

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.304
IA/541(AHM)2022 in
CP(IB) 566 of 2019

Order under Section 54 IBC r.w 302 Co. Act, 2013

IN THE MATTER OF:

Parag Sheth Liquidator for Origin Formulation Pvt Ltd
V/s
Union Bank of India & Ors

.....Applicant

.....Respondent

Order delivered on: 09/05/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of the order.

The common order is pronounced in the open court, vide separate sheet.

SD/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

SD/-

CHITRA HANKARE
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AHMADABAD BENCH
COURT- II**

IA No. 541/(AHM)/2022

IN

C.P. (I.B.) No. 566 (AHM)/2019

(An application filed under section 54 of the Insolvency and Bankruptcy Code, 2016 r.w. Section 302 of the Companies Act, 2013)

IN THE MATTER OF:

Mr. Parag Sheth Liquidator of
M/s Origin Formulation Private Limited (in liquidaton)
404, Sachet 2, Opp. GLS University,
Maradia Plaza, C. G. Road,
Ahmedabad- Gujarat 380006

...Applicant

Vs.

- 1. Union Bank of India**
Representative of Secured Financial Creditors
Through its Assistant General Manager
Mr. Lokesh Sharan
Registered Office: 1st Floor, Rangoli Complex,
Opp. V S Hospital, Ashram Road,
Ahmedabad-380067
- 2. Mr. Hanubhai Sanghani**
Unsecured Financial Creditor and Suspended Management
of Origin Formulation Private Ltd. (in liquidation)
A/5 Karnavati Club, Nr. Anand Niketan School,
Satellite, Ahmedabad-380015
- 3. Mr. Kaushik Sanghani**
Suspended Director and Shareholder of Origin Formulation
Private Ltd. (in liquidation)
19, Shailraj Bunglows,
Opp. Amrapalash, B/h Wide Angle, Ramdevnagar,
Satellite, Ahmedabad-380015

4. **Gayatri Corporation**
Unsecured Financial Creditor
Through it's proprietor
Mr. Paresh Shah
A G-1, Saransh Appt. Nr. Dev Hospital,
Dr. Jivraj Mehta Road,
Vasna, Ahmedabad
5. **Shree Jyotiprakash Narayan Singh**
Representative of Operational Creditor other than Workman,
Employees and Government
A/5 Satyam Bunglows,
Opp. Karnavati Club,
Nr. Anand Niketan School,
Satelite, Ahmedabad-380015
6. **Mr. Pankaj Kumar**
Representative of Government
Regional Provident Fund Commissioner –II
Bhavishya Nidhi BHavan,
Vyomprashtha, Kanwali,
GMS Road, Dehradun, Uttarakhand-248001
7. **Mr. Maneesh Rajput**
Representative of Workmen and Employees

....Respondents

Order Pronounced on: 09/05/2024

For the Applicant: Ms. Natasha D Shah, Adv
For the Income Tax: Ms. Kinjal Vyas, Adv.
i/b Ms. Maithili Mehta, Adv
For Union Bank of India : None

J U D G M E N T

1. The Instant Application is filed by Mr. Parag Sheth Liquidator of M/s. Origin Formulation Private Limited, the Corporate Debtor, under Section 54 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IB Code”) with a prayer to dissolve the Corporate debtor i.e. M/s. Origin Formulation Private Limited.
2. The Applicant submits that the Corporate Debtor was a Private Limited company incorporated on 23.12.2010 under the provisions of Companies Act, 1956.
3. The Financial Creditor M/s. Prutha Enterprises had filed an application under Section 7 of the IB Code, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) of M/s. Origin Formulation Private Limited, which was admitted vide order dated 17.09.2019, CP(IB) No. 566/7/NCLT/AHM/2019 and Mr. Parag Sheth was appointed as Interim Resolution Professional (hereinafter referred to as “IRP”).
4. The Applicant submits that the 1st meeting of CoC convened on 22.10.2019, wherein Union Bank of India, the Sole Member of the CoC abstained from voting on the majority of agenda discussed and deferred to the Second meeting of CoC. The

Second meeting of CoC was held on 23.01.2020, wherein publication of Form –G and Evaluation Matrix was discussed.

5. In the third meeting of CoC held on 07.03.2020 it was resolved with 100% voting to file application for the extension of CIRP for 90 days, which was allowed vide order dated 29.06.2020.
6. The Applicant submits that the Invitation for Expression of Interest in prescribed Form – G was published in Business Standard in English and Jay Hind in vernacular language in pursuance of Regulation 36A(1) of the IBBI (CIRP) Regulations, 2016 on 18.06.2020, wherein the last date of receipt of Expression of interest is 02.07.2020.
7. The Applicant states that M/s. Misson Pharma was the Sole Prospective Resolution Applicant. However, no Resolution Plan was submitted by the PRA till last date of submission, hence, CoC in its fifth meeting resolved that the “*..members of CoC has approved to initiate the liquidation process in the matter of Origin Formulations Pvt. Ltd., ..*”
8. The Applicant herein filed an application under Section 33 & 34 of the IBC 2016, for liquidation of the Corporate Debtor. The said

application was allowed by this Tribunal vide order dated 28.09.2020.

9. The applicant made public announcement in Form B Schedule-II as required under the Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 in English and regional language newspapers in “Economics Times” and “Jai Hind” on 18.10.2020 and 19.10.2020. The applicant had submitted Preliminary Report on 15.01.2021 as per regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation process) Regulations, 2016 alongwith the list of creditors. The Applicant states that pursuant to the claims received and formation of the list of Creditors, the stakeholders consultation committee came to be formulated.

10. The Applicant states that the 1st SCC meeting was held on 29.01.2021, wherein the SCC members decided to sell the assets of the Corporate Debtor and states as follows :

“ It is not feasible to sell the Corporate Debtor as a going concern. They advised Liquidator that; Assets shall be sold in a Lot (Land & Building, Plant & Machineries or Lans & Building

and Plant & Machineries (combined) so as to maximize Value of Assets”.

11. The Applicant states that in 7th SCC meeting held on 15.07.2021, wherein the members of SCC decided to confirm the sale of assets to one M/s. Akum Healthcare Ltd., according to the 5th E-auction held on 09.07.2021. The Applicant in 8th meeting of SCC held on 04.08.2021 appraised the members that Goods and Services Tax account of the Corporate Debtor had been suspended due to non filing of the return and the steps required for restoration of the same have been taken. The Applicant states that Akum Healthcare Limited has undertaken to make payment of GST upon issuance of invoice pertaining to the plant and machineries of the Corporate Debtor. In the 10th meeting of SCC application being filed for extension of the period of liquidation for further three months.
12. The Applicant states that in 11th meeting of SCC held on 25.11.2021, it was discussed that certain amounts that would be recovered in the future including a sum of Rs. 10,22,000/- i.e. outstanding from one M/s. Fab Pharaceuticals Private Limited , cash on hand of Rs. 34,349/- and 30 grms of Gold due from the suspended management of the Corproate Debtor would be

distributed to Union Bank of India as per the waterfall mechanism and relevant extract from the minutes as follows:

“ ...an application for dissolution of M/s. Origin Formulations Private Limited be filed with Hon’ble National Company Law Tribunal, Ahmedabad Bench and Mr. Parag Sheth, the liquidator is hereby authorised to complete all formalities in regard to the same”.

13. The Applicant states that in 12th meeting of SCC held on 27.12.2021, it was resolved that an application for recovery of certain amount of gold and cash from the Suspended Management and it was resolved that :

“ Resolved that an interlocutory application be filed with the Hon’ble NCLT, Ahmedabad bench and against the promoters for recovery of 30 gram Gold and Cash amounting to rs. 34,349/- and the Union Bank of India be made co-applicant with the Liquidator in the said IA”

“Resolved that an Interlocutory Application be filed with the Hon’ble NCLT, Ahmedabad Bench for further extension of liquidation period for six months w.e.f. December 29, 2021”

14. The Applicant states that during pendency of the suspended management deposited the requisite cash amount of Rs.

- 1,65,000/- against the value of 30 grms of Gold and Rs. 34,349/- cash thus the settling the matter.
15. The Applicant filed a progress report dated 15.01.2022 for the period of 01.10.2021 to 31.12.2021 and dated 11.04.2022 for the period 01.01.2022 to 31.03.2022. In compliance with Regulation 45 of the IBBI(Liquidation Process) Regulations, 2016, the Liquidator has filed the Compliance Certificate in Form H dated 17.06.2022.
 16. In compliance with the provisions of Regulation 38 of the Liquidation Regulation, 2017, the liquidator prepared a final report dtd. 17.06.2022. Accordingly, the applicant has filed a application U/s 54 of the IBC 2016 seeking dissolution of the Corporate Debtor. On filing of this application notice was issued upon Respondents and RoC. None appeared for the ROC.
 17. Ld. Counsel for the Income Tax Department appeared and filed status report qua outstanding dues, wherein, the total dues reflecting Rs. 5,86,34,060 from the year 2016-17, 2018-19(154, 270A, 271AAB).
 18. This Tribunal vide order dated 11.03.2024 sought clarifications pursuant to that the applicant has filed clarification affidavit in response to Bank closure certificate of Liquidation account in the

name of M/s. Origin Formulations Pvt. Ltd. (under liquidation) and regarding final distribution of amount of Rs. 8,62,019.62.

19. The Income Tax Department had raised a claim of Rs.7,71,39,553 by letter dated 10th August 2022 and email dated 17th August 2022. The applicant stated vide its affidavit dated 21st September 2022 that the demand raised were during the moratorium under the CIRP period which should not have been raised as held by the Hon'ble Supreme Court in Sundaresh Bhatt Liquidator of ABG Shipyard V CB of Indirect Taxes and Customs on 26.8.2022. Further in the affidavit it has stated that item Nos. 3 and 4 were passed ex parte without giving opportunity to the applicant and there are no dues raised by IT as seen in the balance sheet of the Corporate Debtor. Further the claims were not submitted in time and the entire proceeds of distribution were made without considering the claim of the Income Tax Department and an amount of Rs 14,06,58,868.74 ps was distributed. Further, the Income Tax Department has filed another report by pursis on 28th February 2023 that there are further demands on the Corporate Debtor and the next date of hearing was 31st March 2023. The department had also stated that they were not aware of the moratorium period and the Income Tax Department's claims are to be treated as secured

creditors in lieu of Judgment in *Rainbow Paper Vs ST Department of Gujarat* and in another *Principal Commissioner of Income Tax V M/s Assam Company India Limited (Company Appeal (AT) (Ins) No.243 of 2022* before Hon'ble NCLAT which decided that the Income Tax Department be considered as secured creditors.

20. In the order delivered on 16th August 2023 by this Tribunal the Ld. Counsel for the liquidator stated that the Income Tax Department had filed its claim before the liquidator, and the claim was considered as per provisions of Section 53 of IBC, 2016. During the hearing before this Tribunal on 12th February 2024, the department stated that they have no objection to the dissolution, however no reply has been filed in the matter.
21. Further from the affidavit submitted on 21st September 2022, the Liquidator is observed to have distributed the liquid funds of the estate without considering the claim of Income Tax Department as the other secured creditor Union Bank of India had received only Rs 12,55,53,336.74 crores as against a claim of Rs 30,98,42,842 crores. The liquidator has not considered the claims of the Income Tax Department due to this reason. However, on approval of the order for liquidation by this Tribunal on 28th September 2020 as recommended by COC on 14th August 2020 (fifth coc meeting), the liquidator had written a

letter on 17th October 2020 about initiation of liquidation and also issued a form B inviting claims from all stake holders on 18th October 2020 to be received before 18th November 2020. The Income Tax Department sent a notice on 6th January 2021 to the Corporate Debtor to appear personally on 18th January 2021 and the liquidator had written a letter on 8th January 2021 stating that that company was under liquidation. The liquidator disposed off the assets through e-auction and immediately distributed the amount to stake holders wherein the distribution amount to the Income Tax is not mentioned and there was nil distribution. The distribution was completed before 30th September 2021, but the liquidation was extended and this application was filed on 18th June 2022.

22. The liquidator had not included the claim or dispute or dues of Income Tax department in the Form -H submitted on June 17, 2022. There were two distributions on further realisations to Union Bank of India (secured creditor) as the 11th meeting of the COC authorised the Liquidator to pay the secured creditor of all future receivables.
23. Without going in to the merits as to whether the liquidator was right in rejecting the application of Income Tax and the secured

creditor status to the pending Income Tax dues, we observe that neither the ROC nor the Income Tax Department have confirmed in writing their no objection to the dissolution proposal submitted by the liquidator.

24. In view of the above submissions and facts we pass following order:

ORDER

IA No. 541(AHM)/2022 in CP(IB) No. 566(AHM)/2019 is rejected and stands disposed of.

SD/-

SD/-

**DR. V.G. VENKATA CHALAPATHY
MEMBER(TECHNICAL)**

**CHITRA HANKARE
MEMBER(JUDICIAL)**