

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
SPECIAL BENCH
COURT - 2

ITEM No.303
IA 823 of 2022
In
CP(IB) 732 of 2019

Order under Section 33 r.w 34 of IBC

IN THE MATTER OF:

Canara Bank

.....Applicant

V/s

Ashapura Garments Ltd

.....Respondent

Order delivered on 25/09/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order

The order is pronounced in open Court vide separate sheet.

-Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD SPECIAL BENCH, COURT-II**

**IA NO. 823 OF 2022
IN
COMPANY PETITION (IB) NO. 732/AHM/2019**

[An application filed under section 33(2) and 34(1) of the Insolvency and Bankruptcy Code, 2016 for initiation of liquidation of the Corporate Debtor]

IN THE MATTER OF:

MR. RAMCHANDRA D CHOUDHARY

(The Resolution Professional of

M/s Ashapura Garments Limited, Corporate Debtor)

[IP Reg. No. IBBI/IPA-001/IP-P00157/2017-2018/10326]

Office of RP:

9B Vardan Tower,

Lakudi Circle,

Navrangpura, Ahmedabad 380014

... Applicant/ Resolution Professional

Order Pronounced on: 25.09.2023

Coram:

**SH. SHAMMI KHAN,
HON'BLE MEMBER (JUDICIAL)**

**Dr. V.G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

Apperance:

For the RP: Mr Atul Sharma, Adv. & Mr. Arjun Padhiyar Adv.

For the Suspended Management: Mr. Tirth Nayak

ORDER

- 1 This is an application on 24.09.2022 filed by the Resolution Professional (hereinafter referred to as “RP”) under Section 33(2) and 34(1) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “Code”) for passing an order of liquidation of the Corporate Debtor, **M/s. Ashapura Garments Limited**.
- 2 The facts as narrated in the application and explained by the counsel for the applicant RP are summarized hereunder :-
 - (i) The one of the Financial Creditor, Canaran Bank had filed an application under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as the ‘CIRP’), against the Corporate Debtor, **M/s. Ashapura Garments Limited**, which was admitted vide order dated 27.09.2021 and Mr. Ramchandra D Choudhary was appointed as Interim Resolution Professional (hereinafter referred to as “IRP”).
 - (ii) The IRP under Section 15 of the IB Code r.w. Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, made a public announcement in FORM-A on 30.09.2021. The last date for submission of a claim by the creditors was 13th October 2021.
 - (iii) The IRP collated all claims submitted by the creditors pursuant to Public Announcement and accordingly constituted a Committee of Creditors (hereinafter referred to as the “CoC”) as per Regulation 16 of CIRP Regulations and submitted a report on 18.10.2021. However the RP has received claims from the creditors hence re-constituted on 27.11.2021 and 10.01.2022.

- (iv) The IRP Convened the (reconstituted)1st CoC meeting on 26.10.2021 wherein CoC Members has resolved to continue IRP as a Resolution Professional (herein refered as 'RP') of the Corproate Debtor, and also resolved to appoint Forensic Auditor of the Corporate Debtor and resolved to publish Form G (Invitation of Expression of Interest).
- (v) The Pursuant to approved resolution for the invitation of Expression of Interest which was published in the prescribed form "Form G" on 10.11.2021 wherein the last date of Submission of EoI was 25.11.2021.
- (vi) In the 2nd CoC meeting held on 06th December 2021, the RP apprised to that pursuant to Published Form G i.e. Expression of Interest the RP had received 10 to 15 inquiries from the Prospective Resolution Applicants (herein refered as "PRAs") out of them only 1 EoI received from the PRAs, hence the CoC has resolved to afresh Form G.
- (vii) The Pursuant to approved resolution for the invitation of Expression of Interest which was published in the prescribed form "Form G" on 16.12.2021 wherein the last date of Submission of EoI was 31.12.2021.
- (viii) In the 3rd CoC meeting held on 27.01.2022 wherein RP approsed the CoC Memebbers that pursuant to publication of Form G dated 16.12.2021 the RP had received 5 (five) EoI from the PRAs out of them 1(one) PRA had voluntarily withdrawn his bid voluntarily.
- (ix) In the 4th CoC meeting was held on 15.02.2022 wherein CoC had resolved to invite afresh EoI from the PRA and also extend the CIRP Period for another 90 days beyond 180days. Hence the Hon'ble Tribunal had extended the CIRP Peiod for another 90days beyond 180 days from 27.03.2022 vide its order dated

07.03.2022 bearing IA No. 203 of 2022 in CP IB No. 732 of 2019.

- (x) In the 5th CoC Meeting dated 14.03.2022, the CoC members had resolved to extend the last date of submission of EoI for another 15 days from 10.03.2022.
- (xi) In the 6th CoC Meeting dated 06.06.2022, wherein the RP apprised, pursuant to published form G i.e. Expression of Interest, the RP had received 2(Two) Resolution Plans from the PRAs. As directed by COC, 3 IAs were filed before this Hon'ble Tribunal seeking direction against 5 alleged tenants to vacate the premises of Corporate Debtor.
- (xii) In the 7th CoC Meeting dated 18.06.2022 wherein the RP alongwith CoC members had discussed the feasibility and viability of Resolution Plan from the Prospective Resolution Applicants, also requested the PRAs to increase the financial bid and submit Revised Resolution Plan(s) on or before the subsequent CoC Meeting.
- (xiii) In the 8th CoC Meeting dated 24.06.2022 wherein RP apprised to the CoC that CIRP period is going to be ended on 26.06.2022 hence CoC decided to extend the CIRP Peiod of another 60 days beyond 270 days, hence the Hon'bel Tribunal allowed the extension of another 60 days beyond 270 days w.e.f. 26.06.2022 vide its order dated 07.07.2022 passed in IA No. 564 of 2022 in CP IB No. 732 of 2019.
- (xv) In the 9th CoC Meeting dated 29.07.2022, wherein the RP apprised the CoC Members about the pending litigation, also discussion on Resolution Plan from the PRA(s).
- (xvi) In the 10th CoC Meeting dated 05.08.2022, wherein the RP apprised the members of the CoC that addendum is received to the Forensic Audit report dated 23.07.2022, hence the RP

requested to the PRA to submit revised Resolution Plans hence the RP had received Revised Resolution Plan from the Prospective Resolution Applicant namely Gulabdas International Trading LLP and SKM Steels Ltd on 05.08.2022 and 03.08.2022, hence the CoC Members had discussed the feasibility and viability of the Resolution Plans and put for the E-voting from 03.08.2022 to 20.09.2022.

(xvii) In the 11th CoC Meeting dated 18.08.2022, wherein the RP apprised the CoC that RP had received addendum to Revised resolution Plan of M/s SKM Steels Ltd on 12.08.2022, in the request of the CoC Members the addendum is put for the E-voting, meantime RP discussion about Distribution of the Resdolution Plan value among the CoC and further apprised distribution in Liquidation of the Corporate Debtor. In the request of the CoC Members to extend the CIRP Period for another 30days in view seek approval from the competent authority, hence the Hon'ble Tribunal had allowed to extend the CIRP Period for another 30days from 26.08.2022 vide its order dated 05.09.2022 passed in IA No. 709 of 2022 in CP IB No. 732 of 2019.

(xviii) RP submits that the CoC Members had not approved any resolution Plan vide its E-voing dated 20.09.2022. However, it approved the resolution for the Initiation of the Liquidation Process against the Corproate Debtor with **(80.45%** Voting in favour) and also Resolved to appoint present RP as Liquidator of the Corporate Debtor.

3. For the sake of ready reference, the relevant provision of section 33 (2) of the Code, which is applicable is reproduced hereunder:

(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 [approved by not less than 66% 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).

[Explanation: for the purposes 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].

4. Considering the documents and submission made, since the COC in spite of various meetings could not approve a resolution plan, and in its commercial wisdom has decided to take the Corporate Debtor in liquidation, we are of opinion that the decision of COC the Tribunal should not interfere. It is also observed that there were various meetings conducted and litigations on the assets of the corporate debtor have been reported in the meetings. 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-justiciable**.
5. Considering the above, we are forced to pass the order of liquidation of the Corporate Debtor. Hence, we hereby order for liquidation of the Corporate Debtor. The IBBI vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in 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. Mohit Bipinchandra Adatiya, having Registration No. IBBI/IPA001/IP-P01966/2019-2020/13004** 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. Ashapura Garments 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.
- 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. Mohit Bipinchandra Adatiya, having Registration No. IBBI/IPA001/IP-P01966/2019-2020/13004** is hereby appointed as a Liquidator of the Corporate Debtor i.e., M/s. Ashapura Garments 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) The Liquidator shall endeavour to explore the viability of selling the Corporate Debtor as a going concern in term of Regulation 32A of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- j) 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.
- k) 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.

- 1) The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.
 - m) 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
6. Accordingly, **IA/823(AHM)2022** in CP(IB) No. 732 of 2019 is disposed off

-Sd-
(DR. V. G. VENKATA CHALAPATHY)
MEMBER (TECHNICAL)

-Sd-
(SHAMMI KHAN)
MEMBER (JUDICIAL)

Prakash-Steno