



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA (Liq.) No.02/2024 IN CP (IB) NO.355/ALD/2018

(Under Section 33 & 34 of the Insolvency and Bankruptcy Code, 2016.)

IN THE MATTER OF

DINESH KUMAR, (RESOLUTION PROFESSIONAL)

M/s Shivalik Cotsyn Private Limited,
IP Registration No.1BBI/IPA-001/IP-P00860/2017-
2018/11442,
Reg. Off.:- Room No.7, First Floor,
Chatarbhuj Leelawati Trust Building,
Geeta Mandir Road, Panipat-132103, Haryana
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.....APPLICANT

IN THE MATTER OF

M/s Bhavesh Texo Fab Private Limited

.... Operational Creditor

Versus

M/s Shivalik Cotsyn Private Limited

.... Corporate Debtor

Order Pronounced on 22nd August, 2024

Coram:

Mr. Praveen Gupta : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Vipin Kumar Kushwaha, Adv. : *For the Applicant/ RP*



ORDER

1. This instant application is filed on 22.05.2024 by Mr. Dinesh Kumar Resolution Professional of the Corporate Debtor- M/s Shivalik Cotsyn Private Limited under Section 33 and 34 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) for liquidation of the Corporate Debtor- M/s Shivalik Cotsyn Private Limited.
2. The averments made in the application and submitted by Counsel for the applicant are as follows:
 - i. 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. M/s Bhavesh Texo Fab Private Limited for initiation of Corporate Insolvency Resolution Process (herein after referred to as the "CIRP") against Corporate Debtor, M/s Shivalik Cotsyn Private Limited. Mr. Dinesh Kumar herein was appointed as the Interim Resolution Professional (hereinafter referred to as the "IRP") of the Corporate Debtor by this Tribunal.
 - ii. The IRP then made public announcement of CIRP of the Corporate Debtor in pursuance to the order dated 27.04.2022.
 - iii. The IRP then constituted the Committee of Creditors (CoC) which held its first meeting on 26.05.2022 wherein resolution was passed to appoint IRP as



Resolution Professional (RP). Copy of the minutes of first CoC dated 26.05.2022 is annexed with the application as Annexure no.2.

- iv.** The Applicant learnt that the Suspended Directors of the Corporate Debtor were clandestinely disposing of the plant and machinery and other assets of the Corporate Debtor pursuant to which the Operational Creditors informed this Tribunal about the same and prayed for the direction to the Directors of Corporate Debtor, not to alienate the moveable and immovable assets of the Corporate Debtor. This Tribunal accordingly, directed the Suspended Directors not to alienate any of its assets till next date of hearing. However, this Tribunal was informed again that the Corporate Debtor continued disposing off the assets, plant and machinery and other moveable & immovable assets following which this Tribunal vide its order dated 25.03.2019 gave the following order:

"Having heard learned counsel for both the parties at length and considering the facts and circumstances of the present case, we are of the view the Corporate Debtor Company is legally expected to keep continue with its assurance/undertaking until further order and subject to final outcome of the present case, failing which the court may constrain to pass appropriate direction."



- v.** It is alleged that the Respondent however continued alienating all the moveable and immovable properties of the Corporate Debtor during pendency of the CP (IB) No. 355/ALD/2018 even after the specific order passed by this Tribunal for not alienating and disposing of the assets/properties of the Corporate Debtor.
- vi.** The sale deed dated 16.12.2021 for land measuring 142.09 sq. mtr. or 169.95 sq. yards have been executed by M/s Shivalik Cotsyn Ltd. through its Director Mr. Subhash Chand Gupta in favour of Shri Subhash Chand Gupta HUF through its Karta Subhash Chand Gupta S/o Om Prakash Gupta, which clearly shows that the seller and buyer are same person and it is preferential transaction provided under section 43 of the IB Code, 2016. It is pertinent to note that the entire land has been sold by the director Subhash Chandra Gupta for Rs. 4,47,80,000/- which is less than the circle rate, whereas the market value of land was more than Rs. 12 Crores, as mentioned in the valuation report of M/s Sarvodaya Associates, Saharanpur and M/s Bajaj & Associates, Saharanpur. The valuation report of M/s Sarvodaya Associates was provided by the Director Subhash Chandra Gupta through his letter dated 04.08.2022.
- vii.** The applicant filed an application IA No. 352 of 2023 under Section 66 of the IB Code, 2016 to direct the



Suspended Directors to deposit all the sale consideration and to contribute a sum of Rs. 752.19 lakh to the assets of the corporate debtor, which is pending before this Tribunal.

- viii.** The suspended directors challenged the order dated 27.04.2022 before the Hon'ble NCLAT, Delhi through Company Appeal (AT) (Insolvency) No. 816 of 2022 in which the Hon'ble NCLAT vide order dated 11.05.2023, dismissed the above-mentioned appeal and no Special Leave Petition against the said judgement was preferred.
- ix.** Thereafter, in the 3rd CoC meeting held on 18.05.2023, the committee took note of order passed by Hon'ble NCLAT and report issued by the Registered Valuer in relation to land sold by the suspended directors. The RP was also authorised to appoint Transaction Auditor and other professional. The RP was further authorised to make application to adjudicating authority for exclusion of 288 days (during which stay was imposed of EOI by Hon'ble NCLAT) from CIRP period which was allowed by this Tribunal on 04.07.2023.
- x.** Further, in the 4th CoC meeting held on 14.10.2023 the committee took note of order of Information Memorandum ("IM") issued by the applicant on 01.10.2023, pursuant to provisions of Section 29 of the IB Code, 2016 r/w IBBI (Insolvency Resolution Process of Corporate Persons) Regulation, 2016.



However, the Suspended Board has not provided complete information required for IM, yet the IM has been prepared to the extent of information available and also took note on the point of Appointment of Transaction Auditor and Statutory Auditors. The Committee also took note of record of the financial statements of the Corporate Debtor as on 31.03.2022 and 27.04.2022 prepared by the applicant on the basis of accounting software data provided by the suspended board. The RP was also authorised to further make application to adjudicating authority for exclusion of 288 days, time consumed in disposing of the application under Section 66 & 45 vide IA No. 352/2023 which is pending before this Tribunal and application under section 19(2) of the Code vide IA No. 164 of 2022.

- xi.** The applicant/RP filed an application vide IA No. 176 of 2024 for extension of further 90 days from 07.02.2024 to 07.05.2024, which was dismissed by this Tribunal vide order dated 22.03.2024 because the period of CIRP even after excluding the 288 days period and 90 days extension, the total number of days from date of initiation of CIRP would be more than 330 days. The timeline from commencement of CIRP till date is as under:



Particulars	Date
Date of commencement of CIRP	27.04.2022
Date of completion of CIRP (180 Days)	24.10.2022
Extension Application filed for 90 days, which was allowed Vide Order dated 17.10.2022 (IA 343/2022)	23.01.2023
Exclusion Application filed for 288 days from 28.07.2022 to 11.05.2023 due to pendency of Appeal before the Hon'ble NCLAT (IA 265/2023)	08.11.2023
Extension Application filed for 90 days, which was allowed Vide Order dated 10.11.2023 (IA 557/2023)	06.02.2024

- xii.** After the dismissal of the application for further extension, the applicant moved application for liquidation pursuant to which the CoC in its 7th meeting held on 01.05.2024 discussed the issue of liquidation and decided to authorise the applicant to file this liquidation application under Section 33 & 34 of the IB Code, 2016 and also approved the name of applicant as liquidator in this process. The applicant has also given his consent accordingly to be the liquidator in the proposed liquidation process, through Form AA dated 01.05.2024. The following resolution was thus passed:



"Resolved further that in the event of liquidation order passed by Hon'ble NCLT, The Resolution Professional Mr. Dinesh Kumar be proposed, subject to the approval of Adjudicating Authority, for appointment as Liquidator after obtaining written consent in Form AA and the Liquidator be paid fee as per Regulation 4(1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 in addition to Liquidation Expenses incurred by the Liquidator."

3. We have heard the Ld. Counsel for the Applicant and perused the material available on record.
4. It is noted that the period of CIRP has already expired on 06.02.2024 in terms of extension of CIRP provided by this Tribunal and even after the extension, the RP was unable to invite the Resolution Plan as the RP could not get information about the assets of the corporate debtor due to not providing complete information by the Suspended Directors.
5. Thereafter, the CoC in its 7th meeting held on 01.05.2024, resolved to liquidate the Corporate Debtor, as the last application for further extension was dismissed by this Tribunal since the period of 330 days had expired. The CoC with the requisite voting as given



under section 33(2) of IBC, 2016, has approved the Liquidation of the Corporate Debtor in view of not getting any further extension as more than 330 days have already passed.

6. We have perused the record. In terms of 7th meeting of the CoC held on 01.05.2024, a Resolution has been passed by the CoC, which comprises of only sole member of the Operational Creditor for initiating the process of liquidation of the Corporate Debtor, and the Resolution to that effect has been recorded in the application as well. It was resolved that the CIRP was continuing against the Corporate Debtor w.e.f. 27.04.2020 and more than 330 days have already been passed, and therefore it was resolved to initiate liquidation by moving an application before the Tribunal.
7. Therefore, we are of the considered opinion that since the mandatory period of 330 days has already expired and no Resolution Plans so far have been received, it will only be appropriate, if the liquidation process is initiated by passing the liquidation order.



8. We, therefore, pass the present order of liquidation initiating the liquidation process. The consent form of Applicant/RP in Form AA along with Authorization for Assignment from Insolvency Professional Agency (IPA) to act as liquidator have also been annexed as ANNEXURE-15 with this IA. Suitability of the present RP, Mr. Dinesh Kumar has been considered for appointment as Liquidator in this case after considering his consent as discussed above. The Law Research Associate of this Tribunal, Mr. Sarim Husain, has checked the credentials of Mr. Dinesh Kumar and found that there are no disciplinary proceedings pending against the proposed Resolution Professional and also there is nothing adverse against him. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 30-06-2025. After considering these details, we appoint Mr. Dinesh Kumar, Registration No. IBBI/IPA-001/IP-P00860/2017-2018/11442 as Liquidator. Accordingly, we appoint the Resolution Professional Mr. Dinesh Kumar to act as Liquidator.
9. Ordered Accordingly.



10. IA (Liq.) No.2/2024 disposed off.

-Sd-

**(Ashish Verma)
Member (Technical)**

-Sd-

**(Praveen Gupta)
Member (Judicial)**

Date: 22nd August, 2024