IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.303

IA/558(AHM)2022 in CP(IB) 559 of 2019

Order under Section 33 & 34 r.w 60(5) & Rule 11 of NCLT,2016

IN THE MATTER OF:

Parag Sheth RP of Sujyot Infrastructure Pvt Ltd **.....Applicant**

.....Respondent

Order delivered on: 30/10/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH –I, AHMEDABAD

IA/558/AHM/2022 in CP (IB)/559/2019

(Filed under Section 33(2) & 34 of the Insolvency and Bankruptcy Code, 2016).

In the matter of **Sujyot Infrastructure Pvt. Ltd.**

Parag Sheth
Resolution Professional
of Sujyot Infrastructure Pvt. Ltd.
404, Sachet II, Opp. GLS University,
Maradia Plaza Lane, CG Road,
Ahmedabad- 380006

…. *Applicant*

Sunil Surrendrakumar Kakkad
Director of Corporate Debtor
F/103, Satellite Center,
Cooperative Housing Society,
"C" Block, Ground Floor,
Opp. Management Enclave
Vastrapur, Ahmedabad-380015

…. Respondent

Order Pronounced on 30.10.2023

Coram:

SHAMMI KHAN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : Ms. Aishwarya Reddy, Adv
For Respondents : Mr. Mohit Gupta, Adv

O R D E R

1. The IA/558/AHM/2022 has been filed by the Applicant Resolution Professional under Section 33(2) and 34 of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows; -

   a. *Pass an order directing the initiation of liquidation of the corporate debtor in accordance with chapter III of part II of the IBC, 2016.*

   b. *Appoint the applicant i.e. Mr. Parag Sheth, IBBI Registration No. IBBI/IPA-002/IP-N00142/2017-18/10381, as the liquidator of the Corporate Debtor.*

   c. *Pass ad-interim and interim reliefs in terms of clauses 'a' and 'b' above.*

   d. *Pass such order(s) as may deemed fit and proper in the facts and circumstances of the instant case.*

2. From the averments made by the Applicant, it is evident that the CIRP of the Corporate Debtor was initiated and the Applicant herein was appointed as

IRP on 22.12.2021. IRP caused public announcement dated 30.12.2021 in relevant FORM-A calling upon the Creditors of the Corporate Debtor to submit proof of claims which was published on the website of the IBBI, and the Newspaper, Divya Bhaskar and Economic Times on 31.12.2021. The copy of the public announcement dated 30.12.2021, is annexed and marked as Annexure-C, pursuant to receipts of claims and scrutiny thereof, IRP constituted the CoC which comprised of Two Financial Creditor.

3. The 1st meeting of the CoC was held on 28.01.2022. The applicant further discussed all the actions he had taken as the IRP since the CIRP of the Corporate Debtor. It is stated that the COC unanimously approved the appointment of the applicant/IRP as a Resolution Professional as per section 22(2) of the Code.

4. The 2nd meeting of COC was held on 09.05.2022, The applicant apprised the members that he had

tendered several communications to members of suspended management of the corporate debtor for the handover of custody of assets, documents, and information relating to the corporate debtor. However, no reply/acknowledgment of email had been received from the suspended management.

5. It is stated that the applicant in the second meeting of the Committee of Creditors placed an agenda for approval of Form-G and its publication but CoC members decided not to publish Form-G. The applicant further submits that in the fulfillment of his duties and to adhere to the timeline prescribed under the IBC, 2016, he has appointed the valuers as required under Regulation 27 of the IBBI (Resolution Process for Corporate Persons) Regulations, 2016 The said appointments were rejected/not approved by the CoC in the 2nd CoC meeting held on 09.05.2022.

6. The applicant submits that in the fulfilment of his duties as the resolution professional of the corporate

debtor, the applicant has prepared the information memorandum based upon the limited information available in public domain in pursuant to regulation 36(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016.

7. Further, in the second meeting of CoC, the Committee of Creditors in view of the fact that there has been no operation in the Company for almost 5/7 years and as there is no employee in the Company, the CoC decided to proceed for initiation of liquidation and hence, resolved to file an application with this Tribunal for initiation of liquidation. A copy of the minutes of the second meeting of the committee of creditors is annexed and marked as Annexure - F.

8. The members of the CoC unanimously agreed in favour of the appointment of the applicant/resolution professional, i.e. Mr. Parag Sheth; IBBI registration No. IBBI/IPA-002/ IP-

N00142/ 2017-18/10381, as the liquidator of the Corporate Debtor.

9. In response to the application Respondent has filed the Reply 27.09.2022 opposing the prayer of the Liquidation as follows:

a) It is stated that there are two versions of the minutes of the first meeting.

b) It is stated that no Registered Valuer has been appointed and no valuation report has been made.

c) It is stated that the respondent has approached the Hon'ble High Court of Gujarat by way of a writ petition challenging the constitutional validity of section 33(2).

10. This Tribunal vide order dated 24.07.2023 asked Applicant to file an Additional Affidavit to place on record who is going to bear the liquidation cost in case that exceeds the realization from the liquidation estate. Accordingly, Applicant filed the Additional Affidavit dated 31.07.2023 stating that the liquidation expenses will be borne by both of the

Financial Creditors in proportion to their voting rights.

11. It was observed by the Tribunal that the applicant has not attached Form H with the Application and the same was ordered to file with affidavit dated 29.08.2023. therefore, the applicant has filed an affidavit with Form H attached to it dated 05.10.2023.

12. The counsel as well as RP informed this Tribunal that the asset involved in the matter is already under attachment of ED. Hence Tribunal vide order dated 06.10.2023 asked the applicant to file an Additional Affidavit explaining the details of the ED attachment and proceedings.

13. In compliance with the order dated 06.10.2023, the applicant has filed an additional affidavit vide Inward Diary No. D4128 on 18.10.2023 explaining the ED attachment proceedings, a perusal of the same reveals that assets of CD are under attachment with ED by order of designated authority.

14. It is seen that CoC in the 2nd meeting which was held on 09.05.2022 in the present matter, with a 100% majority has passed a resolution recommending liquidation of the Corporate Debtor.

15. The provisions of Section 33(2) of the Code are reproduced below: -

> *"… (2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [12][approved by not less than sixty-six per cent of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*
>
> *[12][Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]".*

16. The Hon'ble Supreme Court in the matter of ***K. Sashidhar Versus Indian Overseas Bank & Ors in Civil Appeal No. 10673 of 2018*** has held that the commercial decision of CoC is **non-justifiable**. In this case, it is seen that CoC with a 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.

17. In terms of the above, we hereby order for liquidation of the Corporate Debtor.

18. IBBI vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in the exercise of its powers conferred under section 34 (4) (b) of the Code, had recommended that an IP other than the RP/IRP may be appointed as liquidator in all the cases where liquidator (*read liquidation*) order is passed henceforth. In terms of the above circular of IBBI, we hereby appoint **Mr. Ramakant Gupta** an IPA having registration no. IBBI/IPA-001/IP-P-02673/2022-23/14105, as per the panel suggested by IBBI for this Bench for the period of July, 1 to December 31, 2023,

as the Liquidator of the Corporate Debtor to carry the liquidation process subject to the following terms of the directions: -

a) The Corporate Debtor **M/s. Sujyot Infrastructure Private Limited** shall be ordered for liquidation in terms of the provisions of section 33(2) of the Code r.w. Regulations made thereunder which shall be effective from the date of this order. Accordingly, we allow IA/558(AHM)2022.

b) The Moratorium declared under section 14 of the Code shall cease to have effect from the date of the order of liquidation.

c) As per section 34(4)(b) of the Code, **Mr. Ramakant Gupta** an IPA having registration no. IBBI/IPA-001/IP-P-02673/2022-23/14105 is hereby appointed as a Liquidator of the Corporate Debtor I.e. M/s Sujyot Infrastructure Private Limited. The Liquidator so appointed shall complete the liquidation process as per the provisions of the Code r.w. the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

d) All the powers of the Board of Directors, key managerial persons, and the partner of the Corporate Debtor, as the case may be, hereafter

cease to exist. All these powers henceforth vest with the Liquidator.

e) The personnel of the Corporate Debtor are directed to extend all cooperation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

f) The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by IBBI and same shall be paid to the Liquidator from the proceed of the liquidation estate under section 53 of the Code.

g) Once the liquidation process is initiated, subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor. The Liquidator has the liberty to institute a suit and other legal proceedings on behalf of the Corporate Debtor with the prior approval of this Adjudicating Authority, as provided in sub-section (5) of section 33 of the Code.

h) This liquidation order shall be deemed to be 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) This Adjudicating Authority directs the Liquidator to issue a public announcement stating that the Corporate Debtor is in liquidation. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the liquidation order timely. The Liquidator will also provide a copy of this order to the trade unions/employee associations of the Corporate Debtor so that the workman/employees could also be informed of this liquidation order through their association.

j) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations, and also file its response for disposal of any pending Company Applications during the process of liquidation.

k) The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.

l) The Registry is directed to communicate this order to the concerned Registrar of the

Companies, the registered office of the Corporate Debtor, IBBI, the resolution professional, and the Liquidator by speed post as well as e-mail within one week from the date of this order, after completion of all the formalities.

19. Accordingly, **IA/558(AHM)2022** in CP(IB) No. 559 of 2019 is disposed off.

-SD- **-SD-**

SAMEER KAKAR **SHAMMI KHAN**
MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**

Shubhanshu/LRA