



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

ITEM No.303

IA/1047(AHM)2022 in CP(IB) 73 of 2020

Order under Section 33(2) and 34 IBC,2016

IN THE MATTER OF:

Pankaj Prabhudayal Goenka RP of P.G. Silk Mills Pvt LtdApplicant

V/s

Paramjitsingh Indersingh GulatiRespondent
(Member of the suspended Board of (CD))

Order delivered on: 27/09/2023

Coram:

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

Mr. Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

**I.A. No. 1047 of 2022 in
C.P. (I.B.) No.73/9/NCLT/AHM/2020**

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

In the matter of:

Mr. Pankaj Prabhudayal Goenka,
Resolution Professional of
M/s. P. G. Silk Mills Private Limited

..... Applicant/ RP

Versus

Paramjitsingh Indersingh Gulati,
(Member of the Suspended Board of CD)
212, Rajhans Imperia Market,
Salabatpura, Ring Road,
Surat – 395002.

..... Respondent

Order Pronounced on: 27.09.2023

**Coram: Shammi Khan, Member (Judicial)
Kaushalendra Kumar Singh, Member (Technical)**

Appearance:

For the Applicant : Mr. Vishwas V. Shah, Advocate
Mr. Vinodkumar S. Shah, PCS

For the Respondent : None.



ORDER

1. This instant application is filed on 21.11.2022 by Mr. Pankaj Prabhudayal Goenka, Resolution Professional of the Corporate Debtor- **M/s. P.G. Silk Mills Private Limited** under section 33(2) and 34 of the Insolvency and Bankruptcy Code,2016 (IBC,2016) for liquidation of the Corporate Debtor- M/s. P.G. Silk Mills Private Limited.
2. The averments made in the application and submitted by Counsel for the applicant are as follows:
 - a) This Adjudicating Authority vide its order dated 27.04.2022 admitted the Petition under section 9 of the Code, filed by the Operational Creditor i.e. Navneet B Kamani, Proprietor of M/s. Vishnu Silk Mills for initiation of Corporate Insolvency Resolution Process (herein after referred to as the "CIRP") against Corporate Debtor, M/s. P.G. Silk Mills Private Limited. Mr. Pankaj Prabhudayal Goenka herein was appointed as the Interim Resolution Professional (hereinafter referred to as the "IRP") of the Corporate Debtor by this Tribunal.
 - b) The IRP made public announcement of CIRP of the Corporate Debtor on 03.05.2022 for inviting claims from the Creditors. The last date for submission of claims was 12.05.2022. The IRP then constituted/reconstituted the Committee of Creditors. The said committee consisted of only 17 Operational Creditors. Copy of the report of reconstitution of CoC dated 18.10.2022 is annexed with the application.



- c) In 1st meeting of CoC held on 27.05.2022, resolution was passed to appoint IRP as Resolution Professional (RP).
 - d) The 2nd CoC meeting was held on 29.09.2022, wherein the Applicant informed CoC about preparation of Information Memorandum and the CoC approved invitation of Expression of Interest for publication in the newspapers, Eligibility Criteria for Resolution Applicants along with Evaluation Matrix.
 - e) The Applicant had published Form-G on 01.10.2022 in two newspapers for inviting Expression of Interests from the Prospective Resolution Applicants (“PRA”). However, no EOI was received.
 - f) The Applicant in 3rd CoC meeting held on 20.10.2022 informed the CoC that no EOI is received. Thereafter, CoC decided not to re-issue fresh invitation for EOI as there are no fixed assets in the Corporate Debtor. Further, CoC passed resolution for liquidating the Corporate Debtor, appointing applicant as liquidator, fixing fees and estimated cost of liquidation and sale Corporate Debtor as going concern with 81.75% voting in favour of all resolutions. Hence, present application for liquidation of Corporate Debtor.
3. The notice was issued upon Suspended Management vide order dated 30.11.2022. In compliance of said order notice was issued by registry and the tracking report is placed on record. It is seen that notice is duly delivered to the Suspended Management however, no reply is received.



4. During the hearing held on 29.03.2023, Counsel for the applicant requested time for filing supplementary affidavit with regards to contribution in case liquidation cost exceeds. In compliance of the same the Applicant convened 4th meeting of CoC on 12.05.2023, wherein the CoC with 68.68% voting passed the following resolution:

*“**RESOLVED THAT** in case the cost of liquidation exceeds than the realised value of the liquid assets, the members of the COC agree to contribute the excess cost of liquidation over the realized value of the assets in proportion to their voting rights in CIRP.”*

The minutes of the 4th meeting of CoC is placed on record vide affidavit dated 15.05.2023.

5. On perusal of application it was observed that resolution as per regulation 39B, 39C and 39D are placed on record however, there is no resolution seeking liquidation order therefore, this Adjudicating Authority vide its order dated 24.07.2023 directed the Applicant/RP to conduct a meeting of CoC and file resolution to that effect.
6. In compliance of order dated 24.07.2023, the Applicant convened 5th meeting of CoC on 27.07.2023, wherein all the resolution in connection with the liquidation of the Corporate Debtor were passed including following resolution in connection with liquidation with 72.03% of voting in favour of the Resolution:

*“**RESOLVED THAT** on account of failure to receive Expression of Interest from prospective resolution applicants under the provisions of the Insolvency*



and Bankruptcy Code, 2016, the approval of committee of creditors be and is hereby accorded, pursuant to Section 33(2) of the Code, to initiate the Liquidation of the Corporate Debtor subject to approval of Hon'ble Adjudicating Authority”

The minutes of the 5th meeting of CoC is placed on record vide affidavit dated 28.07.2023.

7. We have heard the Ld. Counsel for the Applicant and perused the material available on record, it is noted that no EOI is received and CoC has resolved to liquidate the Corporate Debtor as there are no fixed assets.
8. It is observed from the minutes of 5th CoC meeting that CoC with 72.03% voting has decided to liquidate the Corporate Debtor and approved appointment of applicant as liquidator. Further, CoC has also approved for sale of Corporate Debtor as going concern under clause (e) of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 read with Regulation 39C of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 or sale of business of the Corporate Debtor as a going concern under clause (f).
9. 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-justifiable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.



10. The CoC with requisite voting as given under section 33(2) of IBC, 2016 have approved Liquidation of Corporate Debtor in view of not getting any resolution plan, this Tribunal has very limited judicial review in such matters of commercial wisdom and therefore, this Bench allows the present application and pass order for liquidation of Corporate Debtor.

- i. The Corporate Debtor – **P.G. Silk Mills Private Limited** is ordered to be liquidated 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. The Liquidation of Corporate Debtor is effective from the date of this order and the Moratorium declared vide order dated 27.04.2022 in CP(IB) No.73/NCLT/AHM/2020, henceforth ceases to exist from the date of the order of liquidation.
- iii. In terms of the **IBBI, circular number 12011/214/2023-IBBI/840 dated 18.07.2023 we hereby appoint Mr. Suhas Dinkar Bhattbhatt having registration no. IBBI/IPA-002/IP-N00571/2017-20018/11738 and email id cssuhasb@gmail.com** as per the panel suggested by IBBI for this Bench as the Liquidation of the Corporate Debtor to carry the liquidation process. The Liquidator so appointed shall complete the Liquidation process as per the provisions of the Insolvency and Bankruptcy Code, 2016 r.w Insolvency and Bankruptcy Board of India (Liquidation process) Regulation, 2016.
- iv. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor, as the case



may be, hereafter cease to exist. All these powers henceforth vest with the Liquidator.

- v. 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.
- vi. 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.
- vii. 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.
- viii. 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.
- ix. The Liquidator is directed to first explore the sale of Corporate Debtor as going concern under clause (e) of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 read with



Regulation 39C of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 or sale of business of the Corporate Debtor as a going concern under clause (f).

- x. The CoC is directed to contribute to the liquidation cost if any short fall occurs from the liquidation value of the Corporate Debtor.
- xi. 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.
- xii. 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.
- xiii. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.
- xiv. 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.

11. Accordingly, the present **I.A. No. 1047 of 2022** is allowed and stands disposed of.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER TECHNICAL

-SD-

SHAMMI KHAN
MEMBER JUDICIAL

Arati Suryavanshi-LRA