

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

ITEM No.301  
IA/587(AHM)2022  
in CP(IB) 657 of 2019

**Order under Section 33(1),33(2) &  
34(1) of IBC, 2016**

**IN THE MATTER OF:**

Balmukund Bhagchand Kabra RP  
of Intelligent Textile Engineers Pvt Ltd

.....Applicant

Powertronics Control System & Ors.

.....Respondents

**Order delivered on: 19/01/2024**

**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 order. The order is pronounced in open Court, vide separate sheet.

-Sd-

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

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

**I.A. No. 587 of 2022 in  
C.P. (I.B.) No.657/NCLT/AHM/2019**

*[Application u/s. 33(1), 33(2) and 34(1) of the  
Insolvency and Bankruptcy Code, 2016]*

**Through,**

**Mr. Balmukund Bhagchand Kabra,  
Resolution Professional of:**

M/s. Intelligent Textile Engineers Private Limited

**..... Applicant/ RP**

**Versus**

**1. Powertronics Control System**

(Through its proprietor Brahmaniya Vijaykumar Tulsihdas)

(Member of Committee of Creditors)

Having Address at:

B1-19, Shayona Estate, Memco Char Rasta,  
Naroda Road, Ahmedabad – 380025.

Email: nitin@powertronics.in

**2. Commissioner of State Tax, Government of Gujarat,**

Gujarat Government Department)

(Member of Committee of Creditors)

Having Address at:

Unit-21, 4<sup>th</sup> Floor, Bachat Bhavan,  
Relief Road, Ahmedabad – 38001

Email: sto5unt21-gstd-ahd2@gujarat.gov.in

**3. Mr. Yash Jatinbhai Baxi**

Suspended Management,  
Having Address at:  
C-61, Pruthvi Tower,  
Jodhpur Gam Road,  
Satellite, Ahmedabad – 380015, Gujarat,  
Email: yashbaxi03@gmail.com

**4. Mr. Pragna Jatinbhai Baxi**

Suspended Management  
Jodhpur Gam Road,  
Satellite, Ahmedabad – 380015, Gujarat,  
Email: jatin\_baxi@yahoo.co.in

**5. Mr. Jatin Baxi,**

Suspended Management,  
C-61, Pruthvi Tower,  
Jodhpur Gam Road,  
Satellite, Ahmedabad – 380015, Gujarat,  
Email: jatin\_baxi@yahoo.co.in

**..... Respondents**

**Coram:**

**SHAMMI KHAN, MEMBER (JUDICIAL)**

**SAMEER KAKAR, MEMBER (TECHNICAL)**

**Appearance:**

For the Applicant : Mr. Nipun Singhvi, Adv. a/w.  
Mr. Mayur Jugtawat, Adv.  
Mr. Vishal Dave, Adv.  
For the Respondent : Ms. Ritu Guru, Adv. a/w.  
Mr. P.R. Rathod, State Tax Officer

**Order delivered on: 19.01.2024**

## **ORDER**

**[Per: Bench]**

1. This Interlocutory Application No.587 of 2022 in CP(IB) No.657/NCLT/AHM/2019 under Section 33(1), 33(2) and 34(1) of the Insolvency Bankruptcy Code, 2016, filed by Mr. Balmukund Bhagchand Kabra, Resolution Professional of the Corporate Debtor, M/s. Intelligent Textile Engineers Private Limited for passing order of liquidation with the following prayers:

*“a) Your Lordship may be pleased to allow the present application.*

*b) Your Lordship may decide IA 20 of 2022 seeking direction against the commissioner of state tax to pay CIRP Cost first in order to conduct smooth liquidation cost.*

*c) Your Lordship may be pleased to pass on order under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for liquidation of the Corporate Debtor;*

*d) Your Lordship may be pleased to grant any other relief as may deem fit in the interest of justice.”*

2. The Corporate Debtor was admitted in Corporate Insolvency Resolution Process (“CIRP”) under Section 9 of the I.B. Code vide order dated 02.08.2021 on the application filed by M/s. Powertronics Control System, the Operational Creditor for committing default in paying the operational debt of Rs.14,10,613/-.

3. This Authority vide order dated 02.08.2021 appointed the Applicant herein, as an Interim Resolution Professional (“IRP”). The IRP made public announcement of CIRP of the Corporate Debtor on 10.08.2021 as per Section 15 of I. B.

Code, 2016 in Form "A" for submission of claim by the Creditors. The last date for submission of claims was 23.08.2021. The Applicant was appointed as Resolution Professional in the first CoC meeting on 02.09.2021. The Applicant (RP) constituted total 02 claims to the value of Rs.56,66,071/-. The Applicant RP proceeded with CIRP. On 26.08.2021, the RP formed the Committee of Creditors with two Operational Creditors as members.

4. It is submitted that the 2<sup>nd</sup> CoC Meeting was convened on 29.09.2021, wherein the remuneration & other expenses of the RP was passed by COC. RP was authorized to enter into rent agreement and to fix rent amount. It is stated that the Authorised Representative of State Tax Department was not present in the meeting.
5. As submitted, the 3<sup>rd</sup> CoC Meeting was convened on 27.10.2021, wherein the RP was authorized to appoint Transaction/Forensic Auditor of the Corporate Debtor to conduct audit of last 2 years' transactions of the Corporate Debtor. RP was authorized to sell the stock lying in the factory of Corporate Debtor.
6. It is stated that the 4<sup>th</sup> CoC Meeting was convened on 20.12.2021 wherein RP called off the meeting due to lack of quorum.

7. On 18.12.2021, an E-mail was sent by Forensic Auditor to erstwhile Auditor of Corporate Debtor and asked for details of F.Y. 2016-17 to F.Y.2019-20. In the 5<sup>th</sup> CoC meeting held on 30.12.2021, information Memorandum, RFRP, Eligibility/Ineligibility criteria, EOI Process Memorandum, Evaluation Matrix was prepared by RP and the same was served on receipt of a Non-disclosure agreement by CoC members.
8. It is stated that an E-mail sent by Forensic Auditor to the director of the Corporate Debtor to provide certain documents listed in the mail for smoothly conduct of audit. The 6<sup>th</sup> CoC meeting was held on 06.02.2022, wherein, the RP called off the meeting due to lack of quorum. The 7<sup>th</sup> CoC meeting was held on 15.02.2022, wherein, the RP was authorized to seek extension of time of CIRP period by further 90 days beyond 180 days' period from this Bench and this Bench, vide its order dated 15.03.2022 approved the extension of timeline of CIRP for further 90 days.
9. It is submitted that the 8<sup>th</sup> CoC meeting was held on 30.03.2022 to resolve for inviting Resolution Plans and approve Form G for Publication, Information Memorandum, Eligibility/ Ineligibility criteria, RFRP, EOI Process Memorandum and Evaluation Matrix. As stated, the Applicant has shared Forensic Audit Report submitted by the Forensic auditor DAC & Co. and coordinated with the registered valuers to carry out the valuation of the Corporate

Debtor. From the perusal of the minutes of meeting of 8<sup>th</sup> CoC meeting, it is seen that total six EOI's were submitted by the prospective Resolution Applicants as per the details given below:

<b>Sr. No.</b>	<b>Name of Prospective Resolution Applicants</b>
1.	Soumya Kothari Chordiya
2.	Kundan Care Products Limited
3.	Shanti Group
4.	DGA IB Resolution LLP.
5.	RKG Asset Management LLP.
6.	Premco Rail Engineers Ltd.

However, it is further stated that no EMD amount and primary details were received by the RP till the last date of EOI.

10. It is stated that Form-G was published on 08.04.2022 in the newspapers "Financial Express" (Gujarati) and "Financial Express" (English), Ahmedabad Edition, pursuant to that Applicant has received various EOI submitted by Prospective Resolution Applicants.

11. It is submitted that the 9<sup>th</sup> CoC meeting was held on 03.05.2022, wherein, the CoC approved Resolution for liquidation of the Corporate Debtor with 100% majority. The following resolution was passed (at Page 88):

***"Item No.11***

*Resolution No.1(A)*

*To consider and if found fit, to pass with or without modification the following Resolution:*

*“RESOLVED THAT the RP Balmukund Kabra is hereby authorized to file an application with Hon’ble Adjudicating Authority for liquidation of Corporate Debtor.”*

*The said resolution was approved with 100% of voting share present in the meeting.”*

12. In the 9<sup>th</sup> CoC meeting, it was further resolved to assess the sale of the Corporate Debtor as a going concern as under:

**“39C, Assessment of sale as a going concern**

*CoC members resolved that if an order for liquidation is passed under Section 33 of the Code, proposed Liquidator in consultation with committee shall first try to sale corporate debtor as a going concern or sale the business of Corporate Debtor.”*

13. We heard the Learned Counsel. We perused the record.

14. We have gone through the record and heard the argument of the Applicant. It appears that the RP has published the Form G for receiving the Expression of Interest (“EOI”), but there was no EMD or any resolution plan received. The CoC in its 9<sup>th</sup> meeting dated 20.10.2022 has passed the resolution to liquidate the Corporate Debtor as a going concern and also assessed the Liquidation Cost to the tune of Rs.5,50,000/- as envisaged Regulations 39(c) and 39(b) of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016

respectively. The amount of liquidation cost shall be contributed by the members of the CoC.

15. It is seen that the State Tax Department is also a member of CoC, the cost of liquidation shall be borne with equal proportion by the department as resolved by 100% voting in the 9<sup>th</sup> CoC meeting.

16. In view of the above observation, the present application is allowed and ordered as under:

(i). In terms of the above, we hereby order for liquidation of the Corporate Debtor **M/s. Intelligent Textile Engineers Private Limited** 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.

(ii). 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. Omkarchand Rikhabdas Maloo (Registration No:IBBI/IPA-001/IP-P-00435/2017-18/10758, Email: omkar@ormaloo.com, Mobile No:**

**9879548695**), as per the panel suggested by IBBI for this Bench for the period of January 1, 2024 to June 30, 2024, as the Liquidator of the Corporate Debtor Company **M/s. Intelligent Textile Engineers Private Limited** to carry the liquidation process subject to the following terms of the directions.

- (iii). All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- (iv). The personnel of the Corporate Debtor are directed to extend all co-operations to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- (v). The Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by IBBI and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.
- (vi). That once having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suite or other legal proceeding on

behalf of the corporate debtor with prior approval of this Adjudicating Authority as mentioned in Sub-Section 6 of Section 33 of the I.B. Code.

- (vii). 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.
- (viii). 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.
- (ix). The Liquidator shall co-ordinate with all the authorities and the respected Government Authorities and shall provide complete information to facilitate the process of Liquidation.
- (x). The State Tax Department shall deposit an amount of **Rs.2,00,000/-** in a separate account meant for the liquidation process and towards the liquidation fees/ costs.
- (xi). The Liquidator is at liberty to seek any directions, if need be from this Tribunal during the Liquidation Process.

- (xii). The Liquidator shall take necessary legal action to recover the trade receivables and other credits such as loans and advances from the parties which are reflected in the latest balance sheet of the Corporate Debtor, if any. This direction is hereby given in concurrence of the jurisdiction prescribed under Section 33(5) of the Code.
- (xiii). The Moratorium declared vide order dated 02.08.2021 in CP (IB) No.657/9/NCLT/AHM/2020, henceforth ceases to exist.
- (xiv). The present I.A. No. 587 of 2022 is allowed directing the appointed Liquidator to initiate liquidation process as envisaged under Chapter – III of the Code by following the liquidation process given in the Insolvency and Bankruptcy Board of India (liquidation process) Regulations, 2016.

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

- (xv). The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.
- (xvi). Copy of this order be sent to the Registrar of Companies, Gujarat, Ahmedabad as well as the Commissioner of State Tax, Government of Gujarat, being CoC member, within 07 days for information and necessary action.
- (xvii). Accordingly, the present **I.A. No. 587 of 2022** in CP(IB) No. 657 of 2019 is allowed and stands disposed of.

**-Sd-**  
**(SAMEER KAKAR)**  
**MEMBER (TECHNICAL)**

**-Sd-**  
**(SHAMMI KHAN)**  
**MEMBER (JUDICIAL)**

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