

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



ITEM No.306

IA/51(AHM)2022 in CP(IB) 179 of 2019

Order under Section 33 & 34 r.w 66(5) IBC,2016

IN THE MATTER OF:

Jigar Bhatt RP of Telstar Industries Pvt Ltd

.....Applicant

.....Respondent

Order delivered on: 15/09/2023

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 the order. The order is pronounced in the open court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

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



ITEM No.307

IA/24(AHM)2023 in IA/51(AHM)2022 in IA/11(AHM)2022 in IA/386(AHM)2021 in
CP(IB) 179 of 2019

Order under Section 60(5) IBC,2016 r.w Rule 11 of NCLT,2016

IN THE MATTER OF:

Vivekanand Dhaneshwar Jha & Anr
V/s

.....Applicant

Jigar Tarun Bhatt RP of Telstar Industries Pvt Ltd & Anr

.....Respondent

Order delivered on: 15/09/2023

Coram:

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



ITEM No.308

IA/95(AHM)2023 in IA/24(AHM)2023 in CP(IB) 179 of 2019

Order under Section 60(5) IBC,2016 r.w Rule 11 of NCLT,2016

IN THE MATTER OF:

Jigar Bhatt RP of Telstar Industries Pvt Ltd
V/s
Vivekanand Dhaneshwar Jha & Anr

.....Applicant

.....Respondent

Order delivered on: 15/09/2023

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MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)



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

IA/51(AHM)2022 in CP(IB) No. 179 of 2019

Along with

IA/24(AHM)2023 in IA/51(AHM)2022 in IA/11(AHM)2022 in

IA/386(AHM)2021

And

IA/95(AHM)2023 in IA/24(AHM)2023

In the matter between:

IA/51(AHM)2022 in CP(IB) No. 179 of 2019

[filed under Section 33 & 34 r.w. Section 60(5) of the Insolvency and Bankruptcy Code, 2016]

Mr. Jigar Bhatt,

Resolution Professional of
M/s. Telstar Industries Private Limited
Having address at:
B-101, Arvind Citadel,
B/h BSNL Tower, Navrangpura,
Ahmedabad-380009.

....Applicant

Along With

IA/24(AHM)2023 in IA/51(AHM)2022 in IA/11(AHM)2022 in

IA/386(AHM)2021 in CP(IB) No. 179 of 2019

(filed under Section 60(5) of the IBC, 2016 r.w. Rule 11 of the NCLT Rules, 2016)

1. Vivekanand Dhaneshwar Jha

Having address at:
5B/502, Brijratan Apartment,
Brijvasi Estate,



Parle Point, Surat.

2. Sumankumar Dilipkumar Jha

Having address at:
244, Gangotri Nagar,
Bamroli Road, Pandesara, Surat

....Applicants

Versus

1. Jigar Tarun Bhatt,

Resolution Professional of
Telstar Industries Private Limited
Having its address at:
B-101, Arvind Citadel,
B/h. BSNL Tower, Navrangpura,
Ahmedabad-380009.

2. Punjab National Bank

Through its Authorised Officer
Branch Address at:
1st Floor, Meghani Tower,
Station Road, Surat-395003.

....Respondents

AND

**IA/95(AHM)2023 in IA/24(AHM)2023 in CP(IB) No. 179 of
2019**

*(filed under Section 60(5) of the IBC, 2016 r.w. Rule 11 of the NCLT
Rules, 2016)*

Mr. Jigar Bhatt,

Resolution Professional of
Telstar Industries Private Limited
Having its address at:
B-101, Arvind Citadel,



B/h BSNL Tower, Navrangpura.

....Applicant

Versus

1. Mr. Vivekanand Dhaneshwar Jha

Having address at:
5B/502, Brijratan Apartment,
Brijasvi Estate, Parle,
Point, Surat

2. Sumankumr Dilipkumar Jha

Having its address at:
244, Gangotri Nagar,
Bamroli Road, Pandesara,
Surat.

Order pronounced on: 15.09.2023

Coram:

SHAMMI KHAN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For the Applicant : Mr. Arjun Sheth, Advocate along with Ms.
Rhea Sevak, Advocate

For the Respondent : Mr. Dhruvkumar Chauhan, Advocate
for R- 2, PNB in IA/24(AHM)2023 in
IA/51(AHM)2022 in IA/11(AHM)2022 in
IA/386(AHM)2021

For Suspended Management : Mr. Vivekanand Dhaneshwar Jha
party in person



COMMON ORDER
(Per: Bench)

IA/51(AHM)2022

1. The IA/51(AHM)2022 is an application filed by the Resolution Professional (“RP”) under Section 33 & 34 r.w. Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) seeking the following prayers:

“A. Pass an order directing the initiation of Liquidation of the Corporate Debtor in accordance with Chapter III of Part II of the IBC, 2016;

B. Appoint the Applicant i.e., Mr. Jigar Bhatt, IBBI Registration No. IBBI/IPA-001/IP-P01917/2019-2020/13005, as the liquidator of the Corporate Debtor;

C. Pass ad-interim and interim reliefs in terms of Clause A and B.

D. Pass such other order/directions as this Hon’ble Bench may deem fit and proper in the facts and circumstances of the case.”.

2. It is stated that the Corporate Insolvency Resolution Process (“CIRP”) commenced vide order dated 15.04.2021 in an application filed under Section 7 of the IBC, 2016 by M/s. Punjab National Bank (Financial Creditor) against M/s. Telstar Industries Private Limited (Corporate Debtor) wherein the Applicant herein was appointed as Interim Resolution Professional (“IRP”). The said order dated 15.04.2021 was clarified vide order dated 20.04.2021.



3. The Applicant caused Public Announcement on the website of IBBI and two newspapers viz., “Times of India” and “Gujarat Guardian”.
4. Subsequent to the claims being received, the Committee of Creditors (“CoC”) was formed and the list of creditors was filed on 10.05.2021 in the registry of this Tribunal.
5. The first meeting of the CoC was held on 15.05.2021. The Applicant apprised the members that despite several communications to the Suspended Management of the Corporate Debtor, the custody of assets, document, and information has not been received and application under Section 19(2) of the IBC, 2016 was filed in the Tribunal on 25.05.2021 which was allowed by the Tribunal vide order dated 27.07.2021. However, despite several communications with the Statutory Auditors, no response or cooperation was received by the Applicant. In the said meeting, the Applicant herein was appointed as RP.
6. Form-G was published on 29.06.2021 on the website of IBBI, in newspapers viz, “Indian Express” and “Sandesh” with the last date for submission of Resolution Plan as 02.09.2021.



7. The third meeting of the CoC was held on 28.07.2021 wherein the RP informed the CoC that there was no cooperation received from the Suspended Management.
8. The fourth meeting of the CoC was held on 09.09.2021. The RP brought to the notice of the CoC that despite the order from NCLT, no cooperation has been received from the Suspended Management.
9. On an application moved by the RP vide order dated 27.07.2021, the CIRP period was extended and the extended period was to expire on 11.01.2022.
10. The sixth meeting of the CoC was held on 28.12.2021 wherein the RP apprised the members that a revised Resolution Plan was received from Optima Engineers and Developers and that time limit for completion of the CIRP was nearing its completion and last date was on 11.01.2022.
11. The seventh meeting of the CoC was held on 06.01.2022. The single plan received from M/s. Optima Engineers and Developers was voted upon by the CoC and was rejected with 100% voting against the plan for the following reasons:-
 - a. Amount offered under the Resolution Plan is lesser than the Fair Value and Liquidation Value;



b. The proposal of the Resolution Applicant is ambiguous so as to possession;

c. Consequently, the CoC members have conveyed their decision to liquidate the Corporate Debtor. The CoC members assessed the possibility of sale as a going concern and directed the RP to convey their opinion. The CoC thereafter recommended for appointment of the RP as the liquidator of the Corporate Debtor.

12. On notice being issued to the Suspended Management, they have filed reply in the matter opposing the application seeking liquidation of the Corporate Debtor. The main contentions of the Suspended Directors are summarised below:

a. The Financial Creditor (Punjab National Bank) has fraudulently declared the account of the Corporate Debtor as Non-Performing Asset (“NPA”).

b. Securitization Application No. 47 of 2015 was allowed by the Hon’ble Debt Recovery Tribunal (“DRT”) vide order dated 22.06.2017 and the possession of the assets was ordered to restore to the Corporate Debtor

c. The appeal preferred by the Financial Creditor was dismissed by the Hon’ble Debt Recovery Appellate Tribunal (“DRAT”) vide order dated 23.08.2019.







- d. The Special Civil Appeal filed by the Financial Creditor before the Hon'ble High Court of Gujarat was rejected vide order dated 14.11.2019.
- e. Letters of Patent Appeal No. 159 & 160 of 2020 preferred by the Financial Creditor were dismissed by the Division Bench of Hon'ble High Court of Gujarat vide order dated 17.08.2020 with cost.
13. It is stated by the Respondent that the possession of the assets was never restored to the Corporate Debtor by the Financial Creditor. It is stated that S.A. No. 47 of 2015 seeking compensation was filed by the Corporate Debtor which was rejected by Hon'ble DRT vide order dated 21.08.2021.
14. Special Civil Application No. 16203-16204 of 2021 was filed by the Suspended Management before the Hon'ble High Court which came to be rejected vide order dated 27.07.2022.
15. Against the order of the Hon'ble High Court, Letters Patent Appeal No. 1204 of 2022 & 1206 of 2022 was filed by the Respondent before the Hon'ble Division Bench of the Hon'ble High Court and the same was also dismissed vide order dated 06.02.2023.



16. It is stated that the Resolution Professional supported the Financial Creditor before the Hon'ble High Court.
17. It is stated that the Resolution Professional has not allowed the Suspended Management of the Corporate Debtor to attend the CoC meetings.
18. It is stated that the Resolution Professional has not protected the assets of the Corporate Debtor during the CIRP.
19. The Applicant has filed affidavit-in-rejoinder under Inward No. D 022 dated 03.01.2023. We have gone through the same.
20. We have heard the Counsel and perused the material on record. It is seen that the CoC in its 6th meeting held on 28.12.2021 at page no. 135 of the application passed the following resolutions:

"RESOLVED THAT, the consent of the Committee of Creditors be and is hereby accorded, under section 30(4) with 100% voting share of the financial creditors, for the approval of Resolution Plan submitted by Optima Engineers and Developers and Resolution Professional be and is hereby authorized to do the necessary formalities thereof as per section 30(6)."

"RESOLVED FURTHER THAT Resolution Professional is authorized to appoint legal counsel for filing required application before Adjudicating Authorities at a maximum fee of Rs 50,000/-" for seeking approval on the Resolution Plan. : 1 Post(s)

Name	Photo	Symbol	Votes	Voted Weight
No - Not Approved			1	100
Yes - Approved			0	



21. The CoC in its 7th meeting held on 06.01.2022 at page no. 147 of the application passed the following resolutions recommending the liquidation of the corporate Debtor.

“ RESOLVED THAT the consent of the Committee of Creditors be and is hereby accorded for the Liquidation of the Corporate Telstar Industries Private Limited under section 33(2) of the Code, and that the Resolution Professional be and is hereby authorized to submit recommendations of committee for Sale as a Going Concern under Regulation 39C to Sale of Assets under Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016 and do the necessary application filing formalities thereof”.

“RESOLVED FURTHER THAT Regulation Professional is authorised to appoint legal counsel for filinig required application and appearing before the Adjudicating Authorities at a maximum fee of Rs. 30,000/-.”.

22. As regards the liquidation application, we reproduce Section 33(1) and 33(2) of the IBC, 2016 as under:

“33. (1) Where the Adjudicating Authority, —

- (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under [section 12](#) or the fast track corporate insolvency resolution process under [section 56](#), as the case may be, does not receive a resolution plan under sub-section (6) of [section 30](#); or*
- (b) rejects the resolution plan under [section 31](#) for the non-compliance of the requirements specified therein,*



it shall—

- (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*
 - (ii) issue a public announcement stating that the corporate debtor is in liquidation; and*
 - (iii) require such order to be sent to the authority with which the corporate debtor is registered.*
- (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 ¹²[approved by not less than sixty-six per cent 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 purpose 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.]”.

23. Vide order dated 22.08.2023, the RP was directed to file Form-H which was filed in Inward No. D3283 dated 29.08.2023.
24. In the present matter, it is observed that in the 7th CoC meeting, the Financial Creditor has consciously taken a decision to liquidate the Corporate Debtor with 100%



majority and such resolution forms part and parcel of the application. 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**. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.

25. As regards allegations of the Suspended Board that RP has not permitted them to attend the CoC meetings, we have perused the various meetings of CoC whereat the Suspended Management was present.
26. Considering the above, we are forced to pass the 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 liquiator in all the cases where liquidator (read liquidation) order is passed henceforth. In terms of the above circular of IBBI, we hereby appoint **Mr. Sachin Sinha, having Registration No.**



IBBI/IPA-002/IP-N00939/2019-2020/12985, 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. Telstar Industries Private 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. Accordingly, we allow IA/51(AHM)2022.
- 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. Sachin Sinha, having Registration No. IBBI/IPA-002/IP-N00939/2019-2020/12985**, is hereby appointed as a Liquidator of the Corporate Debtor i.e., M/s. Telstar Industries Private 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.
- l) 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.

27. Accordingly, IA/51(AHM)2022 in CP(IB) No. 179 of 2019 is disposed off.

IA/24(AHM)2022

28. The IA/24(AHM)2022 is an application filed by the Suspended Management of the Corporate Debtor (M/s. Telstar Industries Private Limited) under Section 60(5) of the IBC, 2016 r.w. Rule 11 of the NCLT Rules, 2016 seeking the following prayers:

“A. This Hon'ble Adjudicating Authority may be pleased to set aside the Corporate Insolvency Resolution Process of Telstar Industries Private Ltd, made pursuant to the order dated 15.04.2021 in CP (IB) No. 179 of 2019 considering the peculiar facts and circumstances including in particular the fraudulent and malicious proceedings taken by respondent bank read with the judgment of Hon'ble Supreme Court in the case of Vidarbha Industries Power Limited vs. Axis Bank, reported at (2022) 8 SCC 352, in the interest of justice;

B. This Hon'ble Adjudicating Authority may be impose such penalty as may be deemed appropriate by this Hon'ble



Adjudicating Authority upon the respondent bank for initiating fraudulent and malicious proceedings against Telstar Industries Private Ltd, the Corporate Debtor, in the interest of justice.

C. This Hon'ble Adjudicating Authority may be pleased to pass any other and further orders as may be deemed fit and proper in the interest of justice.”.

29. Several allegations have been levelled by the Suspended Management on the Financial Creditor and the RP in the matter.
30. It is the contention of the Suspended Management that CIRP was fraudulently initiated by the Financial Creditor and the account was wrongly declared NPA by the Financial Creditor.
31. Reply has been filed in IA/24(AHM)2022 by the Resolution Professional under Dairy Nos. 270 and 708 dated 23.01.2023 and 21.02.2023 respectively stating that:-
- a. The Resolution Professional conducted the CIRP according to the IBC, 2016.
 - b. The RP has conducted total seven CoC meetings and submitted three progress reports.
 - c. That there was non-cooperation from the end of the Suspended Directors for which a separate IA under Section 19(2) of the IBC, 2016 bearing IA No. 386 of 2022 was filed.



- d. Several interim orders were passed from time to time.
32. It is stated that during the CIRP of the Corporate Debtor, the Suspended Management has been illegally collecting rent from shops which was not deposited into the account of the Corporate Debtor. Moreover, the premises are located under GIDC where no shops can operate on the said plot which is for industrial purposes only.
33. The Suspended Management has assailed the admission order dated 15.04.2021 in CP(IB) No. 179 of 2019 before the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 407 of 2021 which came to be rejected vide order dated 14.06.2021 and the order of this Tribunal was upheld. The said order of Hon'ble NCLAT dated 14.06.2021 was impugned before the Hon'ble Supreme Court in Civil Appeal No. 4677 of 2021. Vide order dated 16.08.2021, the Hon'ble Supreme Court has dismissed the said Civil Appeal upholding the order of Hon'ble NCLAT.
34. Respondent No. 2 has filed reply under Dairy No. 591 13.02.2023 and additional affidavit in reply under Diary No. 723 dated 27.02.2023.



35. We have heard both the sides and perused the documents. The admission order was assailed by the Suspended Management right upto the Hon'ble Apex Court and the same has been upheld vide order dated 16.08.2021. As such the issue regarding admission to CIRP has attained finality. In our considered view, this Tribunal has no jurisdiction to deal with matters pertaining to the order dated 15.04.2021 admitting the Corporate Debtor to insolvency. As such, there is no merit in the present IA and the same is dismissed.

IA/95(AHM)2023

36. The IA/95(AHM)2023 is an application filed by the RP under Section 60(5) of the IBC, 2016 r.w. Rule 11 of the NCLT Rules, 2016 seeking the following prayers:

- “a. Pass appropriate order dismissing the Interlocutory Application no. Application no. 24 of 2023 in Interlocutory 51 of 2022 in Interlocutory Application no. 11 of 2022 in Interlocutory Application no 386 of 2021 in Company Petition (IB) no. 179 of 2019 filed by the Suspended Management / Respondent nos. 1 and 2 as not maintainable;*
- b. Pending hearing and final disposal of the present application, the Hon'ble Adjudicating Authority be pleased to pass appropriate order staying the*



proceedings of Interlocutory Application no. 24 of 2023 in Interlocutory Application no. 51 of 2022 in Interlocutory Application no. 11 of 2022 in Interlocutory Application no. 386 of 2021 in Company Petition (IB) no. 179 of 2019 filed by the Suspended Management / Respondent nos. 1 and 2.

C. Pass any other appropriate order as this Hon'ble Adjudicating Authority may deem fit”.

37. Respondent No. 1 has filed reply under Inward No. D523 dated 08.02.2023.

38. We have already ordered for liquidation of the Corporate Debtor in IA/51(AHM)2022 and IA/24(AHM)2023 has been dismissed. As such IA/95(AHM)2023 has become infructuous and the same is hereby dismissed and is disposed off.

-SD-

**SAMEER KAKAR
MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN
MEMBER (JUDICIAL)**