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

IA(IBC)/1275(CHE)/2022
IN
IBA/1269/2019

(filed under section 35(1)(n) &(o) r/w Section 60(5) of the Insolvency & Bankruptcy Code, 2016 and Regulation 32 € of the IBBI (Liquidation Process) Regulations, 2016 r/w rule 11 of National Company Law Tribunal Rules, 2016)

RAMELA RANGASAMY
Liquidator of Hydrolina Biotech Private Limited

... Liquidator/ Applicant

In the matter of

Hydrolina Biotech Private Limited

...Corporate Debtor

Order Pronounced on 20th March 2023

CORAM

ASHOK KUMAR BHARDWAJ, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : Ganesh V. Aranala, G. Prabhaharan M. Abinu Monisha, Advocates

ORDER

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

Under consideration is an application filed by Ms. Ramela Rangasamy, in the capacity of Liquidator of Hydrolina Biotech Private Limited, the Corporate Debtor, seeking reliefs as follows,

"a. The Adjudicating Authority may be pleased to approve the Scheme proposed by the prospective investor and permit the applicant to sell the Company under liquidation to the prospective investor on a "going concern" basis.

b. Pass such other further relief/s on the facts and circumstances of the case and thus render justice."

2. Originally, IBA/1269/2019 was filed by the CD, for initiation of CIRP, under Section 10 of IBBI, 2016. The CD was admitted into CIRP vide order dated 20.01.2020, the Applicant herein was appointed as the IRP, thereafter

was confirmed as RP. The Committee of Creditors (CoC) was formed with two Financial Creditors, namely, Biotechnology Industry Research Assistance Council (BIRAC) and Technology Development Board (TDB), Science and Technology, Government of India.

3. The Learned Counsel for the Applicant submitted that during the 3rd CoC meeting held on 09.09.2020, the members of the CoC had approved publication of Form G (EoI). The same was published on 12.09.2020 in one English and Tamil daily. In response to the same, the Resolution Applicant has envisaged his interest, but due to then existed pandemic, the Resolution Applicant was not able to proceed further. Thereafter, EoI was issued for the 2nd time on 07.12.2021. However, no Resolution Plan till the last date (i.e.,) 22.01.2021 was received.

4. The Learned Counsel for the Applicant submitted that in absence of the prospective Resolution Applicant, the CoC, in its 6tth Meeting held on 12.02.2021 had resolved to liquidate the CD, thereby, an Application in IA/492/CHE/2021 was filed, seeking liquidation of the Corporate Debtor, the same was ordered vide order dated 11.02.2022, by this Adjudicating Authority.

5. The Learned Counsel for the Applicant further submitted that upon constitution of Stakeholders Consultation Committee (SCC) the first SCC meeting was held on 30.03.2022, where it was decided to Explore the

possibilities of sale as "going concern" in "as is where is basis". Considering the operations carried out by the Corporate Debtor, the SCC had decided to invite EoI calling upon for a composite scheme of arrangement/compromise with the creditors of the Company under liquidation.

6. The Ld. Counsel for the Applicant had further submitted that the SCC has arrived at a reserve price of Rs.11.00 crores and EMD of Rs.50.00 lakh, for submission of a composite scheme of arrangement.

7. The Ld. Counsel for Applicant had submitted that average liquidation value was arrived by two Independent Registered Valuers. Meanwhile, in response to the public notice dated 31.03.2022, a composite scheme of arrangement was submitted by Jeffepex Paper Industries Pvt Ltd, the prospective investor herein who has come forward to infuse funds into the Corporate Debtor in order to support and revive the Company under liquidation. The investor had proposed to invest a sum of Rs.11.00 crores, excluding the liquidation cost which shall be reimbursed on actual basis to the Liquidator. This being the facts of the instant case, from the application filed, it is seen that the instant application has been filed under Section 35(1)(n) (o), r/w Section 60(5) and Regulation 32(c) of IBBI (Liquidation process Regulation), 2016. However, the prayer seeks approval of scheme proposed by the prospective investor in order to sell the company to the investor on "going concern" basis. On reading both together, it is manifest

that the Liquidator has brought a scheme of compromise under Regulation 32(c) for sale of the Corporate Debtor as going concern. However, the provisions are clear for both, if the Corporate Debtor is to be sold as "going concern" on "as is where is basis", it should be within 90 days from the date of liquidation commencement. However, in the instant case, the Applicant has approached this Adjudicating Authority under Regulation 32(e), seeking sale of the Corporate Debtor as "going concern" without proper reasoning as to why the same is not brought within 90 days of the LCD. Even assuming it for a moment that the instant application is brought as a scheme of compromise which is annexed between pg. nos. 45-69 of the application, the same should be filed in the respective provisions and the attended rules. Since the Liquidator / Applicant is not clear herself as to whether the Corporate Debtor is sold as "going concern" or is taken over by way of a scheme of compromise this Adjudicating Authority refrains itself to proceed any further.

8. Accordingly, we are constrained to **dismiss** the instant application with a liberty to the Applicant so as to confirm with the SCC and file a fresh application in the respective provisions of the act.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-

ASHOK KUMAR BHARDWAJ
MEMBER (JUDICIAL)

Mohana Priya R

*Order pronounced under Rule 151 of NCLT Rules 2016, by Sameer Kakar Member (Technical) on behalf of the Bench comprising of **Ashok Kumar Bhardwaj**, Member (Judicial) and **Sameer Kakar**, Member (Technical)*

M. Mallucheeeragoul
(Court-officer)