
(2023) 01 NCLT CK 0063

In the National Company Law Tribunal

Case No : IA No. 362 Of 2021 In CP (IB) No. 281/Chd/Hry/2019

M/s. Ricela Health Foods Limited Vs M/s. Evershine Solvex Pvt. Ltd ?

Date of Decision : 23-01-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9, 12, 13(1)(b), 14, 15, 19, 21(1), 30(6), 32(2), 33(2), 33(5), 33(6), 33(7), 52, 56
Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016 — Regulation 12, 13
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 6

Citation : (2023) 01 NCLT CK 0063

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Pulkit Goyal, Rajiv Gupta

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

IA No. 362/2021

1. The present application has been filed by the Resolution Professional to liquidate Corporate Debtor under Section 33(2) of the Insolvency and Bankruptcy Code, 2016. Further, to appoint the Resolution Professional as Liquidator. In the instant case, the petition for initiation of the CIRP process was filed by Ricela Health Foods Limited (Operational Creditor) against the Corporate Debtor under Section 9 of the IBC, 2016 and the same was admitted by this Adjudicating authority vide order dated 27.02.2020. In the present matter, Mr Anjum Goyal was proposed as Interim Resolution Professional by the operational creditor. The IRP made a public announcement dated 29.02.2020 in prescribed Form A, in accordance with Regulation 6 of IBBI (CIRP) Regulations, 2016 (hereinafter referred to as Regulations) read with Section 13(1)(b) and 15 of the Code.

2. The Committee of Creditors (CoC) in its first meeting dated 08.04.2020, with

two financial creditors with a voting share of 100% resolved to replace the Interim Resolution Applicant with a new Resolution Professional i.e, Mr Mohit Chawla. Therefore, this Adjudicating Authority appointed Mr Mohit Chawla as Resolution Professional vide order dated 27.07.2020.

3. It is submitted that the Second Meeting of the Committee of Creditors was convened on 18.08.2020, wherein discussions took place on the evaluation matrix for inviting resolution plan, the appointment of valuers to determine the fair value and the liquidation value of the Corporate Debtor including other agendas. Further, the Resolution Professional called the fourth meeting of the CoC on 22.12.2020, where including other matters, publication of EoI was discussed. The fifth meeting of COC was conducted on 15.01.2021, wherein discussion took place on the appointment of professionals for conducting transaction audit in the account of Corporate Debtor, EOI received pursuant to publication of Form G, the appointment of SFA valuers, non-cooperation rendered by promoters/erstwhile directors was discussed.

4. The Resolution Professional convened the seventh meeting of the CoC on 22.03.2021, wherein the plans were received from all the Resolution Applicants including the erstwhile promoter, and they were invited to present their plans before the CoC, and the members of the CoC discussed their views on the respective plans. The members of the CoC were of the view that the plan amount being offered by the Resolution Applicants is on the lower side, and hence all the applicants were advised to work further on the plan amount.

5. The Resolution Professional then received a Revised plan of two Resolution Applicants namely Sh. Dapinder Dhillon representative of M/s Naaj Agro and erstwhile director/promoter i.e. Sh. Ravinder Kumar Kalra in consortium with M/s Aggarwal Agro Industries Ltd. and detailed discussion was carried out on the Resolution Plans submitted by each of the Resolution Applicants, but the same was not put to the vote since the value offered by all the Resolution Applicants was less than the realizable value. The members of CoC advised the Resolution Applicants to further revise the amounts as the debt amount is approximate Rs. 20 crores while the Resolution Applicants are proposing a haircut of 80%. Since the plan amount was only changed marginally, therefore, the CoC had advised them to revise the plan further.

6. The Resolution Professional convened the final 11th meeting of the CoC on 02.07.2021, wherein the members of the CoC of view that the plan amount being offered to the members of the CoC is nowhere close to the realisable value and not feasible and viable, despite giving adequate opportunity to all the Resolution Applicants including the erstwhile director of the corporate debtor. It is submitted that none of the Resolution Applicants increased the plan amount substantially. Moreover, the extended period of CIRP i.e., 270 days was also expiring on 07.07.2021. Therefore, it was unanimously resolved by the CoC to liquidate the corporate debtor with 100% votes in favour of the liquidation and the COC members have also resolved to appoint Mr Mohit Chawla by 100% votes

to continue as the liquidator in the present matter. A copy of the consent form to act as liquidator is attached as Annexure A-14.

7. Pursuant to the order dated 17.11.2021, the ex-director/promoter has filed objections/reply vide diary no. 00450/36 dated 08.07.2022, wherein it is stated that the value of the Resolution Plan of Rs. 3.30 Crores would be much higher than the liquidation value of opinion and estimate of respondent/objector. Further, it is stated that the liquidation value has not been disclosed by the Resolution Professional and the respondent offered combined OTS of its three units/accounts to the Bank of India and the same has been rejected by the bank. Further, a separate OTS for the corporate debtor for Rs. 2.40 Crores has been rejected by the bank. It is submitted that the financial creditor/and the Resolution Professional exceeded the powers stipulated under the provisions of the Code and the CoC has rejected the Resolution Plan of the objector/ex-director without assigning any reason, therefore, the decision of CoC be rejected, and the Resolution Plan submitted by the respondent be considered.

8. The Resolution Professional has filed a response to the objections raised by the Suspended Board of Directors vide diary No. 00816/4 dated 24.11.2022, wherein it is submitted that the members of CoC had in their commercial wisdom with 100% voting rejected the Resolution Plan offered by the objector as it is on the lower side and the value is nowhere close to the realisation value of the assets of the corporate debtor. Further, the matter of OTS is outside the purview of the CIRP process, and the same is a matter of issue between the suspended director/borrowers and lender banks/institutions. Also, the plant of the corporate debtor was shut down way before the initiation of the CIRP process.

9. Keeping in view the fact that the CoC has rejected the Resolution Plan of the objector, after due deliberation and respecting the commercial wisdom of the CoC to take this decision, we refrain from allowing the prayer of the objector/suspended director.

10. Now, coming to the merit of the application, we would like to refer the Section 33(2) of IBC and the same is reproduced below:-

"Section 33(2): Initiation of liquidation

(1)

(2) Where the resolution professional, at any time during the Corporate Insolvency Resolution Process but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the Committee of Creditors [approved by not less than sixty-six percent, of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[Explanation. - For the purpose of this subsection, it is hereby declared that the Committee of Creditors may take the decision to liquidate the corporate debtor

any time after its constitution under sub-section (1) of Section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

11. A bare perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

- i. before the expiry of the Insolvency Resolution Process period;
- ii. Maximum period permitted for completion of the Corporate Insolvency Resolution Process under Section 12 or the fast track Corporate Insolvency Resolution Process under Section 56 as the case may be; and
- iii. If does not receive a resolution plan under sub-section (6) of Section 30.

12. In the present case, the COC in its eleventh meeting held on 02.07.2021 has decided to liquidate the Corporate Debtor by passing Resolution with 100% voting in the aforesaid meeting and further resolved to appoint Resolution Professional as Liquidator.

13. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

14. It is submitted that the CoC in its 11th meeting held on 02.07.2021 has resolved to appoint the present Resolution Professional i.e. Mr Mohit Chawla, Registration No. IBBI/IPA-001/IP-P00524/2017-2018/10949 as liquidator and he has filed his consent in Annexure-14.

15. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor i.e. M/s. Evershine Solvex Private Limited is directed to be liquidated in the manner as laid down in Chapter III of the Code.

16. Accordingly, by exercising our power under Section 33(2) pass the following order:-

- i. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016;
- ii. Since the Resolution Professional has given his consent to act as Liquidator, therefore, Mr Mohit Chawla bearing Registration No. IBBI/IPA-001/IP-P00524/2017-2018/10949 is hereby appointed as liquidator;
- iii. The liquidator is directed to take custody and control of the assets and property of the Corporate Debtor with immediate effect and made a public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- iv. The Provision of Section 33 (5), (6) and (7) of the IBC, 2016 shall have come into force with immediate effect. The Order of Moratorium passed 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;

v. This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

vi. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

vii. The Liquidator shall file regular progress reports as per Regulation 15 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 every fortnightly thereafter;

viii. The Liquidator shall take necessary legal action to recover the trade receivables and other credits such as loans and advances from the parties which are reflected in the latest Balance Sheet of the Corporate Debtor if any. This direction is hereby given in concurrence with the jurisdiction prescribed under Section 33(5) of the Code.

ix. On initiation of the liquidation process but subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the Liquidator to institute a suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.

x. That 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 an effect and shall be vested in the liquidator;

xi. That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional;

xii. The Registry is directed to communicate a copy of the Order to the Corporate Debtor immediately;

xiii. A copy of this order be sent by the Registry to the Registrar of Companies, Punjab and Chandigarh for updating Master Data. After updating Master Data, RoC shall send a compliance report to the Registrar, NCLT within a period of 30 days;

xiv. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

xv. The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.

17. Thus, IA No. 362/2021 stands allowed and disposed of accordingly.