

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

**IA Nos. 949/2020
In
CP (IB) No.73/Chd/CHD/2018
(Admitted)**

**Under Section 33(1) of the
Insolvency and Bankruptcy Code,
2016**

In the matter of:-

ICICI Bank Limited ...Financial Creditor

Vs.

Lakshmi Energy & Foods Limited ...Corporate Debtor

And in the matter of IA No.949/2020:-

Kuldip Kumar Bassi, Resolution Professional for
Lakshmi Energy & Foods Limited ...Applicant

Order delivered on 26.07.2021

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)**

Present through Video Conferencing:-

For the Applicant/

Resolution Professional : 1. Mr. Savar Mahajan, Advocate
2. Mr. Mohana Nijhawan, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

IA No.949/2020

IA No.949/2020 has been filed by the Resolution Professional of Lakshmi Energy & Foods Limited (Corporate Debtor) under

Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation in the matter of Lakshmi Energy & Foods Limited.

2. CP (IB) No.73/Chd/CHD/2018 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by "ICICI Bank Limited" to initiate Corporate Insolvency Resolution Process (in short 'CIRP') against Lakshmi Energy & Foods Limited was admitted on 03.09.2019 and Mr. Ravinder Aggarwal was appointed as Interim Resolution Professional. Subsequently, vide order dated 27.02.2020, IRP was replaced and Mr. Kuldip Kumar Bassi (Applicant) was appointed as Resolution Professional.

3. The facts of the case, briefly stated, are that Form G inviting Expression of Interest was published in the newspaper on 10.03.2020 and the last date to submit Expression of Interest (EOI) was fixed for 25.03.2020. In pursuance of the said publication, RP received four EOI(s) but only one prospective Resolution Applicant-a consortium of JFC Finance India Limited (JFC Consortium) had submitted the resolution plan on 27.07.2020. Subsequently, in the 12th Meeting of CoC held on 29.07.2020, the resolution plan submitted by JFC Consortium was discussed on 29.07.2020 with the member of CoC.

4. It is further submitted that in the 14th meeting of CoC held on 18.08.2020, the resolution plan was discussed with the members of CoC and further discussed with Resolution Applicant for raising the resolution plan amount. After these discussions JFC Consortium submitted various addendums and clarifications to its resolution plan on various subsequent dates. Copy of minutes of 14th meeting of CoC is attached as Annexure-9 of the application.

5. In the 15th meeting of CoC held on 28.09.2020, the resolution plan was put for voting but the voting was extended to 29.09.2020 and then to 05.10.2020 and finally voted on 07.10.2020. Thereafter, the resolution plan submitted by JFC Consortium was rejected by the CoC having 100% voting share. A copy of minutes of 15th meeting of CoC and voting results are found at Annexure A-15 (page No.110 of the application).

6. In view of the rejection of the Resolution plan in the 15th meeting of CoC held on 28.09.2020 and since no other resolution plan was submitted by any of the EOI(s) under Section 30(6) of the I&B Code, 2016 within the time period permitted, the Resolution Professional filed IA No. 949/2020 under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for passing an order of liquidation.

7. The Hon'ble NCLAT, in Praveen Kumar Nand Kumar Vs. VSL Securities Pvt. Ltd. in CA No. 1/2020 in CA No. 308/2000, dated 09.06.2020, observed as under:-

“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review.”

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

9. The relevant provisions of Section 33 (1) (a) of the Code are as follows:-

“Section 33: Initiation of liquidation.

***33. (1) Where the Adjudicating Authority, —**

(a) before the expiry of the insolvency resolution process period or the 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, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall—

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.”

10. **Prescribed period for filing application** - In the present case, the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted on 03.09.2019 and the present application is filed by the Resolution Professional on 11.12.2020. The period of 180 days would be completed on 01.03.2020. As per order dated 25.02.2020 (Annexure-12), this Hon'ble Adjudicating Authority has allowed the CIRP to be extended by a period of 90 days w.e.f. 01.03.2020, but as per Notification No. IBBI/2020-21/GN/REG059 dated 20.04.2020, the period of Lockdown is excluded for the purpose of calculating the timelines in CIR Process. Hence, after excluding the lockdown period w.e.f. 23.03.2020 to 31.07.2020, the CIRP was expired on 07.10.2020 and the present application is filed on 11.12.2020.

11. **Appointment of Liquidator** – Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process shall, subject to submission of written consent, act as the Liquidator for the purpose of liquidation. Mr. Kuldip

Kumar Bassi, Resolution Professional with IBBI Registration No.IBBI/IPA-001/IP-P00280/2017-2018/10524, has filed his written consent dated 09.10.2019 attached as Annexure-19 of the application. The Law Researcher of this Tribunal has checked the credentials of proposed Liquidator and nothing adverse has been found on record. Therefore, Mr. Kuldip Kumar Bassi is appointed as the Liquidator.

12. Regulation 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted by Notification No.IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder.

13. **Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)**
– The CoC has not made compliance of Regulation 39B of the CIRP Regulations, 2016 regarding meeting of liquidation costs. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.

14. **Assessment of Sale as a going concern (Regulation 39C of CIRP Regulations, 2016)** – The CoC has not made any recommendation regarding sale of the corporate debtor as a going concern. Therefore, the Liquidator is directed to refer to Regulation 32A of the IBBI (Liquidation Process) Regulation, 2016 and take necessary action.

15. **Fees of the Liquidator (Regulation 39D of CIRP Regulations, 2016)** – The RP proposed to be appointed as Liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of liquidation estate assets as may be specified by the Board. Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process)

Regulations, 2016 provide for Liquidator's fee. Regulation 4(2) thereof states that the Liquidator shall be entitled to such fee and in such manner as has been provided therein.

16. **Pending applications, if any, and its effect** – The learned counsel for applicant has stated that an Application bearing IA No.226/2020 under Section 19(2) of the Code for seeking cooperation from Directors of the corporate debtor and an another application for seeking assistance of local administration in taking physical possession of the plant of the corporate debtor is pending before this Adjudicating Authority.

17. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the corporate debtor **Lakshmi Energy & Foods Limited** is directed to be liquidated in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:-

(i) That as per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted against the corporate debtor;

Provided that a suit or other legal proceedings may be instituted by the liquidator on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority;

(ii) That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and

(iii) That this order of liquidation under Section 33 of the Code 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; and

(iv) 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 effect and shall be vested in the liquidator; and

(v) 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 liquidation process as they apply in relation to CIR process with the substitution of references to the Interim Resolution Professional for references to the Liquidator.

(vi) That the Liquidator shall publish public announcement in accordance with Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

(vii) That the announcement shall be published in accordance with Regulation 12(3) of the IBBI (Liquidation Process) Regulation, 2016.

(viii) That in accordance with Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 every fortnightly thereafter.

18. Thus, IA No. 949/2020 stands disposed of.

19. Copy of this order be supplied to the counsel for the Liquidator as well as to the concerned Registrar of Companies forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

Sd/-
(Raghu Nayyar)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

July 26, 2021
AV