

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD**

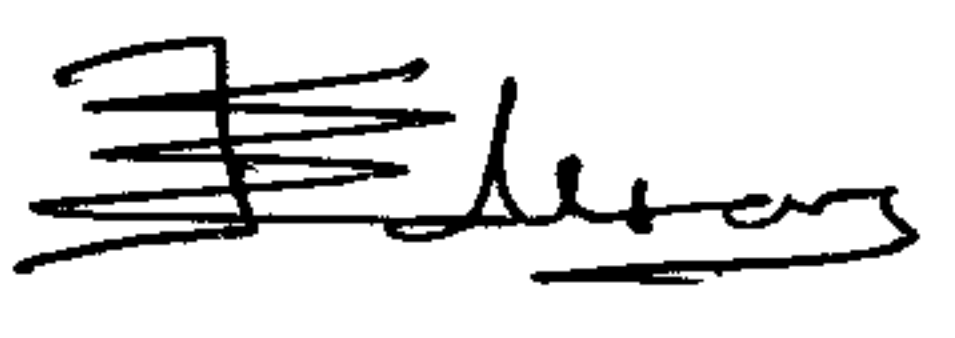
**IA 793 of 2019 in CP(IB) 544 of 2018**

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)  
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 13.01.2020**

Name of the Company: Arvind Gaudana RP For Collyer Container  
Terminal Pvt Ltd  
V/s  
Dena Bank

Section: 0

<b>S.NO.</b>	<b>NAME (CAPITAL LETTERS)</b>	<b>DESIGNATION</b>	<b>REPRESENTATION</b>	<b>SIGNATURE</b>
1.	KULDEEP K. ADESARA FOR KETAN M. PARIKH	ADVOCATE	RESPONDENT Bank-COC member	
2.				


**ORDER**

The Parties are represented through their respective Learned Counsel(s).

The case is fixed for pronouncement of order.

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

  
(PRASANTA KUMAR MOHANTY)  
MEMBER (TECHNICAL)

  
(HARIHAR PRAKASH CHATURVEDI)  
MEMBER (JUDICIAL)

Dated this the 13th day of January, 2020.

**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH**

**IA 793 of 2019  
IN  
CP(IB) No. 544/9/NCLT/AHM/2018**

[An Application by the Resolution Professional of M/s. Collyer Container terminal Pvt.Ltd. under Section 33(1) (a) of Insolvency & Bankruptcy Code, 2016 ]

**In the matter of :**

CA Arvind Gaudana  
Resolution Professional of  
M/s. Collyer Containers Terminal Pvt. Ltd.  
having address at:  
307, Ashirvad Paras,  
Corporate Road,  
B/h. Sales India, Prahladnagar Garden,  
Satellite, Ahmedabad-380015

... Applicant/RP

Versus

Bank of Baroda  
(formerly known as Dena Bank)  
Regional Head Office :  
1<sup>st</sup> floor, Dhanraj Building College Road,  
Bhuj (Kutch)-370001  
Gujarat.

... Respondent

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**  
**Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER TECHNICAL**

Appearance : Learned Counsels Mr. Vishal Dave & Mr. Nipun Singhvi a.w. Counsel Ms. Pragati Tiwari for the Applicant

None for the Respondents

**Order delivered on 13<sup>th</sup> January, 2020**

**O R D E R**

**[Per : Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL ]**

1. The present Interlocutory Application is filed by the Resolution Professional under Section 33 (1) (a) of the Insolvency & Bankruptcy Code, seeking for liquidation of the Corporate Debtor, i.e., **M/s. Collyer Containers Terminal Pvt. Ltd.**
  
2. The Committee of Creditors (CoC) in its third meeting held on 21.11.2019 has noted this fact that the Resolution Professional (RP) did not receive any Resolution Plan for Corporate Debtor Company. Hence, it has decided to proceed for the liquidation of the Corporate Debtor. Thus, member/s of the CoC passed requisite resolution with 100% majority by recommending for liquidation of the Corporate Debtor company. The Sole Member of the CoC also resolved that the present Resolution Professional, CS Mr.Arvind Gaudana, is authorized to file the present application seeking for necessary order/direction from this Adjudicating Authority, in respect of the liquidation of the Corporate Debtor company. Since the RP has expressed his unwillingness to act as Liquidator, the CoC decided to suggest some other name. The Applicant/RP in the present application has submitted that even after the extension of period of Corporate Insolvency Resolution Process (CIRP) for another 90 days beyond 180 days, no Resolution Plan for the Corporate Debtor was received nor there remains no scope for resolution/revival of the Corporate Debtor Company. It is also reported that the CIRP period has also been over on 25.11.2019. Hence, the members

of the CoC took conscious decision to go for liquidation of the Corporate Debtor.

3. It is now well settled legal position as per the Hon'ble Supreme Court's decision in the matter **Sasidharan vs. Indian Overseas Bank & Ors.** and further in the matter of **Committee of Creditors of Essar Steel Ltd. & Ors. vs. Union of India**, by holding that the commercial wisdom applied by the CoC is final and Adjudicating Authority is not expected to sit in appeal nor constitute its view over such commercial prudence and its jurisdiction is only supervisory in nature. By following the above stated legal proposition, we find that the members of the CoC has duly considered the prospect of Corporate Debtor Company and since no Resolution Applicant come forward to submit a viable Resolution Plan for the Corporate Debtor, the CoC took unanimous decision by recommending liquidation of the company.
4. The reasons shown in the minutes of meeting of the Committee of Creditors (CoC), in its third meeting, which is at page nos. 46-47) for passing resolution of the corporate debtor appears to be just and reasonable and the present IA deserves to be allowed and an order for liquidation needs to be passed in respect of M/s. Collyer Containers Terminal Pvt. Ltd., the corporate debtor company, as the resolution is passed with 100% voting of the members of the CoC recommending for liquidation of the Corporate Debtor.

5. During the course of hearing, the Sole member of the CoC filed a purshis for suggesting the name of the Liquidator. It proposed the name of Mr. Atul Mittal to act as liquidator. It also furnished his consent for the same to be proposed liquidator of the Corporate Debtor Company. Therefore, the present IA is allowed and this Adjudicating Authority, in exercise of its power conferred to it under Section 33(1) of the I & B Code, order's that the Corporate Debtor Company M/s. Collyer Containers Terminal Pvt. Ltd., shall go into liquidation with following direction.

- i) The Moratorium declared under Section 14 of the I & B Code shall ceased to have effect from the date of liquidation order.
- ii) This Adjudicating Authority hereby appoints **Mr. Atul Mittal, having Registration No. IBBI/IPA-001/IP-P00439/2017-18/10762)** **address: 174, Balco Apartments, Plot No. 58, IP Extn., Patparganj, Delhi, Delhi, e-mail ID : a.mittalmc@gmail.com** to act as Liquidator of the Corporate Debtor company, under Section 34(1) of the I & B Code to conduct and complete the liquidation process.
- iii) *That Resolution Professional shall continue as liquidator and shall take steps as provided in Provisions of the Code.*


*a) The moratorium declared under Section 14 of the Insolvency & Bankruptcy Code, 2016 shall cease to have effect from the date of liquidation order.*



*b) As per Section 33(1) (b) (ii)- issue a public announcement stating that the Corporate Debtor is in liquidation; 33 (5) Subject to Section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:*

*Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority; 33 (6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. 33 (7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator. No suit or other legal proceedings shall be initiated by /or against the Corporate Debtor.*

6. The Liquidator shall send an intimation to the Registrar of Companies(ROC), to where the Corporate Debtor Company is registered.
7. With the aforesaid observation, **IA 793 of 2019 in CP(IB) 544 of 2018 is allowed and stands disposed of accordingly.**

  
**(Harihar Prakash Chaturvedi)**  
**Adjudicating Authority &**  
**Member (Judicial)**

13/07/20

IA No. 793 of 2019 in CP(IB) 544/NCLT/Ahmedabad/2018  
filed for Liquidation of Corporate Debtor

**[Per: Mr. Prasanta Kumar Mohanty, Member(T)]**

It is observed that –

1. Original Petition was filed by the **Operational Creditor, Mr.Narshibhai B.Hadiya** under Section 9 of Insolvency and Bankruptcy Code, 2016.
2. Application was admitted on **30.05.2019** Operational Creditor had not suggested name of IRP. Hence, this Adjudicating Authority appointed **Mr.Arvind as IRP** with a fees of **Rs.1.00 Lakhs** plus applicable taxes for 30 days.
3. Process started only on **6.07.2019**. Bank of Baroda is the only one CoC Member. First meeting of the Committee of Creditor was held on 01.08.2019. CoC approved payment of Rs.1.00 Lakhs as fixed by this Adjudicating Authority and appointed IRP as RP. Subsequently, CoC approved the fees of RP for Rs.50,000/- per month.
4. On 25.11.2019, **RP filed this** IA for liquidation of Corporate Debtor just **within 110 days of CIRP even 6 months have not crossed.**

As observed from the proceedings/papers submitted by RP –

1. **RP has not published expression of interest (Form G)**, which is mandatory under CIRP process, whether assets are there or not, it is not the decision of the RP to publish expression of interest or not, when balance sheet shows

**inventory of Rs.1.64 crores and tangible assets of Rs.14.28 Crores.**

2. Operational Creditor, **Mr.Narshibhai**, who filed this petition under Section 9 and his Petition is admitted for CIRP, **did not lodge any claim or attend any meeting inspite of repeated notice.**

3. Accordingly, the Committee of Creditors submitted that -  
**“Other Directors/Promoters are neither responding to Notices nor attending CoC meetings.**

*According to CoC all Promoters/Directors of Corporate Debtors has siphoned off the funds provided by the Bank and are not traceable. Moreover, Applicant Mr.Narsibhai Haldia (Operational Creditor) is also **relative of Promoter/Director of Corporate Debtor.** Application seems to be intentionally moved u/s 9 of the IBC, 2016 before Hon’ble NCLT to delay the proceedings in other courts and to dissolve the Corporate Debtor/Company.”*

It is learnt that Director, **Mr.Madhusudan Sorathia has escaped to Australia.**

4. Statutory Auditor of the Company, Virat Sheth & Associates, Chartered Accountant, **who were appointed on 28.09.2017** in AGM upto financial **year 2022** as statutory Auditor of Corporate Debtor did **not co-operate.** Rather they have sent mail on 13.07.2019 for resignation, **which was rejected by CoC** and they did not **approve the resignation.**

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5. Suspended Directors/Promoters are traceless, **statutory auditor** is not providing data/information. Agenda No.2/8 was passed and CoC agreed to appoint, Patel Jain & Associates as forensic auditor Section 43, 45, 49 of IBC, 2016, were discussed, but the RP **has not commented on this resolution**. Whether forensic auditor appointed/audit conducted/whether RP had filed IA with the Adjudicating Authority about the above transactions.
6. It is surprising that RP Shri Arvind has expressed his **unwillingness to act as Liquidator** which is against the **basic IBBI Rules and Regulation**. The reason for unwillingness is **not given**. If the RP is not taking up the job of Liquidator, why other **Insolvency Professional will take up this job**.
7. As observed from page no.41, RP has given consent to consider and approve resignation of Statutory Auditor, **which is contrary to the decision of CoC**, as CoC does not approve resignation.
8. As observed from page no.49, Agenda 3/6, it is not clear whether **CoC wants extension of CIRP period** or go for **liquidation as observed assent is given for both**.
9. Another purshish has been filed by the Lawyer of the Bank, suggesting the name of Mr.Atul Mittal to be appointed as Liquidator. Consent letter of the Bank for such appointment is not available.


10. The RP is required to submit the details of CIRP as stipulated under regulations **35A, 36A and Form H** i.e. compliance **certificate** along with the **Resolution/Liquidation Application**, but the same **has not been submitted by the RP.**

It is clear that the RP **has not conducted the process** as **stipulated under the Code** even not **published Form G, invitation of EOI** etc., which is essential under CIRP.

According to CoC, Promoters/Directors have **siphoned the funds**, one Director **escapes to Australia**, Applicant of this **petition Mr.Haldia**, on whose application, CIRP process started, moratorium declared, **is a relative of the promoter** and **he has not lodged the claim and not co-operated.**

It appears that the entire process of IBC, 2016 is not followed and the application **has been filed with malicious intent for any purpose other than the resolution.**

In view of the above, notice to be issued to the **RP, CoC Member, Applicant** (Operational Creditor), Statutory Auditors of the Corporate Debtor, Promoters and Directors to be present for their **clarifications on the points** mentioned above, so that decision can be taken on the present IA no.793 of 2019 filed by the RP for liquidation of the Corporate Debtor.

  
(PRASANTA KUMAR MOHANTY)  
MEMBER(T)

Date this the 13<sup>th</sup> day of January, 2020  
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