

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

I.A. 45 OF 2022

IN

CP (IB) - 3708/MB/2019

Under Section 33(1) and 34 of the
Insolvency & Bankruptcy Code, 2016

Filed by

Mr. Dharit Kishorbhai Shah

Resolution Professional for:

Nihar Cotspin Private Limited

...Applicant

In the matter of

Corporation Bank

**Registered Office at: Post Box No. 88,
Mangladevi Temple Road, Pandeshwar,
Mangaluru - 575001.**

**Branch at: Thane Branch, A Wing,
Ground Floor, Oasis Sapphire, Opp. S.T.
Bus Depot, Khopat, Thane West -
400601, Maharashtra**

...Operational Creditor

Versus

Nihar Cotspin Private Limited

**S. No. 21/22, bhairav Compund Shelar
Village, Bhiwandi, Thane - 421302,
Maharashtra**

...Corporate Debtor

Order delivered on: 25.03.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance: For the Applicant: Mr. Amey Hadwale, Advocate a/w Dharit Kishorbhai Shah, Resolution Professional

1. The above application I.A. No. 45/2022 is filed by Resolution Professional, Mr. Dharit K. Shah (hereinafter referred to as the “Applicant”) seeking liquidation of Nihar Cotspin Private Limited (hereinafter referred to as the “Corporate Debtor”) under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”), praying for following reliefs:

- a. *To allow the instant application and pass an order of Liquidation of Corporate Debtor in terms of Section 33 of the Code, as decided by the CoC in its 7th Meeting held on 02nd October 2021.*
- b. *To appoint the undersigned, Resolution Professional Mr. Dharit Shah (Reg. No. IBBI/IPA-001/IP-P00993/2017-18/11640) as Liquidator of the Corporate Debtor in terms of Section 34 of the Code, as recommended by the CoC in its 7th Meeting held on 02nd October 2021.*
- c. *The Applicant/RP crave leave for filing additional details/ information/ documents as and when required by the Hon’ble Tribunal and the same be taken on record.*
- d. *Any other reliefs as the Hon’ble Tribunal may deem fit.*

2. The brief facts of the application are as follows:

- A. The Applicant mentions that this Tribunal vide its order dated 13.03.2020 in Company Petition No. (IB) 3708/ 2019 admitted the petition under Section 7 of the Code, filed by Corporation Bank (hereinafter referred to as the “Financial Creditor”) and Corporate Insolvency Resolution Process (hereinafter referred to as the “CIRP”) was initiated against Nihar Cotspin Private

Limited. Mr. Dharit Kishorbhai Shah was appointed as the Interim Resolution Professional (hereinafter referred to as the “IRP”) of the Corporate Debtor by this Tribunal vide Order dated 13.03.2020.

- B. It is further stated by the Applicant that on 27.06.2020 a public announcement was made inviting claims from the Creditors of the Corporate Debtor in two newspapers namely The Free Press Journal, Mumbai Edition (English Newspaper) and Navakal, Mumbai Edition (Marathi Newspaper).
- C. On 24.07.2020, in the first meeting of the Committee of Creditors (hereinafter referred to as the “CoC”) the Applicant was appointed as the Resolution Professional which was approved by 100% members voting in favour of the same.
- D. The Counsel for the Applicant states that an advertisement, inviting Expression of Interest (EoI) in Form G was published on 12.09.2020 and 17.10.2020 respectively in Free Press Journal (English Newspaper) and Navshakti (Marathi Newspaper, 01.11.2020 being the last date for receipt of Express of Interest and 08.12.2020 being the last date for submission of Resolution Plan. Thereafter, the Applicant received only 1 Resolution Plan was received by the “Paras Dyeing & Printing Mills” (hereinafter referred to as the “Resolution Applicant”) till the last date of submission of the Resolution Plan.
- E. On 02.10.2021, in the 7th CoC Meeting the Resolution Applicant reduced the value of Resolution Plan from Rs. 1.20 Crores to Rs. 36.50 Lakhs as the land on which corporate debtor building is constructed is not owned by the Company and is owned by Mr. Chirag Suresh Thakkar (Erstwhile Director) and Mrs. Sonal Suresh Thakkar (mother of the Erstwhile Director).

F. The Applicant further states that in the 7th CoC meeting the members decided to opt for Liquidation of the Corporate Debtor with 100% voting as well as appointing Applicant as the Liquidator of the Corporate Debtor with 100% voting share. The relevant extract of the resolution is reproduced herein below for ready reference:-

Item No. 1 – To approve initiation of Liquidation Process under section 33 of the Insolvency and bankruptcy Code, 2016 and appointment of Liquidator in case of non-receipt of Expression of interest.

Item No. 4 – To consider the approval of the Liquidation fee, in accordance with Regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 during the period of compromise or arrangement under Section 230 of the Companies Act, 2013 is considered or during the period of sales, if considered, under clause (e) or (f) of Regulations 32 of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) and also during the remaining period of liquidation.

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, it is observed from the minutes of the 7th CoC meeting that the CoC has with 100% majority decided to liquidate the Corporate Debtor. The CoC has appointed the Applicant as Liquidator to carry on the process of Liquidation of the Corporate Debtor. The Applicant has agreed to act as Liquidator to carry on the process of Liquidation and given his consent to act as Liquidator. This bench, therefore allows the above Interlocutory Application Number 45 of 2022 and passed the following:

ORDER

1. The above I.A. No. 45/2022 is allowed and the Corporate Debtor Nihar Cotspin Private Limited is ordered to be liquidated.

- a. **Mr. Dharit Kishorbhai Shah**, having Registration No. IBBI/IPA-001/IP-P00993/2017-18/11640 and having office at: C/o Bipin & Co. Chartered Accountant, 302, Centre Point, R.C. Dutt Road, Alkapuri, Vadodara, Gujarat - 390007 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 during the period of compromise or arrangement under Section 230 of the Companies Act, 2013 is considered or during the period of sales, if considered, under clause (e) or (f) of Regulations 32 of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) and also during the remaining period of liquidation.
- c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. The Liquidator appointed under section 34(1) of the Code. Will have all powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.

- e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- f. 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.
- g. That 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.
- h. That on having liquidation process initiated, 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.
- i. 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.

With the above directions, this application i.e. I.A. No. 45 of 2022 is hereby allowed and disposed of.

Sd/-

Chandra Bhan Singh
MEMBER (TECHNICAL)

Sd/-

H.V. Subba Rao
MEMBER (JUDICIAL)