IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT II

IA 398 of 2022

In

CP (IB) 10/MB/C-II/2019

Under Section 33(1) of the Insolvency and Bankruptcy Code, 2016.

In the Application of

Mr. Arun Kapoor

Address Office: - G-601, Army Co-op Housing Society, Sector – 09, Nerul (East), Navi Mumbai – 400706.

...Applicant/Resolution Professional

In the matter of

Bank of Baroda

...Financial Creditor

Versus

Shalibhadra Cottrade Pvt. Ltd.

...Corporate Debtor

Order Delivered on 03.06.2022

Coram:

Hon'ble Member (Judicial)	**:**	**Justice P.N. Deshmukh (Retd.)**
Hon'ble Member (Technical)	**:**	**Mr. Shyam Babu Gautam**

Appearance (through Video Conferencing):

For the Applicant : Mr. Manoj Mishra

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. The present application is filed by the Resolution Professional upon the instructions of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, *viz.,* Shalibhadra Cottrade Pvt. Ltd, on the ground that there is no possibility for resolution of the Corporate Debtor.

2. This Adjudicating Authority *vide* its order dated 22.10.2019 on a Petition filed by Bank Baroda (Financial Creditor) under section 7 of the Insolvency and Bankruptcy Code, 2016 *('the Code'),* directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed Mr. Vikas Prakash Gupta as the Interim Resolution Professional (IRP) of the Corporate Debtor.

3. The IRP published the Public Announcement of the commencement of the CIRP in Form A on 04.11.2019 in newspapers inviting claims from the Creditors. The IRP received claim from the Financial Creditor i.e. Bank of Baroda (erstwhile Dena Bank) and no other Operational Creditors. Thereafter the IRP constituted CoC on

admission of claims on 22.11.2019 with only one Financial Creditor i.e. Bank of Baroda. The said Creditor had voting share of 100%.

4. The IRP further received claims from Axis Bank, Shriram City Union Finance, RBL Bank Ltd, HDFC Bank Ltd. and IndusInd Bank Ltd. and admitted their claim after due verification. Accordingly, the list of Creditors was updated and again the CoC was reconstituted on 21.02.2020.

5. The Third CoC meeting was held on 13.02.2020 of the Corporate Debtor and also resolution to appoint Resolution Professional (RP) was passed. Further, Form G for inviting Expression of Interest (EoI) for submission of Resolution Plan was published on 21.01.2020 and the last date for submission of EoI was 05.02.2020.

6. Further in the Fourth CoC meeting an extra time for issuing second EoI for the purpose of inviting Resolution Applicant or resolving the liquidation of the Corporate Debtor. However, the CoC members voted against the extra time for the Resolution of the Corporate Debtor and unanimously with 100% votes resolved for the liquidation of the Corporate Debtor.

7. The IRP had appointed registered valuers for valuation of the Securities, Financial Assets, Machinery and other Assets of the Corporate Debtor. However, due to non-cooperation of the management of the Corporate Debtor, the valuation could not be

completed. The Applicant was appointed as the RP on 16.03.2020.

8. Further, the Applicant had also sent notices to the other Debtors of the Corporate Debtor demanding the pending receivables from them. However, no response was received from them. The list of the Debtors and the amount outstanding from them is as follows :-

Sr. No.	Name of the Debtor	Amount outstanding as on 22.10.2019 (Rs.)
1.	Chetana Traders	54,88,102/-
2.	Jay Kapeesh Corporation Ltd.	2,90,67,052/-
3.	KML Tradelinks Pvt. Ltd.	28,92,073/-
4.	Radhika Silk Mills Pvt. Ltd.	84,09,437/-
5.	Rajasaayee Fine Linen Pvt. Ltd.	1,90,52,831/-
6.	Rajkiran Fabrics Pvt. Ltd.	34,14,374/-
7.	Rajshree Syntex Exports Pvt. Ltd.	39,41,526/-
8.	Som Globe Textiles	1,42,01,542/-
9.	Suhanish Textiles Pvt. Ltd.	1,32,21,597/-

10.	Vienna Multi Ventures Pvt. Ltd.	1,49,00,000/-

9. The Applicant states that the RP had filed an IA 487 of 2021 for the Liquidation of the Corporate Debtor. However, due to lack of clarity in the voting, liquidation cost and liquidator not being proposed the said Application is pending before this Tribunal.

10. Thereafter, in the eighth CoC meeting held on 27.01.2022, the resolution was discussed, and online voting was held on 31.01.2022. The members of the CoC voted on the resolution and voted 89.40% majority for the liquidation of the Corporate Debtor.

11. Further, a resolution for the appointment of Mr. Brijendra Kumar Mishra as the liquidator of the Company was passed and a lump sum fee of Rs. 1,00,000/- was fixed. Also, it was resolved that in the event of shortfall to meet the liquidation costs, the liquidator shall call upon the Financial Creditor to contribute the excess of the liquidation costs over the liquid assets of the Corporate Debtor.

12. Further the Applications under sections 43, 45, 47, 66 of the Code and all other pending Applications are to be pursued by the Liquidator.

ORDER

a. Upon perusal of the documents, records made available and submissions of the Applicant in the 8th CoC meeting held on

27.01.2022, the CoC with majority of 89.40% approved to Liquidate the Corporate Debtor and directed the RP to file an application under section 33 (1) of the IBC for liquidation of the Corporate Debtor.

b. In view of the decision of the CoC, we are inclined to admit the IA 398/2022 in CP 10/2019 to initiate liquidation process against the Corporate Debtor. Accordingly, the Adjudicating Authority Orders for initiation of Liquidation of the Corporate Debtor.

c. This Bench hereby appoints Mr. Brijendra Kumar Mishra as Liquidator having [Reg. No. IBBI/IPA-002/IP-N00109/2017-18/10257], as Liquidator in terms of section 34(1) of the Code.

d. The Applicant/RP shall forthwith hand over possession of the Corporate Debtor, its assets and all documents in his possession, to the newly appointed Liquidator;

e. The Liquidator shall initiate the liquidation process as envisaged under Chapter-III of the Code and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

f. Whenever the Liquidator issues any publication in the newspapers, the said shall be published in widely circulated newspapers in the State in which the Registered office of the Company is incorporated.

g. Public Notice shall be issued in two newspapers, *viz.,* in *Times of India/Business Standard* (English) and *Navshakti* (Marathi), stating that the Corporate Debtor is in liquidation, as required in terms of section 33(1) of the Code;

h. All the powers of the Board of Directors and key managerial persons of the Corporate Debtor shall cease to exist. All these powers shall henceforth be vest with the Liquidator;

j. The personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor;

k. On initiation of the liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso;

l. This liquidation order shall be deemed to be a 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;

m. The Court Officer shall forward a copy of this Order to – (i) the Applicant/ RP, (ii) the Liquidator and (iii) the concerned Registrar of Companies, immediately upon pronouncement of this Order; and

n. A copy of this order shall additionally be served by the Applicant/ RP on the Registrar of Companies, within whose jurisdiction the Corporate Debtor has been registered, for updating the Master Data of the Corporate Debtor.

o. The IA **398 of 2022 in CP 10 of 2019 is allowed and disposed of.** File to be consigned to records.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-

JUSTICE P.N. DESHMUKH
MEMBER (JUDICIAL)