

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT III**

IA-3796/2021
In
CP (IB) – 138/ND/2020
Filed under Section 33(2)
Of the IBC, 2016

In the matter of Narmada Cereals Pvt. Ltd. (CD)

Dr. Vichitra Narayan Pathak
Resolution Professional

... Applicant

Order delivered on 04th of January, 2022

CORAM:

Shri Bachu Venkat Balaram Das
Hon'ble Member (Judicial)

Shri Narender Kumar Bhola
Hon'ble Member (Technical)

Parties / Counsels present

For Applicant : Mr. Abhishek Naik (Advocate)

ORDER

Per: NARENDER KUMAR BHOLA, MEMBER (T)

1. This relates to IA- 3796/2021 filed in CP (IB) – 138/ND/2020 filed by Dr. Vichitra Narayan Pathak (hereinafter referred to as 'Resolution Professional') under Section 33(2) read with 60(5) of the Insolvency and Bankruptcy Code, 2016. The prayer made in the Application is to pass an order of liquidation pertaining to the Corporate Debtor (CD) viz., Narmada Cereals Pvt. Ltd.
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2. Originally the captioned petition was admitted by this Adjudicating Authority vide Order dated 07.12.2020, the Corporate Insolvency Resolution Process (CIRP) was initiated of the Corporate Debtor and Mr. Arun Chadha was appointed as Interim Resolution Professional (IRP) vide the same order.
3. It is submitted that public announcement was made by the IRP on 11.12.2020 and pursuant to that a claim of one financial creditor, Punjab national bank was received by IRP and CoC was constituted and as per applicable regulation consisting of sole financial creditor. It is stated that the 1st CoC meeting was held on 07.01.2021, wherein Dr. Vichitra Narayan Pathak (applicant) was appointed as the Resolution Professional and same was approved by this Adjudicating Authority vide order dated 09.02.2021. It is further submitted that the applicant performed its duties as per the IB Code, 2016 and the CIRP Regulations including the appointment of registered valuers.
4. It is further submitted that in 3rd CoC meeting dated 22.02.2021, the CoC passed necessary resolution for publication of Form G in terms of section 25(2)(h) of the code read with 36A (1) of CIRP Regulations and Form G was published on 23.02.2021 in Dainik Jagran (Hindi) and Economic Times (English), Financial Express (English) and Jansatta (Hindi) for inviting expression of interest for submission of resolution plan for the Corporate Debtor. Pursuant to that 6 expression of



interests were submitted by the Prospective Resolution Applicants (PRAs) within stipulated time and after scrutiny, the applicant found 5 PRAs eligible in terms of Section 29A of the IB Code, 2016, therefore, the information memorandum, evaluation matrix and the request for resolution plan (RFRP) was shared with the PRAs and last date for submission of resolution plan was 24.04.2021.

5. It is averred that submission for resolution plan date was further extended by the CoC to 10.05.2021 on the account of lockdown imposed by the government in its 5th CoC meeting dated 22.04.2021. It is stated that 4 resolution plans were received by the applicant before the stipulated date. In the 7th CoC dated 25.05.2021, wherein all the resolution applicants (RAs) were invited for discussions and advised them to substantially increase their resolution plan value. This adjudicating authority vide order dated 10.06.2021 granted further of 90 days u/s 12(2) of IB Code, 2016. It is further stated that in 8th CoC dated 29.06.2021, the CoC advised the RAs to further improve their resolution plan value as revised resolution plan was increased only marginally. The CoC in its 9th meeting dated 13.07.2021 gave the final opportunity to RAs to improve/modify the resolution plan, however, the RAs refused to make any change.
6. It is submitted that on 09.08.2021, the COC having 100% voting share and exercising its commercial wisdom, did not find any of the resolution plan(s) to be feasible



and consequently, voted against the resolution(s) for approval of each of the resolution plan(s). Alternatively, the COC voted for resolution approving liquidation of the Corporate Debtor. The COC also approved the estimated liquidation cost but voted against the resolution for appointment of the Applicant as the Liquidator of the Corporate Debtor. During the hearing of the present application vide order dated 06.09.2021, this Adjudicating Authority has passed the following order:

“Heard the submissions made by the Counsel for the Suspended Board of Directors. Counsel for the Suspended Board of Directors has come with a proposal to offer double of the EMD amount (Rs.50 Lakhs) and also to submit fresh proposal separately for the Corporate Debtor and another plan of personal guarantor (two plans separately) to the CoC and the CoC is at liberty to examine the same with due diligence and communicate their decision to the Applicant within two weeks. The Resolution Professional is directed to file an additional affidavit with respect to the developments and the decision of the CoC regarding consideration of the fresh plan submitted by the Suspended Board of Directors in the matter.”

7. In compliance of order dated 06.09.2021, the applicant filed an additional affidavit and relevant extract of the affidavit is as follows:

“3. In accordance with the directions given under order dated 06.09.2021 of this Hon'ble Tribunal, the Deponent called for 11th CoC meeting on 17.09.2021 wherein the resolution plan submitted by the RA was placed before CoC members for consideration. The meeting was attended by the sole CoC member, Punjab National Bank and Mr. Arun Mittal, on behalf of the RA.

4. That on 17.09.2021 was the said resolution plan was rejected for consideration as it was not in compliance of the directions of this Hon'ble Tribunal of submitting a separate resolution plans. The COC directed the RA to submit revised resolution plans, one for the Corporate Debtor and another for releasing of third party collaterals. Accordingly, two separate resolution plans are submitted by the RA for consideration of

the COC. However, the COC meeting was adjourned to 18.09.2021 as the resolution amount stipulated under the resolution plans was below the financial expectation of the COC. The RA assured of submitting a revised proposal.

5. That on 18.09.2021, the RA again submitted composite resolution plan for a resolution amount of Rs.37 Crores for acquiring the Corporate Debtor as a going concern as well as for release of third-party collaterals and personal guarantees.

6. The Deponent apprised the COC member that the composite resolution plans was in defiance of this Hon'ble Tribunal Order dated 06.09.2021. After brief discussion, the COC member agreed to consider the composite resolution plan submitted by the RA considering the composite resolution plan was feasible and in the interest of all the stakeholders of the Corporate Debtor. Consequently, the Deponent was requested by the COC to examine in terms of fulfilment of compliances and adjourned the meeting to 20.09.2021 for consideration of the composite resolution plan.

7. That on 20.09.2021, the COC meeting continued and COC considered the composite resolution plan for a resolution amount of Rs.37 Crores for acquiring the Corporate Debtor as a going concern as well as for release of third-party collaterals and personal guarantees was put for voting by the COC member. Accordingly, before concluding with the COC meeting, the Deponent put up the necessary resolutions for approval/rejection of the COC on all the four resolutions plans received and considered by COC i.e., i) consortium of Arun Mittal & Abhinav Mittal; ii) consortium of Maharana Pratap; iii) Fortune Rice; iv) Sandeep Garg, for e-voting and voting window was opened from 23.09.2021 to 26.09.2021 which was further extended to 30.09.2021.

8. The COC on 30.09.2021, applying its commercial wisdom, has rejected all the resolution plans including the revised composite plan submitted by the RA. Hence, the Corporate Debtor has now put under the rigors of liquidation as prayed for in the captioned Application."

8. Since no resolution plan has come before this Adjudicating Authority for approval and CoC has passed resolution approving the liquidation of corporate debtor, therefore, the Corporate Debtor has to be ordered for Liquidation.



ORDER

9. In view of the facts and circumstances recorded by Applicant in IA- 3796/2021 filed in CP (IB) - 138/ND/2020 and in exercise of powers conferred under Sub-Clauses (i) (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the I&B Code, 2016, this Authority proceeds to pass Liquidation Order as follows: -

- I. This Authority hereby orders for liquidation of the Corporate Debtor (CD) viz., M/s. Narmada Cereals Pvt. Ltd. which shall be conducted in the manner as laid down in Chapter III of part II of the Insolvency & Bankruptcy Code, 2016;
- II. Since CoC rejected the resolution to appoint the Resolution Professional as Liquidator, therefore, this Authority hereby appoints Mr. Prabhat Jain having Reg. No. IBBI/IPA-001/IP-P01980/2020-2021/13123 (Email Id: prabhat@pdmco.in) as Liquidator from list recommended by IBBI, who shall issue a public announcement stating therein that the Corporate Debtor is in liquidation;
- III. Subject to Section 52 of the Insolvency & Bankruptcy Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on

behalf of the Corporate Debtor, with the prior approval of this Authority.

IV. This Authority makes it clear that Para (IV) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

V. This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

VI. 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 effect and shall be vested with the Liquidator viz., Mr. Prabhat Jain, in addition to it, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the Insolvency & Bankruptcy Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

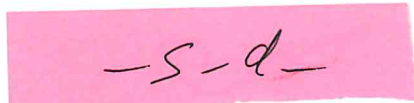
VII. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.



VIII. The Liquidator shall be entitled to charge such fees for the conduct of the liquidation proceedings and in such proportion to the value of liquidation estate as specified under regulation 4(2) of the IBBI (Liquidation Process) Regulations, 2016.

IX. The Registry is directed to communicate this order with immediate effect to the concerned Registrar of Companies (ROC) with which the Corporate Debtor is registered, OL, Registered Office of the Corporate Debtor and Liquidator viz. Mr. Prabhat Jain, for information and compliance.

10. In terms of the above, IA-3796/2021 filed in CP (IB) – 138/ND/2020 by the Applicants under Section 33(2) of the Insolvency & Bankruptcy Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor viz., M/s Narmada Cereals Pvt. Ltd. is Allowed.



(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)



(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)