
(2021) 02 NCLT CK 0084

In the National Company Law Tribunal

Case No : Interlocutory Appeal No. 1202/MB Of 2020 In Company Petition No. 3147/MB Of 2019

Murlidhar Namdeo Bhalekar

APPELLANT

Vs

Sanjay Insecticides Pvt Ltd

RESPONDENT

Date of Decision : 26-02-2021

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 33(1), 33(1)(b)(i), 33(1)(b)(ii), 33(1)(b)(iii), 33(2), 52, 53

Citation : (2021) 02 NCLT CK 0084

Hon'ble Judges : Suchitra Kanuparthi, J;Chandra Bhan Singh, Member (Technical)

Bench : Division Bench

Final Decision : Allowed

Judgement

1. IA 1202 of 2020 has been filed under Section 33 (1) has been filed for the liquidation of the Corporate Debtor Company subsequent to a CoC resolution dated 27.02.2020.

2. Today during the course of hearing, RP is present in person. The Representative Mr. Naresh Trivedi, CS has appeared on behalf of the Financial Creditor (SBI).

3. Relevant portion of the CoC Resolution of 27-02-2020 is as follows -

"RESOLVED THAT, as the Corporate Debtor Sanjay Insecticides Private Limited completely shut down, no business operations carried out since last four years, no operating revenue, no employees, the whereabouts of Directors as per the records of MCA Mr. Rajendra Ghanshamdas Mandhane and Mr. Pradeep Ghanshamdas Mandhane not available as they have left their registered address, the CoC formed its considered opinion with 100% voting share to liquidate the Corporate Debtor Sanjay Insecticides Private Limited u/s 33 (2) of IBC, and the State Bank of India, Stressed Assets Recovery Branch, Town Centre Aurangabad

to file Miscellaneous Application before the Hon'ble NCLT Mumbai, through Resolution Professional, to pass liquidation order as referred to in sub- clause (i) (ii) (iii) of sub-clause b of sub-section 1 of section 33 of IBC."

4. RP mentions that vide order dated 07.08.2020, CoC has communicated the name of Mr. Rakesh Kuman Relann to be appointed as the liquidator of the Company. The written consent of Mr. Rakesh Kuman Relann has also been produced to act as the liquidator of the Company.

5. In view of above, the Bench approves the IA No 1202 of 2020 and the Liquidation of the Corporate Debtor Company and appointing of Mr. Rakesh Kumar Relann as liquidator in the matter.

6. In the same IA, RP has prayed for his remuneration for the conduct of CIRP. He has mentioned that he has been paid only till the May, 2020. RP mentions that he has been appointed on a monthly remuneration of Rs. 35,000/-.

7. In view of this prayer of the RP, the Bench directs CoC to pay the RP remuneration @ Rs. 35,000/- per month upto the date of which this order has been passed i.e. 26.02.2021 along with other incidental charges which he has incurred. These incidental charges the Bench notes is of about Rs. 28,000/- for the conduct of CIRP.

8. During the course of the discussion on the monthly remuneration, the representative of the CoC Mr. Nitin Trivedi mentions that CoC has resolved for the liquidation of the Company in February, 2020 and therefore amount due to the RP may be restricted till February, 2020.

9. This Bench takes note of the fact that the RP continues with the Corporate Debtor Company till the time either resolution plan is approved or Company order regarding liquidation is approved by the Bench. Therefore, RP is to be paid till 26.02.2021 i.e till the date matter regarding liquidation was decided by the Bench.

10. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, for the RP has complied with the procedure laid under the Code read with Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations), we are of the view that this case is fit to pass liquidation order under sub-section 1 of section 33 of the Code as no resolution plan has been submitted before the Adjudicating Authority by the Resolution Professional, and accordingly, this Bench orders;

a. that the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.

b. all the powers of the Board of Directors, key managerial persons, the partners

of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.

c. that the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

d. that the Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.

e. that on having liquidation process initiated, 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 suit or other legal proceeding on behalf of the corporate debtor with prior approval of this Adjudicating Authority.

f. This liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

11. On the above lines, IA 1202 of 2020 is allowed and disposed off.