

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.303

IA/135(AHM)2023

in

CP(IB)/242(AHM)2021

Order under Section 33, 34 & 60(5) IBC r.w Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

Tejas K Shah RP of DNB Impex Pvt Ltd

.....Applicant

V/s

DNB Impex Pvt Ltd & Ors

.....Respondents

Order delivered on: 25/01/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

S/d-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

S/d-

CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMADABAD BENCH
COURT No.- 2**

IA NO. 135 OF 2023

IN

COMPANY PETITION (IB) NO. 242/AHM/2021

[An application filed under section 33(2) and 34(1) of the Insolvency and Bankruptcy Code, 2016 for initiation of liquidation of the Corporate Debtor]

IN THE MATTER OF:

CA Tejas K Shah
(The Resolution Professional of
DNB Impex Private Limited)
Office of RP:
B-201, Narayan Krupa Avenue,
Opp. Prernatirth Derasar,
Jodhpur, Satellite
Ahmedabad 380015

... Applicant/ Resolution Professional

Versus

1. M/s DNB Impex Pvt Ltd
Registered office at :
Plot No. 18/A/B/C
Block No. 205 & 219
Saheli Industrial Estate
Village: Karanj, Tal. Mandvi
Surat 394311

...Repondent No-1/Corporate Debtor

2. Mr. Ashwinbhai Laljibhai Viradiya
Partner of Asmi Enterprises
Registered Office at:-
Shop No. 8 Garden Gate Appt;
Nana Varchha Varchha Road,
Surat 395006

...Respondent No-2/Operational Creditor

3. Nasik Merchant Co-Op. Bank Limited

Registered address at:-
A/16 Late Babubhai Ratibhai Chowk,
Netaji Subhash Chandra Bose Marg,
MIDC Satpur, Nasik
Maharashtra 422007 ...Respondent No-3/Financial Creditor

Order Pronounced on: 25.01.2024

Coram:

MRS.CHITRA HANKARE, HON'BLE MEMBER (J)

DR. V. G. VENKATA CHALAPATHY, HON'BLE MEMBER (T)

Present:

For the RP: Mr. Urvesh K Gor Adv. a.w. Mr. Sumit Parikh, Adv.

For RP in Person: Mr.Tejas K Shah

JUDGMENT

- 1 This is an application filed by the Resolution Professional (hereinafter referred to as "RP") under Section 33, 34 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") for passing an order of liquidation of the Corporate Debtor, M/s. DNB Impex Private Limited.
- 2 The facts as narrated in the application and explained by the counsel for the applicant RP are summarized hereunder :
 - (i) One of the Operational Creditors i.e. M/s. Asmi Enterprise had filed an application under Section 9 of the Code for initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as the 'CIRP'), against the Corporate Debtor, M/s. DNB Impex Private Limited, which was admitted vide order dated 22.07.2022 and Mr. Tejas Shah was appointed as Interim Resolution Professional (hereinafter referred to as "IRP").

- (ii) The IRP under Section 15 of the IB Code r.w. Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, made a public announcement in FORM-A on 27.07.2022. The last date for submission of a claim by the creditors was 09.08.2022.
- (iii) The IRP collated all claims submitted by the creditors pursuant to Public announcement and accordingly constituted a Committee of Creditors (hereinafter referred to as the "CoC") and also filed the report certifying the constitution of CoC as per Regulation 17(1) of CIRP Regulations, 2016 on 16.08.2022.
- (iv) The Applicant submitted that the 1st CoC meeting was held on 23.08.2022 wherein CoC Members resolved to continue IRP as a Resolution Professional (herein referred to as 'RP') of the Corporate Debtor, and also resolved to reduce the Notice Period from 5 days to 2 days.
- (v) It is further submitted that the 2nd CoC Meeting was held on 03.09.2022 wherein CoC member has resolved to invite the Expression of Interest i.e. Form G. Pursuant to the approved resolution for the invitation of Expression of Interest which was published in the prescribed form "Form G" on 07.09.2022 wherein the last date of Submission of EoI was 22.09.2022.
- (vi) It is submitted that the 3rd CoC Meeting on 29.09.2022, wherein apprised the sole CoC Member that pursuant to publication of Form G, the RP had received two Expression of Interest. The details of the Prospective Resolution Applicants are as under:-
- 1) Dravya Capital Service Pvt Ltd. jointly with Aruna Shah at Surat and

2) Raj Enterprises, Ahmedabad.

- (vii) It is submitted that the 5th CoC meeting was held on 10.11.2022, wherein the RP apprised the members of CoC that only one Resolution Plan was received from the PRA i.e. Dravya Capital Service Pvt Ltd. jointly with Aruna Shah.
- (viii) It is further submitted that the 6th CoC meeting was held on 02.12.2022, wherein the sole CoC Member had discussed the feasibility and viability of the Resolution Plan as submitted by the PRA and also requested to increase the financial bid amount substantially in view that the Plan amount is less than Liquidation value.
- (viii) It is submitted that the 7th CoC meeting was held on 03.01.2023 wherein the sole CoC member resolved to liquidate the Corporate Debtor in view that the Resolution Plan as submitted by the PRA is not complied with the provision of the Code also not feasible and viable. Hence, the sole CoC member had resolved not to put the Resolution Plan for approval of the CoC and resolved to Liquidate the Corporate Debtor since the amount offered under the Resolution Plan is much less than the Liquidation value.
3. The applicant filed the compliance affidavit on 16.01.2024 wherein it is submitted that the Average Fair value and liquidation value of the assets of the corporate debtor is Rs. 2,13,81,227/- and Rs. 1,45,70,350/- respectively and the resolution value was Rs. 50,20,000/-.
4. Considering the documents and submission made, since the COC in its commercial wisdom has decided to take the Corporate Debtor in liquidation on the grounds that the amount offered under the

Resolution Plan is less than the Liquidation value, we are of the opinion that the decision of COC should not interfere. The present application seeking liquidation of the Corporate Debtor M/s DNB Impex Private Limited, in the manner laid down in Chapter III of Part II of the Code, is allowed.

5. Considering the above, 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 the 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 liquidator in all the cases where liquidator (read liquidation) order is passed henceforth. In terms of the above circular of IBBI, we hereby appoint **Mr.Sunil Kumar Kedia, having Registration No. IBBI/IPA-001/IP-P00028/2016-17/10064** and **email id is kedia_kedia@yahoo.com** 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. Hence, we passed the following orders:-

ORDER

- a) The Corporate Debtor - M/s. DNB Impex 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.
- 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. Sunil Kumar Kedia, having Registration No. IBBI/IPA-001/IP-P00028/2016-17/10064** is hereby appointed as a Liquidator of the Corporate Debtor i.e., M/s. DNB Impex 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) The liquidator to issue a public announcement stating that the corporate debtor is in liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e) The liquidator is to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- f) The liquidator to follow up and continue to investigate the financial affairs of the corporate debtor to determine any undervalued and preferential transactions, etc. 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.
- g) This order is deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016.
- h) The Liquidator is to submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- i) 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 subsection (5) of section 33 of the Code.

- j) It is further directed that the Personnel of the Corporate Debtor extend all assistance and cooperation to the Liquidator as may be required in liquidating the affairs of the Company in discharging his function as specified under Section 35 of Insolvency & Bankruptcy Code, 2016.
- k) 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 the same shall be paid to the Liquidator from the proceed of the liquidation estate under section 53 of the Code.
- 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.
- n) In terms of the above, the present application IA No. 135(AHM)2023 in CP(IB) No. 242 of 2021 is allowed and disposed off.

S/d-

**DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)**

S/d-

**CHITRA HANKARE
MEMBER (JUDICIAL)**