



NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

15. IA 3635/2023 In C.P. (IB)/4059(MB)2018

CORAM:

SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (T)

SHRI KULDIP KUMAR KAREER
HON'BLE MEMBER (J)

**ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 22.08.2024**

NAME OF THE PARTIES: - Mr. Kshitiz Gupta
IN THE MATTER OF
Omkara Assets Reconstruction Pvt. Ltd.
Vs
Aaishni Pharmaceuticals Pvt. Ltd.

Section: - 33(1) (b) (i) to (iii) r/w Sec 33(3) U/s 7 of (IBC)

ORDER

IA.No.3635/2023

Presence: -

Adv. Ajinky Kurdukar Applicant through VC.

Heard the submission of the counsel for the Applicant. The detailed order will follow vide separate order sheet.

Sd/-
ANIL RAJ CHELLAN
Member (Technical)

JAGDISH

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

IA. No. 3635/2023

**In
CP(IB)No. 4059/MB/CII/2018**

*Application filed under section 33 of Insolvency
and Bankruptcy Code, 2016*

**Mr. (CA) Kshitiz Gupta, RP of
Aaishni Pharmaceuticals Pvt. Ltd.**

...Applicant

In the matter of

**Omkara Assets Reconstruction Private
Limited**

...Financial Creditor

V/s

Aaishni Pharmaceuticals Pvt. Ltd.

...Corporate Debtor

Order delivered on: 22.08.2024

Coram:

**Anil Raj Chellan
Member Technical**

**Kuldip Kumar Kareer
Member Judicial**

Appearances:

For the Applicant

: Adv. Ajinkya Kurdukar



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ORDER

Per: Coram

1. It is an application filed u/s 33 of the Insolvency and Bankruptcy Code, 2016 (Code) by Mr. (CA) Kshitiz Gupta, Resolution Professional (RP) of Aaishni Pharmaceuticals Pvt. Ltd. seeking liquidation order based on the resolution passed by the CoC **in its 5th meeting held 21.06.2023.**
2. On perusal of this application, it appears that CP No. (IB)- 4059/2018 was admitted by this Tribunal on 06.01.2023 and Mr. Vinodkumar Pukhraj Ambavat was appointed as Interim Resolution Professional (IRP). Further, the sole CoC member filed an IA No. 1451/2023, seeking replacement and the appointment of Mr. Kshitiz Gupta as the IRP of the Corporate Debtor. This Tribunal, in its discretion, considered the application and subsequently issued an order dated 01.06.2023 appointing Mr. Kshitiz Gupta as the IRP of Corporate Debtor. Thereafter, IRP published Form A issuing public announcement dated 11.01.2023 inviting claims from the Creditors of the Corporate Debtor and upon receipt of the claims, a CoC was formed constituting only one Financial Creditor.
3. In the 1st CoC meeting held on 04.02.2023, various issues were discussed, including creditor lists, provisional CoC members, actions taken by the IRP, issues regarding the custody of the assets and taking control over the bank account of the Corporate Debtor.
4. In the 2nd CoC meeting held on 10.03.2023, appointment of registered valuers and criteria for submission of EoI were discussed. Further, the IRP published



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Form G in two newspapers inviting Expression of Interest (EoI) on 17.03.2023 and the last date for submission of EoI was till 01.04.2023.

5. In the 3rd CoC meeting held on 13.04.2023, the terms for the request for the resolution plan and the evaluation matrix were discussed. The Corporate Debtor failed to file its financial statements or reports with the Registrar of Companies (ROC), for several years. Therefore, the erstwhile IRP/RP and the applicant were not in possession of any material and adequate information regarding the Corporate Debtor's financial position. Consequently, the IRP filed an application under Section 19(2) of the Insolvency and Bankruptcy Code, 2016, to obtain necessary documents and cooperation from the erstwhile directors.
6. Further in the 4th CoC meeting held on 25.05.2023, the CoC members discussed the evaluation matrix, the information memorandum, and the request for resolution plans. They also considered the option of liquidating the Corporate Debtor.
7. In the 5th CoC meeting held on 21.06.2023, it was noted that despite discussions with the erstwhile IRP, there were no assets, books of accounts, or other documents on the MCA website. It was also noted that there were no funds in the Corporate Debtor's bank account. Valuers were appointed but no valuation could be conducted due to lack of documents nor any transactional auditor was appointed to find out PUF transactions, and the information memorandum was prepared with limited information. One Form-G was published, resulting in one EoI which was later on withdrawn.



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8. The CoC has decided to liquidate the Corporate Debtor's assets. This decision was made and approved before the completion of the initial 180-day CIRP period as required under Section 12(1) of the Code. The Applicant, who was appointed as Resolution Professional on 01.06.2023, received the appointment order on 12.06.2023, and took over the documents and information from the erstwhile IRP on 17.06.2023. The CIRP email credentials were provided on 19.06.2023. In view of the circumstances, the CoC resolved to liquidate the Corporate Debtor before the 180- day period elapsed.
9. Hence, due to the absence of a resolution plan from any interested party and the non-availability of necessary documents and information, the CoC members deemed it appropriate to proceed with the liquidation of the Corporate Debtor.
10. After discussions, the CoC passed the following Resolution to liquidate the Corporate Debtor with 100% votes.
11. The relevant extracts of the resolution passed in 5th CoC meeting held on 21.06.2023 are as follows:

***“RESOLVED THAT** an application for liquidation of the corporate debtor be filed before Hon’ble NCLT as per section 33 of Chapter III of Insolvency and Bankruptcy Code 2016 by the Resolution Professional and the Resolution Professional to make the necessary submissions before the Hon’ble NCLT.*

***“RESOLVED FURTHER THAT** appointment of Mr. Kshitiz Gupta, Insolvency Professional (IBBI/IPA-002/IP-N00721/2018-2019/12140) to act*



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as a Liquidator of the Corporate Debtor is hereby approved at monthly remuneration of Rs. 70,000/- (Rupees Seventy Thousand Only) per month plus applicable taxes upto a ceiling of Rs. 6,30,000/- (Rupees Six Lakhs Thirty Thousand only) plus taxes and out of pocket expenses as incurred for the purpose of execution of assignment.

12. Looking at the application and averments made therein, we are of the considered opinion that this is a fit case for liquidation. Therefore, we hereby order the liquidation of the company in the following terms:

- a. The **Mr. (CA) Kshitiz Gupta**, holding Registration No. **IBBI/IPA-002/IP-N00721/2018-19/12140**, is appointed as the Liquidator in terms of Section 34 of the Code;
- b. Registry is directed to communicate this Order to the Registrar of Companies, Mumbai and to the Insolvency and Bankruptcy Board of India;
- c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- d. This order shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor as per



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Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

- e. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- f. The Liquidator shall follow upon and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- g. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor if any as per law.
- h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- i. Copy of this order be sent to the financial creditors, corporate debtor, the Liquidator for taking necessary steps.



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13. The **IA- 3635/2023** filed by the RP for Liquidation of the Corporate Debtor stands **allowed accordingly in aforesaid terms.**

Sd/-

**ANIL RAJ CHELLAN
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**