

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



ITEM No.301

IA/96(AHM)2022 in CP(IB) 175 of 2020

Order under Section 33(2) IBC,2016

IN THE MATTER OF:

Krishna Gopal Ratanlal Maheshwari RP of Jashank Impex
Pvt Ltd
V/s
Hitesh Kumar Desai & Ors

.....Applicant

.....Respondents

Order delivered on: 18/09/2023

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)



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

IA/96/AHM/2022 in CP (IB)/175/AHM/2020

(Filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016)

In the matter of Jashank Impex Private Limited

KRISHNA GOPAL RATANLAL MAHESHWARI

Resolution Professional

Jashank Impex Pvt. Ltd.

408, Manish Chambers, Sonawala Road,

Above Kotak Bank, Goregaon East,

Mumbai-400063

... Applicant

Versus

1. HITESH KUMAR DESAI

Director of Suspended BOD of

Jashank Impex Pvt. Ltd.,

Office No. 401, 4th Floor, A Wing,

55 Corporate Avenue, Saki Vihar Road,

Powai, Kurla Mumbai-400072

2. ANIL SHIVKUMAR GUPTA

Director of Suspended BOD of

Jashank Impex Pvt. Ltd.,

Office No. 401, 4th Floor, A Wing,

55 Corporate Avenue, Saki Vihar Road,

Powai, Kurla Mumbai-400072

3. DRIP CAPITAL INC.

Sole COC Member (Financial Creditor)

121, 2nd Floor, Building,

12 Solitaire Corporate Park,

Guru Hargovindji Road,

Chakala, Andheri East,

Mumbai-400093

.... Respondents

Order Pronounced on 18.09.2023



CORAM:

SHAMMI KHAN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance

For Applicant : Ms. Nandita Bajpai, Adv. a/w. Mr. Aditya
Mehta, Adv
For Respondents : Mr. Nagesh Sud, Adv. Though VC for UBI

ORDER

1. The IA/96/AHM/2022 has been filed by the Applicant under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows;
 - a. *Allow the present application.*
 - b. *Pass an order for Liquidation of the Corporate Debtor under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016.*
 - c. *Pass and order to appoint the Applicant as the Liquidator of Corporate Debtor during the Liquidation Proceedings.*
 - d. *Pass such order(s) as may deemed fit and proper in the facts and circumstances of the instant case.*
2. From the averments made by the Applicant, it is evident that the CIRP of the Corporate Debtor was initiated and the Applicant herein was appointed as IRP on 02.08.2020. IRP caused public announcement calling for the claims from the Creditors of the Corporate Debtor by virtue of publication dated 09.08.2020 and 10.08.2020, pursuant to



receipts of claims and scrutiny thereof, IRP constituted the CoC which comprised of one Financial Creditor viz. Dirp Capital Inc.

3. The 1st meeting of the CoC was held on 8.09.2029 wherein the CoC was informed by the IRP that the corporate and registered office were not operational/rented out to third party. The applicant had filed IA No. 690 /2021 u/s 19(2) of the Code. Applicant from the analysis of the Balance Sheet of 2019-20 found that Union Bank of India, Andheri and Fort, Mumbai have lent some money to the Corporate Debtor. However, no claim was filed by the said bank before the IRP despite visit of the IRP to the said bank.
4. The COC confirmed the Applicant herein as the Resolution Professional (RP) of the Corporate Debtor and directed the RP to appoint the valuers only after collating the information about the assets of the Corporate Debtor.
5. The 2nd meeting of COC was held on 1.10.2021, RP appraised the COC that the suspended directors have not provided the details of assets of the Corporate Debtor as such no information memorandum could be prepared. The sole member COC informed the RP that since last 5 years they have been chasing the promoters of the Corporate Debtor however without any result.



6. This Tribunal disposed off IA 690/2021 vide order dated 15.11.2021 with directions contained in the said order. None appeared on behalf of the suspended management.
7. The 3rd meeting of the COC was held on 30.11.2021 whereat the COC passed the following resolution unanimously:-

""RESOLVED THAT pursuant to the provisions of Section 33, sub section (2) and Section 35 (1) (e) of the Insolvency and Bankruptcy Code, 2016 (including all the amendments and modifications for the time being in force) and rules and regulations made thereunder, approval of Committee of Creditors be and is hereby accorded to initiate liquidation proceedings in the matter of Jashank Impex Private Limited (Corporate Debtor)"".

"RESOLVED THAT the approval of the CoC be and is hereby accorded to appoint Mr. Krishna Gopal Maheshwari, Resolution Professional (IBBI Registration No.- IBBI/IPA-001/IP-P-01296/2019-2020/12712 as the Liquidator of the Corporate Debtor.

RESOLVED FURTHER THAT the consent of the Committee of Creditor be and is hereby accorded to fix the liquidator fees as per Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 clause 4 (b).

"RESOLVED THAT pursuant to Regulation 39C(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the recommendation is be and is hereby given by the members of the Committee of Creditors that the Liquidator may first explore the sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) on the passing of the liquidation order by the Hon'ble NCLT.

"RESOLVED THAT, the approval of the members be and is hereby accorded for inviting the scheme under section 230 of the Companies Act, 2013 by the liquidator.



Hence, the present IA being IA/96(AHM)2022 was filed by the Applicant seeking liquidation of the Corporate Debtor

8. It is stated that post the order dated 15.11.2021 in IA No. 690 of 2021 certain information was provided by the Suspended Management to the RP.
9. Vide order dated 08.02.2022, notices were issued to the Suspended Board (R-1 and R-2). Registry Notice remained undelivered to the Suspended Directors as can be seen from the track report placed on file. Vide another order dated 30.05.2022 notice was issued to the COC to file reply in the matter. COC filed their reply which is by way of Affidavit dated 04.07.2022.
10. In reply the COC has placed the followings: -
 - a) Corporate Debtor is not a going concern. The Corporate Office at Mumbai is locked. The Registered Office at Surat is rented out to another person.
 - b) Promoters are neither cooperating nor providing any details.
 - c) Auditor is not having any data, no GST returns are being filed.
 - d) In absence of required data, it was impossible to move ahead.
 - e) COC is not aware of the assets of the Corporate Debtor.As such looking to the peculiar facts and circumstances of the case, COC requested for early liquidation of the Corporate Debtor.
11. Additional Documents were sought from the Applicant which were filed vide inward diary no. 1391 dated 21.4.2023 comprising of Public Announcement, Minutes of the COC meetings from No. 1st to 8th.



12. In the 8th COC meeting held on 20.01.2023, the COC approved the estimated liquidation expenses of 15.66 Lakh.
13. Vide order dated 15.05.2023 this Tribunal directed the RP to serve notice on Union Bank of India. Ld. Counsel Mr. Nagesh Sood appeared in hearings conducted on 7/6/2023, 19/7/2023, 28/08/2023 and on 04/09/2023. No reply was filed by Union Bank of India. During the hearing on 04.09.2023, Ld. Counsel Mr. Nagesh Sood stated that he has no instructions in the matter from Union Bank of India.
14. We have heard the arguments advanced by the Applicants and the Respondents in the matter and perused the pleadings.
15. Despite notice none has appeared on behalf of the Suspended Directors.
16. The Suspended Directors have not cooperated with the RP. CoC comprises of one financial creditor has approved early liquidation. No claim was filed by Union Bank of India and despite notice the said bank has not filed any reply. Union Bank of India despite several opportunities, never filed any reply.
17. Form H has been filed under Dairy No. D3464 dated 14.09.2023.
18. We reproduce Section 33 (1) and (2) of the Code :-
 - (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 [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).

2[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.

19. 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.

20. 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 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. Chandra Prakash Jain, having Registration No. IBBI/IPA-001/IP-P00147/2017-2018/10311**, 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. Jashank Impex Pvt. Ltd.** 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/96(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. Chandra Prakash Jain, having Registration No. IBBI/IPA-001/IP-P00147/2017-2018/10311**, is hereby appointed as a Liquidator of the Corporate Debtor i.e., **M/s. Jashank Impex Pvt. Ltd.** 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) 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.

- j) 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.
- k) The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.
- l) 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.

21. Accordingly, **IA/96(AHM)2022** in CP(IB) No. 175 of 2020 is disposed off.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHMMI KHAN
MEMBER (JUDICIAL)

Rajeev/P.S