices have been issued in terms of the provisions of Section 230(5) of the Companies Act, 2013 shall act in accordance thereof.

(h) The Liquidator shall furnish an Affidavit of service of notice of meetings and publication of advertisement and compliance of all the directions contained herein at least a week before the proposed meeting.

(i) The Chairman for the Stakeholders' Committee meeting to be convened shall be **Mr.Nallasenapathy *(Contact No. 9841527190)*** who shall file his report in relation to the Stakeholders' Committee meeting and its outcome within seven (7) days from the date of the meeting. Consequently, we hereby appoint **Ms.Pavitra Sundarrajan (*Contact No. 9566210824*)** as the scrutinizer for the said meeting and he shall file his report in relation to the Stakeholders' Committee meeting and its outcome within seven (7) days from the date of the meeting. The remuneration payable to the Chairman and Scrutinizer shall be Rs.**75,000/- and Rs.30,000/-** respectively.

(j) The Scheme as approved by the Stakeholders with the requisite voting majority be placed before this Tribunal for the consideration of its sanction within a period of 60 days from the date of this Order.

(k) Since the Scheme has been propounded by SNJ Distillers (P) Ltd we direct them to make arrangements for the expenses likely to be incurred in relation to the meetings including the fees of the Chairman and Scrutinizer appointed as above and for placing the Scheme before the Stakeholders Committee. In case of any query being addressed by the Stakeholders in relation to the Scheme and with a view to address those queries which may be addressed by the

Stakeholders and the Scheme Proponent may clarify the same.

11. Accordingly, this **CA(CAA)/11(CHE)/2023** stands **allowed**. In case of any difficulty in implementing the procedure as directed above, the Liquidator is given the liberty to approach this Tribunal as and when required for necessary directions at the earliest without any delay.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

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