

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI**

MA/204/IB/2018

In

TCP/130/(IB)/CB/2017

Under Section 33(2) and section 60 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Shri.L.K.Sivaramakrishnan
Resolution Professional

....Applicant

Representing Corporate Debtor
(M/s.Auro Mira Biopower India Private Limited)

Representing Financial Creditors
(Bank of India & Phoenix ARC Pvt. Limited)

Vs

Representing Operational Creditor
(Mr. N. Nagarajan)

Order delivered on 16.07.2018

CORAM:

K. ANANTHA PADMANABHA SWAMY, MEMBER (J)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Applicant: Shri. L.K. Sivaramakrishnan, RP

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

1. Matter under consideration is a Miscellaneous Application dated 18.06.2018 filed by Mr. L.K. Sivaramakrishnan, the Resolution Professional for M/s. Auro Mira Biopower India Private Limited, (for short 'Corporate Debtor') which is under CIRP as per the Order dated 01.09.2017.

f

2. The facts of the case as it stands now, in brief, is that the original petitionTCP/130/(IB)/CB/2017 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short the IBC, 2016) was filed by Mr. N. Nagarajan, the Operational Creditor (for brevity OC) to initiate the Corporate Insolvency Resolution Process (in short CIRP) against M/s. Auro Mira Biopower India Private Limited, the Corporate Debtor (in short CD). The Insolvency and Bankruptcy Board of India (IBBI) was requested by this Tribunal to recommend the name of an Interim Resolution Professional. On the basis of directions issued by the Adjudicating Authority and recommendation by the IBBI, Mr.Arumugam was appointed as Interim Resolution Professional under section 16(3)(a) of the IBC, 2016.

3. In the first meeting of Committee of Creditors (CoC) held on 13.10.2017, the appointment of Resolution Professional (RP) was unanimously approved and recommendation was made to appoint Mr. L.K. Sivaramakrishnan (IBBI/IPA-001/IP-P00045/2017-18/10119) as Resolution Professional. The list of Creditors was finalized and the CoC was also constituted on 13.10.2017 and the details of which were submitted before this Tribunal on 25.10.2017.

4. (i) The Resolution Professional filed an application on 18.06.2018 and submitted that he had given the list of Financial Creditors and further claims received in respect of Corporate Debtor.

(ii) As per Regulation 27 of the Insolvency and Bankruptcy Board of India (Resolution Process for Corporate Persons), the IRP appointed two Registered Valuers to determine the liquidation value of the Corporate Debtor. On perusal of records, the RP noted that out of two registered valuers appointed, one of the valuers had not submitted his report since he was not getting all the information that he had sought. The RP had appointed another registered valuer (Second Valuer) on 08.12.2017. Since there was huge variation in the reports submitted by the two valuers, the RP, as per Regulation 35(2), appointed Third Valuer after discussing the subject in the 3rd COC meeting held on 22.01.2018. It was decided not to conduct any Special Audit to identify the transaction as required under Section 43, 45, 49 & 50 of IBC, 2016 as the Plant had been closed for more than three years; there were no operational activities, except routine maintenance expenditure being incurred on security, diesel for lighting etc.

(iii) Since the moratorium period of 180 days would expire on 28.02.2018, the counsel for RP filed a memo requesting extension of moratorium period. The CoC in its 4th meeting dated 19.04.2018 has recommended for extension of moratorium period for further 90 days. The Tribunal has passed an order dated 21.02.2018 for extension of Corporate Insolvency Resolution Process under Section 12(2) of the IBC Act, 2016 and the moratorium period of 180 days was further extended till 28.05.2018. In the above meeting, it was decided to place advertisement inviting Expression of Interest as well as sending e-mails to Asset Reconstruction Companies (ARCs) seeking Resolution Plan. Accordingly, Advertisement was given in the All India Edition of "Business Standard" on 09.02.2018 and e-mails were sent to 24 ARCs on 27.02.2018. A response was received from only one ARC evincing interest. The Confidentiality and Non-Disclosure Agreement was sought from the ARC and the Information Memorandum (IM) was shared. Subsequently, there was no response from the ARC.

(iv) In the 6th CoC meeting, it was discussed about the time period for completion of Corporate Insolvency Resolution Process which was due to expire on 28.05.2018. During the course of this meeting, a potential Resolution Applicant had approached the RP

and Committee of Creditors expressing his interest in the business of the Corporate Debtor. The potential Resolution Applicant also sought time for visiting the plant and submitting a resolution plan.

(v) Since the Corporate Insolvency Resolution Process was about to expire, the Committee of Creditors and Resolution Professional decided to approach NCLT to seek further extension of time. Based on this, the counsel for RP filed a Miscellaneous Application MA/113/IB/2018 before the NCLT Single Bench, Chennai seeking an extension of time from 28.05.2018 (after completion of 270 days). The Adjudicating Authority passed an order on 29.05.2018 granting a period of extension for three weeks from 28.05.2018 for the CIRP of the Corporate Debtor. The said period of extension also expired on 18th June 2018.

(vi) In the mean while, another potential Resolution Applicant had also evinced interest through a legal firm acting as their representative. However, despite sharing the format of the Non-Disclosure and Confidentiality Agreement, no details were received from them. None of the above mentioned potential Resolution Applicants have, as on date, submitted any Resolution Plan despite continuous efforts/reminders to this effect.

82

(vii) In the 7th CoC meeting convened on 15.06.2018, it was resolved to go in for Liquidation process under Section 33 of the IBC 2016 since no viable resolution plan has come up. The applicant RP has filed this Application for liquidation under Section 33 of the Insolvency and Bankruptcy Code, 2016.

ORDER

In the light of the facts and circumstances stated in the Affidavit filed by the RP, this Adjudicating Authority in exercise of powers conferred under Section 33 of the I&B Code, 2016, proceed to pass the following order:

- i. We order for liquidation of the Corporate Debtor viz., M/s.AuroMira Biopower India Private Limited, which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;
- ii. Since the CoC has not recommended any name for being appointed as liquidator, this Tribunal presumes that CoC intend for the continuation of the RP viz., Mr.L.K. Sivaramakrishnan as Liquidator, who shall issue a public announcement stating therein that the

81

Corporate Debtor is in liquidation as recommended by the Committee of Creditors;

- iii. The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of approval of the application for liquidation filed by the RP with this Tribunal;
- iv. Copy of this Order shall be sent to the Registrar of Companies, RD, OL and the Registered Office of the Corporate Debtor.
- v. As stated in Section 33(5) of the I&B Code 2016, subject to Section 52, 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.
- vi. We make it clear that para (v) 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.
- vii. In terms of Section 33(7) of the I&B Code 2016 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.

- viii. 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 in the Liquidator viz., Mr. L.K. Sivaramakrishnan. In addition to this, the Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- ix. 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.
- x. The Liquidator shall be entitled to charge such fee for the conduct of the liquidation proceedings in such a proportion to the value of the liquidation estate assets as may be specified by the IBBI Rules and Regulations. Accordingly, the fees of the conduct of

the liquidation proceedings shall be paid to the Liquidator from the proceeds of the liquidation estate.

- xi. The Tribunal directs the liquidator to submit progress reports before this Tribunal as per Rule 15 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. As per the said rule, the liquidator is directed to submit the 1st progress report within 15 days after the end of the quarter in which he is appointed and subsequent progress reports within 15 days after the end of every quarter during which he acts as a liquidator.

In terms of the above, application **MA/204/(IB)/2018 (TCP/130/(IB)/CB/2017)** by the RP under Section 33 of the I&B Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor stands **disposed of**.

S. Vijayaraghavan.
(S.VIJAYARAGHAVAN)
MEMBER (TECHNICAL)


(K.ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

/tjs/knp/