

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
ALLAHABAD BENCH**

IA NO. 210/2020

IN

COMPANY PETITION NO. (IB) 128/ALD/2019

*(Under Section 33(1) (a) of the Insolvency and Bankruptcy Code, 2016 for
liquidation of the corporate debtor)*

IN THE MATTER OF:

CHANCHAL DUA
(RESOLUTION PROFESSIONAL)
KK MILK FRESH INDIA LTD.

.....APPLICANT

AND

IN THE MATTER OF:

SMT. ANURADHA DEVI

.....OPERATIONAL CREDITOR

VERSUS

KK MILK FRESH INDIA LIMITED

.....CORPORATE DEBTOR.

ORDER PRONOUNCED ON :06.10.2021

CORAM:

Hon'ble Dr. Deepti Mukesh, Member, Judicial

Hon'ble Ms. Sumita Purkayastha, Member, Technical

MEMO OF PARTIES

Chanchal Dua
(Resolution Professional)
KK Milk Fresh India Ltd.
1-A/85A, Ramesh Nagar,
New Delhi-110015

.....APPLICANT

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Mr. Chanchal Dua (RP) and Smt. Anuradha Devi vs.
KK Milk Fresh India Ltd.

Sd

Appearance:

For RP: Mr. Abhishek Anand, Advocate
For Respondent : Mr. Imtiyaz, Advocate

ORDER

[Per se: Ms. Sumita Purkayastha, Member (T)]

1. This is an application filed by Resolution Professional under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the Corporate Debtor, KK Milk Fresh India Ltd. and also for the appointment of the Liquidator thereof.
2. This Bench vide its order dated 24.09.2019, admitted the application for initiation of CIRP filed by the Operational Creditor under Section 9 of IBC, 2016 and appointed Mr. Swami Deen Gupta as the Interim Resolution Professional.
3. Pursuant to the order, the IRP made a public announcement in accordance with Section 15 of the Code in Form A on 01.10.2019 in which the last date for submissions of proof of claim was specified as 12.10.2019. Further the CoC in the first meeting dated 24.10.2019 appraised the members of CoC that the necessary information pertaining to the corporate debtor is not available to him as the ex-directors were not cooperating.

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4. Thereafter in the Third CoC meeting held on 10.12.2019, the COC replaced the IRP with new RP named as Mr. Chanchal Dua with 100% voting share which was further approved by this Tribunal vide its order dated 30.12.2019.
5. In the 4th COC Meeting held on 21.01.2020, the RP appraised the members of CoC regarding invitation of EOI for submission of the Resolution plan by publication of FORM- G, which was approved by CoC and pursuant to this, the RP in terms of Section 25 read with Regulation 36A of CIRP Regulations, 2016, published the EOI for submission of Resolutions Plans for the Corporate Debtor with last date of submission of EOI on 07.02.2020.
6. Further , in the 5th meeting of COC, the RP appraised the member of COC about the EOIs being received from three prospective resolution applicants and the final list of eligible PRAs was issued but in the 6th meeting of COC which convened on 17.03.2020, the applicant appraised the CoC that the CIRP of 180 days is going to expire and PRAs have not submitted the Resolution Plan till the last date given by the Applicant and also apprised the fact that some other PRAs has approached the Applicant to submit the EOI. Pursuant thereto it was decided by the Members of COC to call for

—Sd—

a fresh invitation for EOI by publishing Form-G thus the Resolution for extension of CIRP by 90 days was approved.

7. Thereafter, fresh EOI was published by the CoC in which the last date for submission of EOI was 11.07.2020. Further in the 8th meeting of COC, the applicant brought before the CoC that the eligible provisional list of Prospective Resolution Applicants (for brevity 'PRAs') was made and the Request for Resolution Plan (for brevity 'RFRP') along with a valuation matrix was also issued on 14.07.2020 and the final list of eligible PRAs with 5 applicant was issued on 21.07.2020 and the Resolution Plan from the PRAs were awaited to be received till the last date of the same. The detailed discussions were held on the process and remaining timeline for considering and evaluating the Resolution Plans to be received.
8. Further based on the valuation report, the average fair value of land and building, plant and machinery and securities or financial assets is Rs. 96.87 crores and liquidation value of the Corporate Debtor is Rs. 67.80 crores .
9. Thereafter, in the 9th CoC meeting held on 21.08.2020, the applicant appraised the member of COC that the last date for submission of resolution plan was stipulated as 13.08.2020 but despite constant follow ups and reminders for submission of

Resolution Plan, no Resolution Plan was received from any PRAs forming part of final list of PRAs.

10. Thus, upon discussions and deliberations, the members of CoC, unanimously advised the RP to file the application for liquidation of the corporate debtor in view of the fact that there is no alternative available except for proposing the liquidation of the Corporate Debtor considering the completion of 270 days of CIRP period and in absence of any Resolution Plan. Accordingly, it was resolved that an application under Section 33 of IBC to seek permission of this Adjudicating Authority for liquidation of Corporate Debtor shall be filed and it was resolved as:

“ Post detailed discussions and deliberations, the unanimous view of CoC members emerged that no alternative was available excepting for proposing liquidation of the corporate debtor, considering that 270 days of CIRP are expiring on 29.08.2020. Accordingly, the CoC unanimously advised RP to file an application for liquidation of the CD before the Hon’ble NCLT and decided to appoint RP as the liquidator for the corporate debtor. Whereupon, RP apprised that the resolution to this effect will be placed before CoC for approval through voting u/s 33 (2) of the code, to which the representative of SBI and other CoC members indicated that the voting on this agenda is not required. CoC further stated that in accordance with Section 33(1)(a) of the Code, if the Hon’ble NCLT does not receive a resolution plan under Sec 30(6), before the expiry of the CIRP period, it shall pass an order for liquidation of the corporate debtor, if no plan is approved by the CoC

before the end and resultantly, no plan is received by the Hon'ble NCLT before the end of CIRP and CIRP period expires.

The RP is at liberty to file an application under Sec 33(1)(a) of the IB Code, intimating the Hon'ble NCLT that no IBC compliant plan has been approved by the CoC till the end of the CIRP period, and since CIRP period has expired, accordingly seek appropriate directions to be passed by the Hon'ble NCLT, in light of the provision under Section 33(1)(a) and 33(1)(i). There is no bar upon the RP to approach the Hon'ble NCLT under Sec33 (1) (a).

It was discussed that RP may submit the aforesaid to Hon'ble NCLT."

11. Taking into consideration, the provisions of law and as well as the documents on record , this Tribunal is of the view that the endeavours to obtain resolution of corporate debtor has failed and CoC in its commercial wisdom decided to liquidate the corporate debtor which does not require any interference, thus in present circumstances the CoC decision is appropriate.
12. We hereby order that the corporate debtor KK Milk Fresh India Ltd., stands liquidated and the incidence of liquidation to follow, on and from the date of this order in terms of the provisions of IBC, 2016 and more particularly as given in Chapter – III of IBC, 2016 and also in terms of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017.

13. Further as the CoC have decided to confirm the RP who was conducting the CIRP, to be appointed as the Liquidator, who has given consent in Form-AA to act as a Liquidator. Accordingly, Chanchal Dua IBBI No. : IBBI/IPA-003/IP-N00083/2017-18/10821 is be and hereby appointed as Liquidator in terms of Section 34(1) of the Code, with the following directions:

- (a) The liquidator to issue public announcement stating that the Corporate Debtor is in Liquidation in term of Regulation 12 of IBBI (Liquidation Process) Regulations, 2016.
- (b) The Liquidator to proceed with the process of Liquidation in the manner laid down in Chapter-III of Part -II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- (c) This order is deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016.
- (d) The Liquidator to submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

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14. As a consequence of the application being allowed the Moratorium as envisaged under Section 14 of the Insolvency and Bankruptcy

Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence.

15. A Copy of this order shall be communicated to the financial creditors, corporate debtor and the Liquidator for taking necessary steps. In addition, a copy of said order shall be also be forwarded to IBBI for its records and to ROC for updating the Master Data.
16. The present application is allowed and disposed of in terms of above order.



(SUMITA PURKAYASTHA)
MEMBER (T)



(DR. DEEPTI MUKESH)
MEMBER (J)

Swati Gupta
(LRA)