

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

IA 2511/2019, MA 2400/2019, MA 876/2019 IN MA 1082/2019, MA
2314/2019 CP.(IB)-1882(MB)/2018

(Under Section 33 of the IBC, 2016)

Mrs Hema Manoj Shah

... Applicant/RP

Vs

Mr Gaurav Dave &Ors.

... Respondents

In the matter of

Shivam Water Treaters Pvt Ltd

... Corporate Debtor

Order delivered on 17.7.2019

Coram:

Hon'ble Member (Judicial) Shri V.P. Singh

Hon'ble Member (Technical) Shri Ravikumar Duraisamy

For the Applicant: Mr Kiran Kulkarni, Advocate, Ms Hema Shah, RP

Member(Judicial) Shri V.P. Singh

Member (Technical) Shri Ravikumar Duraisamy

ORDER

IA 2511/2019 has been filed by the Resolution Professional under section 33 of the IBC, Code 2016, seeking liquidation of the Corporate Debtor.



2. Applicant contended that the Company Petition was admitted by order of this Bench dated 15.10.2018 after that applicant Mrs Hema Manoj Shah, was appointed as IRP and later on she was confirmed as Resolution Professional in the first CoC meeting held on 14.11.2018.

3. It is further stated by the Applicant that 180 days of CIRP expired on 13.4.2019, which was further extended by this court by 90 days by this Bench. However, due to the non-cooperation of the promoter, the Applicant has not received the custody and control of the Corporate Debtor to date. The RP has not received Resolution plan before the expiry of the maximum period permitted for completion of the CIRP under the Code. In the circumstances, the matter was discussed and deliberated before the CoC in its meeting held on 11.7.2019.

4. The CoC in its 9th meeting dated 11.7.2019 passed the Resolution with 100% vote shares to appoint Ms Hema Shah as the Liquidator of the Corporate Debtor. It is stated in the minutes that the CoC members having 100% vote rights are present in person through video conferencing comprising of Asset Reconstruction Company (India) Limited, having a voting shares of 60.29 % and Pegasus Assets Reconstruction Private Limited, having a voting share of 39.46% and Premjayanti Enterprises Private Limited, having a voting share of 0.25 % respectively agreed and voted for putting these facts before the Adjudicating Authority that before the maximum period permitted for corporate insolvency resolution process under section 12, no resolution plan has been received under sub section (6) of section 30, so necessary orders be passed requiring the Corporate Debtor to be liquidated under the Code in the matter of Shivam Water Treaters Private Limited and directed the RP to file the final report before the Adjudicating Authority.

5. Given the Resolution Passed by the CoC with 100% vote shares, we at this moment pass the order for liquidation of the Corporate Debtor.

6. It is further stated in the minutes that CoC Members expressed that as the final report will be filed by the RP for Orders under Section 33(1), they wanted to nominate the liquidator. On further discussion, the CoC members having 100% voting rights and present in person and present through Video conferencing comprising of Asset Reconstruction Company (India) Limited having a voting shares of 60.29 % and Pegasus Assets Reconstruction Private Limited, having a voting share of 39.46% and Premjayanti Enterprises Private Limited, having a voting share of 0.25 % respectively voted and resolved to



appoint Ms Hema Shah as the Liquidator of SWTPL as she is aware of all the facts of the case since day one.

7. It is also stated in the minutes that with due respect to the National Company Law Tribunal, and the CoC members, Ms Hema Shah, expressed her dissent for being the liquidator of SWTPL. Hence the CoC members expressed that these facts be put forward to the NCLT in the final status Report and request the NCLT, to pass orders as they deem fit and proper.

8. It is pertinent to mention that Ms Hema Shah, Resolution Professional is looking after the affairs of the Corporate Debtor from day one, in spite of non-co-operation of the promoters of the Corporate Debtor during the CIRP . The Promoters of the Corporate Debtor failed to submit the entire documents and details of the Corporate Debtor despite several reminders and ultimately no Resolution Plan was approved during the statutory period provided under the Code. Ms Hema Shah, who is the Resolution Professional and who is present in the court submitted that the promoters of the Corporate Debtor are in the habit of filing the false complaint. Therefore, she has declined to act as a liquidator.

9. It is pertinent to mention that the Liquidator has to perform her duty as the officer of the court and Liquidator should never be afraid of false complaints.

10. Therefore, We at this moment appoint Ms Hema Shah act as a Liquidator. She is directed to submit her consent within two days.

ORDER

11. IA 2511/2019 is allowed, and we at this moment pass the order of liquidation Under Section 33 of IBC as follows:

- a. That the Corporate Debtor is liquidated in the manner as laid down in the Chapter by issuing a Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to RoC under which this Company has been registered.
- b. As to the appointment of Liquidator, Mrs Hema Shah is at this moment appointed to act as a Liquidator for the liquidation of Corporate Debtor company with all powers as envisaged in the Code.

c. On such appointment under Section 34 of the Code, all powers of the Board of Directors, key managerial personnel and the partners of the



- Corporate Debtor shall cease to effect and shall be vested in the Liquidator.
- d. That the personnel of the Corporate Debtor shall extend all co-operations to the Liquidator as may be required by her in managing the affairs of the Corporate Debtor.
- e. That the Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate/assets as specified under Regulation 4 of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.
- f. Since this liquidation order has been passed, subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, in the event of initiation of a suit or legal proceeding by the liquidator on the corporate debtor behalf, it may initiate such proceedings with prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the Code.
- g. This liquidation order shall be deemed to be notice of discharge to the officers, employees and workers of the Corporate Debtor except to the extent of the business of the Corporate Debtor continuing during the liquidation process by the Liquidator.
12. Moratorium declared vide Order dated 15.10.2018 in CP No.: 1882/2018 ceased to exist.
13. The registry is directed to communicate this order to the Liquidator immediately even by way of e-mail.
14. IA 2511 /2019 is disposed of accordingly.

List all pending MAs on 23.7.2019

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)



Sd/-
V. P. SINGH
Member (Judicial)
Certified True Copy
Copy Issued "free of cost"
On 08/08/2019

Assistant Registrar

National Company Law Tribunal Mumbai Bench