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

ITEM No.301

IA/1004(AHM)2023 in C.P.(IB)/301(AHM)2022

Proceedings under Section 33 & 34 IBC,2016

IN THE MATTER OF:

Iqbal Singh Gandhi IRP For Yashkirti Tours and Travels Pvt Ltd. **........Applicant**

........Respondent

Order delivered on: 17/10/2023

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- -SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)

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

IA/1004(AHM)2023 in CP(IB) No.301(AHM)2022

[filed under Section 33 & 34 *of the Insolvency and Bankruptcy Code, 2016]*

In the matter of **Yashkirti Tours and Travels Pvt Ltd.**

Mr. Iqbal Singh Gandhi,

Interim Resolution Professional of
M/s. Yashkirti Tours and Travels Pvt. Ltd.
Having address at:
9B, Vardan Tower, Near Vimal house,
Lakhudi Circle, Navrangpura,
Ahmedabad, Gujarat- 380 014.

....Applicant

In the matter of :-

Indian Bank (Erstwhile Allahabad Bank)

......Financial Creditor

Versus

M/s Yashkirti Tours and Travels Pvt. Ltd.

...... Corporate Debtor

Order pronounced on: 17.10.2023

CORAM:

SHAMMI KHAN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For the Applicant/IRP : Mr. Sumit Parikh, Adv.

O R D E R
(Per: Bench)

1. This is an application filed by Interim Resolutoin Professional under Section 33 read with Section 34 of IBC, 2016 read with Regulation 40D of the CIRP Regulations seeking intitiation of Liquidation Process against the Corporate Debtor with the following Prayers:

    a) *Your Lordships may be pleased to allow the present application;*

    b) *Your Lordships may be pleased to pass an order under Section 33 of the Code for liquidation of Corporate Debtor;*

    c) *Your Lordships may be pleased to pass an order under Section 34(1) of the Code for appointing the Applicant as the Liquidator;*

    d) *Your Lordships may be pleased to grant any other relief or relief(s) as may deem fit in the interest of justice;*

2. It is stated that on an application under Section 7 of IBC,2016 Filed by Indian Bank (Erstwhile Allahabad Bank), the Corporate Debtor i.e., Yashkirti Tours and Travels Limited was admitted to CIRP vide order dated 03.07.2023 in CP(IB)301/7/NCLT/AHM/2022 and the applicant was appointed as IRP.

3. It is stated that Form A was published on 06.07.2023 in *Financial Express* (English Language and Gujarati Language) and *Jansatta* (Hindi Language) with last date for submission of claims being 19.07.2023.

4. Subsequent to the receipt of claims, the CoC was formed on 26.07.2023 and the first meeting of CoC convened on 01.08.2023.

5. The Report of CoC is appended on page No.30 of the application. Perusal of the Report reveals that there are four banks who are forming part of the CoC:

Sr. No.	Name
1.	Union Bank of India
2.	Punjab National Bank
3.	State Bank of India
4.	Indian Bank

6. During the first meeting of CoC, the CoC unanimously resolved for Liquidation of the Corporate Debtor in view of the following reasons:

   1. *There are No Business Operatoins since last more than 8 years.*
   2. *There are no Workman/Employee in the Corporate Debtor.*
   3. *There are no immovable assets except one small flat situated at Surat Gujarat.*
   4. *As per last available audited Financial Statement no carry forward losses are available.*

7. The Resolution of the CoC is appended on page No. 57 of the application. It is seen that CoC with 100% majority has approved this Resolution. The voting in respect of the

Resolution concluded only on 28.08.2023. Hence the present application was filed by the applicant.

8. Heard Ld. Counsel for the applicant and perused the records placed before us. From the order of admission in CP(IB)307 of 2022, it is seen that Corporate Debtor is one of the Corporate Guarantors of one Sidhhivanayak Logistic Limited. It is also seen that vide order dated 19.11.2018, the order of Liquidation of the Principal borrower i.e., Siddhivinayak Logistic Limited was passed by this Tribunal and subsequently on an application filed by one of the Financial Creditors, the Corporate Debtor was also admitted into CIRP.

9. It is seen that the CoC of the Corporate Debtor in the First Meeting held on 01.08.2023 has already approved, with 100% majority, liquidatin of the Corporate Debtor. Form H has been filed under inward Diary No.DD254 dated 11.09.2023. Despite due notice of the the CoC, the

Suspended Board of the Corporate Debtor has not attended the CoC meeting.

10. We have seen that the CoC of the Corporate Debtor has with 100% majority approved the Liquidation of the Corporate Debtor, with the necessary voting results are appended at page No.66 of the application.

11. Section 33(1) and Section 33(2) of the IBC, 2016 is reproduced below:

Initiation of Liquidation.

33(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 therien,

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.

33(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 percent 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), (iii) of clause (b) of sub-section (1).*

(emphasis supplied)

12. **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 view of the above, as the CoC has already resolved with requisite majority to liquidate the

Corporate Debtor, we are forced to order Liquidation of the Corporate Debtor. The Corporate Debtor is hereby ordered for Liquidation.

13. 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 are constraint to appoint Mr. Suhas Dinkar Bhatt as the Liquidator of the Corporate Debtor from the Panel of RP/Liquidator available with this Adjudicating Authoirty.

14. The liquidator of the corporate debtor to carry the liquidation process subject to the following terms of the directions:-

    a) The Corporate Debtor **Yashkirti Tours & Travels 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/1004 (AHM)2023.

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. Suhas Dinkar Bhatt,** having Registration No.IBBI/IPA-002/IP-N00571/2017-2018/11738, is hereby appointed as a Liquidator of the Corporate Debtor i.e., **Yashkirti Tours & Travels 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) 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.

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.

18. Accordingly, **IA/1004/(AHM)2023** in CP(IB) No. 301 of 2022 is disposed off.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

Anuj