

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

I.A. (IB) No. 181/KB/2022

C.P. (IB) No. 440/KB/2018

In the matter of

An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Section 35 of the Insolvency and Bankruptcy Code, 2016

AND

In the matter of

Huvepharma Sea (Pune) Private Limited, having its registered Office at 42, Haridwar Bungalow, S.N.213 Road No.2 A/B, Kalyani Nagar, Pune MH 411006 , e-mail- Sandeep.padwall@huvepharma.com

....Operational Creditor

Versus

Amrit Feeds Limited, having its registered office at 158 Lenin Sarani, Kolkata – 700013, email- compliances@amritgroup.net

....Corporate Debtor

AND

In the matter of

Sunil Mohan Acharya, IBBI Reg No. IBBI/IPA-003/IP-N000174/2018-19/12120, Liquidator of Amrit Feeds Limited, having registered office at Intelligent IP Management Solutions Private Limited, YMCA building, 2nd Floor, 25 Jawaharlal Nehru Road, Kolkata – 700087, emial- Liquidator.amritfeeds@gmail.com

....Applicant/Liquidator

Date of hearing: 3/03/2022

Date of Pronouncement: 24/03/2022.

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Counsel appeared through video conference:

For Sector Realty Pvt. Ltd.] Mr. Abhrajit Mitra, Sr. Adv.
Mr. Satadeep Bhattacharyya, Adv.
Mr. Satyaki Chauduri, Adv.

For suspended Board] Mr. D.N. Sharma, Adv.
Mr. Nirmalya Dasgupta, Adv.
Mr. Shwetaank Nigam, Adv.

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The Court convened by video conference today.
2. The instant application has been filed by applicant being the liquidator of Amrit Feeds Limited (hereinafter referred to as the Corporate Debtor) under Section 35 of Insolvency and Bankruptcy Code, 2016, seeking leave of this Adjudicating Authority to initiate proceeding under Section 34 of Arbitration and Conciliation Act, 1996, against arbitral award dated 30.09.2019.
3. The permission by the applicant is sought in terms of Section 35 which is reproduced hereinafter;

“35. Powers and duties of liquidator. – (1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely : -

*(a) To (j) ****

(k) To institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of (and) on behalf of the Corporate Debtor;”

4. This application is opposed by Ld. Senior Counsel Shri Abhrajit Mitra appearing for one Sector Realty Pvt. Ltd. Ld. Senior Counsel states that an Application under Section 34 of Arbitration and Conciliation Act, 1996, sought to be filed by

the liquidator / applicant is hopelessly time barred and allowing this application shall mean condoning the delay.

5. We have taken note of submission of Ld. Senior Counsel.
6. After hearing the parties and perusing the record, we allow this Application.
7. An application under Section 34 of Arbitration and Conciliation Act, 1996, or any other application under the said Act can only be filed before the appropriate forum provided under Arbitration and Conciliation Act, 1996. This Adjudicating Authority has no jurisdiction to entertain or decide the question of limitation for filing an application under Section 34 of Arbitration and Conciliation Act, 1996, sought to be filed by the Liquidator. Allowing this application of the applicant/liquidator shall not in any manner mean or shall be construed that this Adjudicating Authority is condoning the delay, if any, in challenging the arbitral award by the liquidator.
9. Accordingly, this application is disposed of.
10. Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order signed on 24/03/2022.

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