

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (Court – II)
KOLKATA**

IA(IBC)/573(KB)2022

in

C.P. (IB)/74(KB)2020

***An application under Section 33(2) of the Insolvency and
Bankruptcy Code, 2016.***

-And-

In the matter of:

(1) Radico Khaitan Limited, having its registered office at Bareilly Road
Rampur Uttar Pradesh, UP – 244901.

... Operational Creditor

-Versus-

(2) Concept Biosciences India Private Limited (In CIRP), having its
Registered Office at 24/25, Dobson Road, Howrah, West Bengal –
711101.

... Corporate Debtor

-And-

(3) Mr. Ajay Kumar Agarwal, Interim Resolution Professional of Corporate
Debtor, having its address at Plot No. IID/31/1, Street No. 1111, PS
Qube, Unit Number 1015A, 10th Floor, Beside City Centre 2, Kolkata –
700161.

... IRP/Applicant

Date of pronouncing of the order: 14/05/2024

Coram:

SMT. BIDISHA BANERJEE : MEMBER (JUDICIAL)

SHRI D. ARVIND : MEMBER (TECHNICAL)

Appearances (via video conferencing/physically):

Ms. Komal Singhi : For the RP

Mr. Sandeep Choubey :
Mr. Sourojit Das Gupta, Adv. :

Mr. Gaurav Varma Adv. : For R-2 in IA 635/KB/22
Mr. Himanshu Kohli, Adv. :

Ms. Debaleena Ganguly, Adv. : For the Suspended Board

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The court convened through hybrid mode.
2. Ld. Counsels/Authorised Representative appearing for the parties were heard in extenso.
3. This application **IA(IBC)/573(KB)2022** has been preferred to seek the following reliefs, inter alia: -

(a) An order be passed directing the corporate debtor to go under liquidation as per Section 33(2) of the Insolvency and Bankruptcy Code, 2016;

(b) An order be passed replacing the applicant with any other person to act as the liquidator in respect of the corporate debtor under Section 34(4) of the Insolvency and Bankruptcy, 2016;

(c) Such further and/or other order and/or orders be passed, as this Learned Tribunal may deem fit and proper in the facts and circumstances of the present case;

4. **Factual matrix of the case are as under: -**

(a) This Adjudicating Authority *vide* its Order dated 01st April, 2022 directed to initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in the matter of **M/s. Concept Biosciences India Pvt. Ltd.**

(“Corporate Debtor”), on a Petition filed by **Radico Khaitan Limited** (“Operational Creditor”) against **M/s. Concept Biosciences India Pvt. Ltd.** under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy 2016 being C.P. (IB)/74(KB)2020 and Mr. Ajay Kumar Agarwal is appointed as the Interim Resolution Professional (in short “IRP”).

- (b)** In terms of Section 15 of the Code, public announcement was made on 04th April, 2022 and the Committee of Creditors (in short “CoC”) was formed with *viz.* Radico Khaitan Limited.
- (c)** A report certifying the Constitution of the Committee of Creditors was filed on 22nd April, 2022 before this Adjudicating Authority and report certifying the re-Constitution of the Committee of Creditors was filed on 19th May, 2022 before this Adjudicating Authority.
- (d)** The IRP has circulated the Notice and notes on Agenda of First Meeting of the Committee of Creditors of Concept Bioscience India Private Limited on dated 25th April, 2022 and the meeting of 1st CoC duly held on 30th April, 2022. Further voting result of the 1st CoC also circulated on 5th May, 2022, but the applicant was not confirmed by CoC with requisite majority of the voting share as the Resolution Professional and the CoC also not proposed any name of the new RP.
- (e)** The applicant has appointed valuers for the following class of assets to determine the fair value and liquidation value of the assets of the Corporate Debtor and the CoC in its 2nd CoC meeting (adjourned) held on 19th May, 2022 duly

approved the Fee of Valuers with 55.98% voting shares of requisite majority.

- (f) Thereafter, the 2nd adjourned meeting of the CoC was held on 19th May, 2022. At the time of 2nd CoC meeting the Committee of Creditors had made a proposal for initiation of liquidation proceedings under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 and the said resolution being resolution no. 6 was approved by a voting percentage of 99.28% of the voting share. The relevant portion of the said agenda is extracted below: -

“RESOLVED THAT, *in pursuant to Section 33(2) of Insolvency and Bankruptcy Code, 2016 and the rules made thereunder, the consent of members of the Committee of Creditors be and is hereby accorded to approve the initiation of liquidation process of Corporate Debtor.*

RESOLVED FURTHER THAT, *the Resolution Professional be and is hereby authorised to submit an application before the Hon’ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto”.*

FURTHER RESOLVED THAT, *the cost of advocate for preparation and filing of application at the rate of Rs. 15,000/- plus filing and other charges on actual basis before the Hon’ble NCLT be and is hereby approved.*

FURTHER RESOLVED THAT, *the cost of appearance before the Hon’ble NCLT per effective and non-Effective hearing at the rate of Rs. 5000/- and Rs. 3000/- respectively be and are hereby approved.”*

- (g)** However, although all the members of the Committee of Creditors had discussed with regard to the Liquidation of CD, under Section 33(2) of the Code, but in regard to approval of meeting of estimated cost of Liquidation as per Regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) and Assessment of sale as a going concern as per Regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, the CoC members deferred the matter mentioning that *“they will discuss later after that they will get back to the Chairman for the further course of action”*.
- (h)** In view of the aforesaid, under the provisions of Section 33(2) of the Code, 2016, the Corporate Debtor is required to sent for liquidation and necessary procedures will have to be followed.
- (i)** The applicant, functioning under the contours of the Insolvency and Bankruptcy Code, 2016 and the regulations made thereunder, is duty bound to follow the provisions thereof. Since the CoC Members with requisite Majority under Section 33(2) of the Code approved the Liquidation of the Corporate Debtor before inviting of Expression of Interest and Resolution Plan. Accordingly, the applicant has no other option but to conform to the provisions of Section 33(2) of the Code the instant application is being made. The instant application satisfies all the conditions and requirements of the Code, 2016 for an Order to be passed for liquidation by this Adjudicating Authority.

5. Hence, the rival contentions were noted.

6. **Analysis and Findings:** -

- (a) We have considered the submission made by the Ld. Counsel and perused the record.
- (b) Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor when the CoC with 66% approves the Liquidation of Corporate Debtor.
- (c) Hence, we do find merit in the prayers made in **IA(IBC)/573(KB)2022**, and deem it fit to order liquidation of the Corporate Debtor.

7. **This Bench, therefore, hereby orders as follows:** -

- a. Prayers as sought for in **IA(IBC)/573(KB)2022** filed by RP, is allowed and **Concept Biosciences India Private Limited**, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code;
- b. **Mr. Sanjay Kumar Poddar** having registration no. **IBBI/IPA-001/IP-P01802/2019-2020/12759**, **email:** Poddar.sanjay@gmail.com, is hereby appointed as Liquidator is hereby appointed as Liquidator as provided under section 34(1) of the Code subject to a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which she is a professional member;
- c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- d. Public Notice shall be issued in the newspapers stating that the Corporate Debtor is in liquidation.
 - e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
 - f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
 - g. 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 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.
 - h. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a 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.
 - i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, within whose jurisdiction the Corporate Applicant is registered.
8. The application bearing **IA(IBC)/573(KB)2022** shall stand **disposed of** in accordance with the above directions.

9. List the main **C.P. (IB)/74(KB)2020** for reporting progress on **26.0.6.2024**.
10. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
11. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on: 14th of May, 2024.

Ar. [steno]