

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 28.02.2020

CAUSE LIST - 2

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP258/16, TP108/17	For hearing on IA 09/2020, IA 102/2020	Sec 433 of CA 1956	Encarta Pharma Pvt Ltd	Rama- chandra D Chrudhaw IRP	Vikram Hospitals Pvt.Ltd	Madhusudha n T.

ADVOCATE FOR PETITIONER/s:

ANIL KUMAR. H
ADVOCATE FOR IRP
9886698898

ADVOCATE FOR RESPONDENT/s:

Abhishek Patil
~~As Patil~~
Advocate for Respondent
9916417509

~~JW~~
(Dr. Vikram S.B)

ORDER

Heard Shri Anil Kumar H., learned Counsel for the IRP, Shri Abhishek Patil, learned Counsel for the Respondent and Dr. Vikram S.A., Party-in -Person for the Respondent.

I.A.No.09 of 2020 in C.P.No.258 of 2016(T.P.No.108 of 2017) is disposed of by separate order.

Issue Notice to all the Respondents in I.A.No.102 of 2020.

Learned Counsel for the RP is directed to serve a copy of I.A. No.102 of 2020 on all the Respondents in I.A.No.102 of 2020 and file proof of service will before the next date of hearing.

Post the case for report of Liquidator on **16.04.2020.**



MEMBER(T)



MEMBER(J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No.09 of 2020 in
C.P.No.258 of 2016(T.P.No.108 of 2017)
U/s 33(1), 33(2) & 34(1) of the IBC, 2016

Shri Ramchandra D. Choudhary
Resolution Professional of
M/s.Vikram Hospital Pvt. Ltd
9B, Varden Tower, Nr. Vimal House,
Lakhudi Circle, Navrangpura,
Ahmadabad – 380 014.

- Applicant/
Resolution Professional

Date of Order: 28th February, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)


Parties/Counsels Present:

For the Applicant/RP : Shri Anil Kumar H.

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.09 of 2020 in C.P.No.258 of 2016 (T.P.No.108 of 2017) is filed by Ramachandra D. Choudhary, Resolution Professional of M/s.Vikram Hospital private Limited (hereinafter referred to as 'Applicant/Resolution Professional') under Section 33(1), 33(2) & 34(1) of the IBC, 2016, by inter seeking to order liquidation of Corporate Debtor i.e., M/s.Vikram Hospital Private Limited in terms of Code; to appoint the present Resolution Professional as the Liquidator for the same.
2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:
 - (1) Initially Company Petition (COP) No.258 of 2016 was filed by M/s.Encarta Pharma Pvt. Ltd. before the Hon'ble High Court of Karnataka U/s 433, 434 and 439 of Companies Act, 1956, by inter



Karnataka U/s 433, 434 and 439 of Companies Act, 1956, by inter alia seeking to liquidate/wound up M/s.Vikram Hospital Private Limited ; to appoint Liquidator etc. Subsequently, the case was transferred to the Tribunal to decide the case in accordance with provisions of Code. Therefore, the case is numbered as T.P No.108 of 2017. After considering the case was admitted by the Adjudicating Authority vide order dated 19th June, 2018, by initiating CIRP in respect of Corporate Debtor, appointing Ramachandra D. Choudhary bearing Registration No.IBBI/IPA-001/IP-P00157/2017-2018/10326 as IRP, imposing moratorium etc.

- (2) In Pursuant to admission of Case, the IRP made public announcement in form A as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in the 'Times of India' Mysore edition and in 'Vijay Vani' Mysore edition on 20th June, 2018 and also on the website of the IBBI, as contemplated under the provision of Section 15 of the IBC, R/w related Regulations by calling claims from all creditors. In accordance with the provisions of Section 21 of the Code, based on the claims received, the IRP constituted the Committee of Creditors of the sole Financial Creditor (Pridhvi Asst. Reconstruction and Securitisation Company Limited). Accordingly, filed Report certifying constitution of CoC with this Tribunal on 16th July, 2018 as required under regulation 17(1) of the IBBI (CIRP for Corporate Persons) Regulations.
- (3) Accordingly, 11th CoC meetings were held on 01.10.2019 to explore the possibilities getting Resolution plan Viz. The first CoC meeting was on 18.07.2018; the second CoC meeting on 03.09.2018; the third CoC meeting was on 10.10.2018; the fourth CoC meeting was on 04.12.2018; the fifth CoC meeting on 24.01.2019; the Sixth CoC meeting was on 07.02.2019: the Seventh CoC meeting was on



11.03.2019, the Eighth CoC meeting on 14.03.2019, the Ninth CoC meeting on 20.06.2019, the Tenth CoC meeting held on 31.07.2019, and the Eleventh CoC meeting on 01.10.2019.

(4) During 10th CoC meeting held on 31.07.2019, it was inter alia resolved to proceed for a fresh round of Invitation of Expression of Interest in accordance with the provisions of the Code. Therefore, the Applicant caused to publish Invitation for Expression of Interest in Form-G as prescribed under Section 25(2)(h) of the Code R/w regulation 36A of the CIRP Regulations in two newspapers namely Economic Times and the Prajavani, in addition to hosting of the same over the website of the IBBI. In Pursuant to this invitation for Expression of Interest, two prospective Resolution Applicants expressed their interests to submit Resolution Plan for the Corporate Debtor. Thereafter, only one Resolution Applicant 'the Balaji' submitted its Resolution Plan to the Applicant on 21.09.2019, who in turn further circulated the same amongst the Members of the CoC. Notably, the Resolution Plan submitted by the Balaji in this round of Expression of Interest was financially decreased, as compared to his previously submitted Resolution Plan filed in the previous round.

(5) During 11th meeting of the CoC held on 1st day of October, 2019, the Resolution Plan along with the Report as required to be made under Section 30(2), 30(3) and other applicable provisions of the Code and the CIRP Regulations was placed for consideration. The Applicant brought to the notice of the CoC the fact of inability of the Balaji to deposit an amount of INR 50 lakhs along with the submission of the Resolution Plan which was indeed a non-compliance with the minimum eligibility criteria as laid down by the CoC under Section 25(2)(h) of the Code, R/w related Rules and Regulations. The Applicant further informed to the CoC that Resolution Applicant had deposited only an amount of INR 24

lakhs against an amount of INR 50 lakhs as laid down by the CoC. The inability of the Resolution Applicant to provide a complete deposit of INR 50 lakhs was one of the reasons to reject his Resolution Plan in the previous round also. Further, the CIRP was expiring on 5th October, 2019. Thereafter, the CoC unanimously resolved to not to consider the Resolution Plan submitted by the Resolution Applicant for approval being not in compliance with the eligibility criteria as laid by the CoC for the prospective Resolution Applicants under Section 25(2)(h) of the Code.

(6) It is also stated that the Fair Value of the Corporate Debtor as arrived at by the Registered Valuers under regulation 35 of the CIRP Regulations was to the tune of INR 40,81,92,425/- (which also includes the value of the land of the promoter Dr. S.B. Vikram) while Resolution Applicant had offered an amount of INR 3,55,00,000/- to be made within 6 months of approval of Resolution Plan.

(7) Subsequently, no Resolution Plan was accepted by the CoC, and thus in pursuant to the provisions of Section 33(2) of the Code, the CoC unanimously resolved to liquidate the Corporate Debtor in accordance with Chapter III of the IBC, 2016, R/w IBBI (Liquidation Process) Regulations, 2016, and appoint the Applicant as the Liquidator of the Corporate Debtor. The relevant extracts of the resolution passed by the CoC is reproduced hereunder below:

“RESOLVED THAT the Corporate Debtor be liquidated as per the provisions contained in Chapter III of the Insolvency and Bankruptcy Code, 2016 and applicable Regulation thereon and that the Hon’ble NCLT be informed of the decision of the decision of the Committee of Creditors of the Corporate Debtor;

RESOLVED FURTHER THAT the Resolution Professional, CA Ramchandra Dallaram Choudhary, having IP Registration

No.IBBI/IPA-001/IP-P00157/2017-18/10326 be and in hereby appointed as the Liquidator of the Corporate Debtor.

RESOLVED FURTHER THAT *the proposed Liquidator CA Ramchandra Dallaram Choudhary, having IP Registration No.IBBI/IPA-001/IP-P00157/2017-18/10326 be and is hereby authorised to file with the Hon'ble NCLT, the decision of the Committee of Creditors to liquidate the Corporate Debtor."*

- (8) It is further stated that in terms of Regulation 39 C of the CIRP Regulations, the CoC unanimously recommended the Applicant to explore the possibilities of effecting the sale of the Corporate Debtor as a going concern in terms of Regulation 32(e), or sale of the business of the Corporate Debtor as a going concern in terms of Regulation 32(f), R/w Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016. The below mentioned Resolution was passed in this regard.

"RESOLVED THAT, *as all the assets and liabilities, which according to its commercial considerations, are identified in accordance with the provisions contained sub-regulation (2) of Regulation 39 C of CIRP Regulations, that could be sold as going concern sale under clause (e) regulation 32 of the Liquidation Regulations, the Liquidator may, where he is of the opinion, and in accordance with Regulation 32A of the Liquidation Regulations, that sale under clause (e) of regulation 32 might maximize the value of the Corporate Debtor, he shall endeavour to first sell under the said clause, in consultation with the consultation committee."*

3. Heard Shri Anil Kumar H., learned Counsel for the Resolution Professional. We have carefully perused the pleadings of the Party and the extant provisions of the Code and the Rules made thereunder.



4. As detailed supra, the Resolution Professional and the CoC of the Corporate Debtor, have made their best efforts to find a suitable Resolution Plan to revive the business of the Corporate Debtor. However, sole Resolution Plan received found not to be in compliance with parameters prescribed under the extant the Provisions of Code and the Rules made thereunder. Therefore, there is no other alternative for the CoC except to seek to order to liquidate the Corporate Debtor as per the provisions of the Code. The Resolution to initiate liquidation was also approved by the CoC with requisite majority as per law and the instant Application is filed strictly in accordance with law. The CoC has also proposed Shri Ramchandra D. Choudhary as a Liquidator, for liquidating the Corporate Debtor, who has filed a written consent to act as Liquidator of the Corporate Debtor i.e., M/s.Vikram Hospital Private Limited dated 07.10.2019, U/s 34(1) of the IBC, 2016, by inter alia declaring that there are no disciplinary proceedings against him with the Board or Indian Institute of Insolvency Professionals of ICAI; he is eligible to appoint as the Liquidator in respect of the Corporate Debtor in accordance with the provisions of the IBBI (CIRP for Corporate Persons) Regulations, 2016 etc. Hence, he is provisionally eligible to be appointed as Liquidator. Therefore, it is a fit case to initiate Liquidation in respect of Corporate Debtor.
5. In view of the facts and circumstances of the case, the Adjudicating Authority, by exercising powers conferred under Section 33(1), 33(2) & 34(1) of the IBC, 2016, disposed of I.A.No.09/2020 in C.P.No.258 of 2016 (T.P.No.108 of 2017) with following directions:
- a) It is hereby ordered that M/s.Vikram Hospital Private Limited, Corporate Debtor to be liquidated in the manner as laid down in Chapter III of Part II of Code, R/w IBBI (Liquidation process) Regulations, 2016.
 - b) Shri Ramchandra D. Choudhary is hereby appointed as a Liquidator, subject to the terms and conditions to be

agreed upon by the parties in the light of extant provisions of the IBBI. He is directed to follow due process of law as per above Chapter and Regulations and to issue public announcement immediately by stating that the Corporate Debtor is in liquidation.

- c) The Registry is directed to communicate this order to the Registrar of Companies, Karnataka for information and necessary action and also to the Liquidator.
- d) The liquidator is directed to strictly adhere to the extant provisions of the Code and the Rules made thereunder framed by the IBBI from time to time and also directed to take expeditious steps to complete the liquidation process in the light of various orders.
- e) The Liquidator is further directed to make best efforts to revive the Corporate Debtor during liquidation process, as going concern, as decided by the CoC.
- f) Post the case for report of Liquidator on **16.04.2020**.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

Puja

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL