

**IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD**  
**SPECIAL BENCH**  
**COURT - 2**

ITEM No301  
IA/869(AHM)  
2023  
in CP(IB)/114(AHM)2021

**Order under Section 33(2) IBC**

**IN THE MATTER OF:**

AJAY KUMAR JAIN RP OF JIVANJYOTI MOTORS PVT. LTD .....Applicant

.....Respondent

**Order delivered on 27/09/2023**

**Coram:**

Mr. Shammi Khan, 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.

-Sd-

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

-Sd-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD SPECIAL BENCH, COURT-II**

**IA No. 869 / NCLT / AHM / 2023  
IN  
CP(IB) No. 114 / NCLT / 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 BETWEEN**

**Ajay Kumar Jain**

**...Applicant/RP**

(RP of Corporate Debtor  
M/s Jivanjyot Motors Pvt. Ltd.  
Having registered office at  
E-15/209, Sec.-8,  
Rohini, New Delhi-110085)

**IN THE MATTER OF**

**AKZO Nobel India Ltd.**

**... Applicant / Financial Creditor**

**VERSUS**

**Jivanjoyt Motors Pvt. Ltd.**

**... Respondent/Corporate Debtor**

**Order pronounced on : 27/09/2023**

**CORAM:**

**SH. SHAMMI KHAN,  
HON'BLE MEMBER (JUDICIAL)**

**Dr. V.G. VENKATA CHALAPATHY  
HON'BLE MEMBER (TECHNICAL)**

**Apperance:**

For the Applicant : Mr. Saurit Arora, Adv. a.w Mr. Ajay Kumar  
Jain, RP in Person  
For the Respondent :

**ORDER**

1. The present application is filed by Mr. Ajay Kumar Jain - the Resolution Professional/Applicant of the Corporate Debtor under section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") for passing an order of liquidation of the Corporate Debtor- M/s Jivanjyot Motors Pvt. Ltd. and to appoint RP as liquidator.
2. The facts as narrated in the application and explained by the Ld. Counsel for the Applicant/RP are summarized hereunder:-
  - i). It is submitted that M/s AKZO Nobel India Ltd., (the original petitioner has filed an application being CP(IB) 114 of 2021 under Section 7 of the IBC, 2016 against M/s Jivanjyot Motors Pvt. Ltd. (the Corporate Debtor) on the ground of alleged outstanding debts.
  - ii). It is submitted that this Hon'ble Tribunal, after hearing the parties admitted the aforesaid petition vide order dated 20.10.2022 passed an order under Section 7 of IBC 2016 read with Rule 4 of IBC Rules, 2016. The application was admitted in terms of Section 7(5) of IBC, 2016 and moratorium as envisaged under provisions of Section 14(1) was advised to be followed. By the said order, Mr. Ajay Kumar Jain was appointed as Interim Resolution

Professional (hereinafter referred to as IRP) in the aforesaid matter.

- iii). It is submitted that upon receiving the order of the Hon'ble NCLT, Ahmedabad Bench on 20.10.2022, the IRP performed in his role had submitted 9 progress reports from time to time to the Hon'ble Appellate Tribunal. He also sought extension of the CIRP period till 16.07.2023 which was last approved by the Hon'ble Tribunal on 19.04.2023.
- iv). During the CIRP period, it was brought to the attention of the tribunal that the suspended directors did not cooperate with RP despite the order of the adjudicating authority in IA No. 1070 of 2022 followed by order in contempt court petition no. 03/2023. In this regard, the Cont.03/2023 in CP (IB) 114 of 2021 was filed and order delivered on 04.09.2023, the RP stated that in compliance of order dated 12.05.2023, he had provided list of documents and information vide letter dated 12.05.2023 was served on the suspended management through e-mail dated 12.05.2023. However, the RP submitted that the suspended management has not again complied the order of this tribunal. It is observed that one of the members of the suspended management filed an affidavit vide inward no. 3239 dated 28.08.2023 wherein in para-2 submitted that all the information that may be required by the RP from time to time and they have always cooperated with the Resolution Professional. Further copy of reply is annexed with the said affidavit dated 25.05.2023 subject to the reference letter dated 12.05.2023. At page 7 of the affidavit

of the suspended management, in last para mentioned regarding point No.22(B) that financial stability of the Suspended Management is extremely poor and we do not have fix advocate representing us. An order has been passed listing the case for hearing on 18.10.2023.

- v). As per RP the liquidation value and fair value based on valuation done on 15 4 2023 was at Rs 117.90 lakhs and Rs.131.56 lakhs respectively. However, the RP has not been able to provide full details by way of Asset Memorandum and there could be some assets which include Land and Building which may be under litigation.
- vi). From the various submissions and hearings, it is observed that RP had initiated the CIRP process with certain deviations but has not proceeded further in getting all the claims in order to conduct the process further. Moreover, further progress of CIRP may not be feasible and the RP has asserted that as per Balance Sheet of the Corporate Debtor huge cash balance of more than Rs 20 crores and had not deposited with CD's bank account despite reminders.
- vii). For the first time, RP published Form-G inviting Expression of Interest (EOI) for sale of property and received only one EOI from M/s. Nakshatra Corporate Advisors Ltd. PRA along with EMD of Rs. 10 lacs till the last day for submission of resolution plan i.e. 06.01.2023. However, the PRA did not file any resolution plan and sought for refund of EMD which was complied with by the RP. The RP again published Form-G for the second time on 17.01.2023 by following the requisite procedure however, no EOI was

received. The RP again published Form-G for the third time on 20.04.2023 in two newspapers Financial Express-Ahmedabad Edition in English and Gujarati. One EOI was received from consortium M/s. Visual Autolink Pvt. Ltd. & M/s. Globe Ecologists Pvt. Ltd. along with EMD. However, no resolution plan was received and the money was refund after taking approval of CoC on 09.06.2023.

- viii). The RP again convened the 9<sup>th</sup> CoC meeting on 23.06.2023 after receiving an e-mail dated 12.06.2023 from the single member of CoC M/s. Axis Bank proposing liquidation of the corporate debtor which was approved by 100% voting and CoC decided to liquidate the CD and pass the following resolution. However, in the meeting various issues of non-receipt of claims from the various creditors has not been discussed. The sole member of COC approved the following resolution.

*“Resolved that- the Corporate debtor namely M/s. Jivanjyot Motors Pvt. Ltd. be liquidated under the provisions of IBC, 2016. A copy of minutes was submitted to the adjudicating authority.”*

- ix). It is observed in the various submissions and documents that in spite of efforts to get the formal resolution plan for approval by the CoC, no resolution plan from any of the Prospective Resolution Applicants were received by the Resolution Professional before the last date of submission of the Resolution Plan. Considering to the terms as stated in the Expression of Interest, the Resolution Professional duly refunded the EMD amount of both the Prospective

Resolution Applicants as deposited by them during the 1<sup>st</sup> and 3<sup>rd</sup> process of inviting EOI.

- x). In the said Ninth meeting of the Committee of Creditors held on 23.06.2023, in absence of any Resolution Plan, the COC (Axis Bank being the sole financial creditor) in the commercial wisdom, approved for initiating the Liquidation period of the Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code, 2016. One of the suspended directors (both directors were served the notice of meeting) stated that she could not attend the meeting for medical reasons.
- xi). The suspended directors (2) were observed to be invited to attend the meeting and a copy of the minutes were forwarded to them. There was only one operational creditor namely M/s. Cartec Motors Pvt. Ltd. As per the minutes of first meeting of the COC constituted by the RP, it is stated that under Regulation 17 of CIRP, only one financial creditor namely Axis Bank had filed a claim of Rs 5,96,12,740. It is also observed that inspite of various liabilities due to financial creditors, none of them have raised a claim before the RP. The RP has clarified in his affidavit on 26 September 2023, that the Corporate Debtor had availed loan facilities under multiple banking arrangements and some of the creditors have proceeded to realise assets invoking SARFESI inspite of the CIRP process. It is also observed from the reports that there are no workmen in the corporate entity whose claims were received. The RP has filed IAs against such creditors. The

RP instead of submitting status reports, should have brought to the notice of the tribunal the debt due to financial creditors and enlarged the members of the CoC comprising of financial creditors. He has visited some of the creditors reportedly or sent letters but should have included them as members after getting valid reasons why claims were not submitted.

- xii). There has been no further objection by the Corporate Debtor to the decision of CoC that in the absence of any resolution plan, in the commercial wisdom of the CoC approving initiation of liquidation of the Corporate Debtor u/s 33 of the IBC, 2016. There has been no claims received in the matter or objections from other creditors who may be holding on to certain secured assets which have not been identified by the RP or by the CoC.
- xiii). The CoC also recommended that Mr. Ajay Kumar Jain RP be and is hereby authorized to take necessary steps to file the necessary application regarding the decision of the CoC under Section 33(2) of the IBC, 2016 to liquidate the corporate debtor. It is also resolved the agenda item no. 7(4) which includes the liquidator's fee of Rs. 2.00 lac per month for a period of one year from the date of the order of the Adjudicating Authority. Based on the IBBI guidelines, and role of the RP in the matter by submitting an application without all the facts on which clarification was sought by the Tribunal, a Tribunal approves a new Liquidator is to be appointed.

xiv). The applicant further submits that in the event the Adjudicating Authority NCLT passes an order u/s 33(1)(b)(i), (ii) and (11) of IBC, 2016, it may consider appointing him as the liquidator in accordance with Section 34(1) of IBC, 2016. The applicant submits that he is eligible to be appointed as a liquidator in terms of Regulation 3 of The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 if offers himself for appointment. The same is not allowed in terms of IBBI guidelines in this regard and need to look in to the various aspects where lapses have been observed in the CIRP process.

3. Heard the learned counsel for the applicant in IA 869 of 2023. The tribunal also sought various clarifications on 8th September 2023 and 25th September 2023. The provisions of Section 33(2) of the Code are reproduced below:-

*“(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 <sup>12</sup>[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).*

*<sup>12</sup>[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.]”.*

4. 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-justificable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.
5. Considering the documents and submission made, since the COC in its commercial wisdom has decided to take the Corporate Debtor in liquidation, we are of the opinion that the decision of the COC should not be interfered with. However, the decision of the Tribunal to allow the liquidation process to be initiated is also due to various reasons including the non-cooperation of the management, the constituted COC decision, RP could not get any other claims inspite of liabilities and the liquidation and fair value being far lower than the total claims due and payable to the Financial and Operational Creditors. As per the clarification a total amount of Rs.3,17,21,237 was filed by the operational creditors against which an amount of Rs.2,67,88,928 was admitted. The claim of the sole financial creditor Axis Bank was reported at Rs.5.96 crores.
6. As per the financial statement submitted by the RP on the clarification sought on 25 September 2023 (submitted on 26 September 2023) an amount of Rs 24.27 crores is outstanding liability (including loans and advances received from Jayashree Inwala, Director of Rs 5.15 crores) of which there are dues as Term Loans Secured to to Standard Chartered Bank, Axis Bank, HDFC Bank, Deutsche Bank and HDB Finance services as on 31 March 2022. It is also observed that some amounts of loans have been repaid to IDFC First Bank and Kotak Mahindra Bank

during the period between 31 March 2021 and 31 March 2022. There is also short-term borrowing repayable on demand amounting to Rs 35.00 crores to various banks including Bank of India, HDFC, ICICI, Axis Bank and Standard Chartered Bank.

7. As it is also observed that the Suspended Management has resorted to settle the dispute independently with the applicant and it is reportedly holding balances in their accounts and not repaying the debt. No resolution Plan could be successfully approved by the CoC or received for approval and based on the developments in the CIRP process, the present application seeking liquidation of the Corporate Debtor M/s Jivanjyot Motors Pvt. Ltd. in the manner laid down in Chapter III of Part II of the Code, is deserved to be allowed.
8. The CIRP process cannot be modified/terminated as the appointment of RP was recommended by the sole financial creditor Axis Bank which had put up a claim. The process of CIRP and conduct of the Corporate Debtor and the debt due is not satisfactory to be recovered through the CIRP process and liquidation is the only way to settle the debt due.
7. One of the prayers in the I.A is to appoint present RP/Applicant Ajay Kumar Jain, as liquidator in terms of Section 34(1) of the Code. However, 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 liquidator in all the cases where liquidator (*read liquidation*) order is passed henceforth.

8. In terms of the above, we hereby order for liquidation of the Corporate Debtor. Further, in terms of the above circular of IBBI, we hereby appoint Mr. Sanjaykumar Jitendralal Shah having Registration No. IBBI/IPA-001/IP-P-01915/2020-2021/13096 as per the panel suggested by IBBI for this Bench for the period of July, 1 2023 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 Jivanjyot Motors Pvt. Ltd.** 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.
- 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. Sanjaykumar Jitendralal Shah having Registration No. IBBI/IPA-001/IP-P-01915/2020-2021/13096 is hereby appointed as a Liquidator of the Corporate Debtor i.e. M/s Jivanjyot Motors Pvt. Ltd. The Liquidator so appointed shall file the Form A, written consent and complete the liquidation process as per the provisions of the Code r.w. the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- c) 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. The liquidator will give a status report in detail within 3 months of taking charge, but submit a preliminary assessment within 45 days including a detailed asset memorandum and valuation report of the assets including cash and bank balances of the directors/corporate debtor and also constitute an Advisory Committee after receiving claims from all creditors.
- 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.

9. In terms of the above, **IA/869(AHM)2023** is allowed and disposed off.

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

**-Sd-**  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**