SL. No.1

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II

(Video Conference)

CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON'BLE MEMBER (J)
CORAM: SHRI SATYA RANJAN PRASAD, HON'BLE MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 11.11.2022 AT 02:30 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1271/2022 in CP (IB) No.150/7/HDB/2020
NAME OF THE COMPANY	Hari Shanker Paper Products Pvt ltd
NAME OF THE PETITIONER(S)	Indiabulls Consumer Finance Ltd
NAME OF THE RESPONDENT(S)	Hari Shanker Paper Products Pvt ltd
UNDER SECTION	7 of IBC

ORDER

IA No. 1271/2022

Order pronounced. Recorded vide separate sheets.

The petition is allowed. Liquidator orders shall be conduct the liquidation process in the matter laid down in Chapter III of IBC, 2016.

Sd/-
MEMBER (T)
Satya Priya

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II, HYDERABAD

I.A. No. 1271/2022 in
C.P. (IB) No. 150/7/HDB/2020
Under Section 33(2) of the IB Code, 2016 r/w
Regulations 3 of the IBBI (Liquidation Process) Regulations, 2016.

In the matter of
M/S HARISHANKAR PAPER PRODUCTS PRIVATE LIMITED

M/S Harishankar Paper Products Pvt. Ltd.,
Rep. by its Resolution Professional,
Mr. Sunit Jagdishchandra Shah,
IBBI/IPA-001/IP-P00471/2017-2018/10814
801-802, 8th Floor, Abhijeet-1, Mithakali Six Roads,
Navrangpura, Ahmedabad – 380009.

...Applicant

Date of Order: 11.11.2022

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Member, Judicial

Sri Satya Ranjan Prasad, Member, Technical

Appearance:

For the Applicant: Ms. MS Mano Ranjani and Mr. M. Rama Rao, Advocates

Per : Bench

ORDER

1. Under consideration is an Interlocutory Application filed by the Resolution Professional (hereinafter referred to as the "Applicant") of M/S Harishankar Paper Products Pvt. Ltd. (hereinafter referred to as the "Corporate Debtor"), under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code, 2016"), read with Regulation 3 of the IBBI (Liquidation Process) Regulations, 2016 (hereinafter referred to as "the Liquidation Regulations, 2016"), seeking an order for liquidation of the Corporate Debtor and to appoint Mr. Umesh Chandra Sahoo (Regn. No. IBBI/IPA-001/IPN00211/2018-2019/11855) as the Liquidator, as approved by the Committee of Creditors (hereinafter referred to as "the CoC").

2. Brief facts of the matter, as stated by the Applicant, are as follows:
   a) Corporate Insolvency Resolution Process (hereinafter referred to as the "CIRP") had been initiated against the Corporate Debtor, vide order of this Tribunal, dated 13.04.2022, and the Applicant herein was appointed as the Interim Resolution Professional, subsequently confirmed as the Resolution Professional by the CoC.
   b) As per the resolution passed by the CoC, in its 3rd meeting, dated 21.06.2022, the Applicant issued the invitation for 'Expression of Interest',

dated 29.06.2022, in Form - G in the English daily, Financial Express (India Edition) and the Telugu daily, Mana Telangana (Telangana Edition), to invite the prospective Resolution Applicants. However, no 'Expression of Interest' was received.

c) Subsequently, the CoC, in its 6th meeting dated 23.09.2022, resolved to republish the Form – G, with a shorter duration, in furtherance to a mail received from a potential Resolution Applicant. Accordingly, the Applicant republished the invitation for 'Expression of Interest', dated 24.09.2022, in the same newspapers, inviting prospective Resolution Applicants to submit their 'Expression of Interest', with last date as 30.09.2022. However, yet again, no 'Expression of Interest' was received.

d) Pursuantly, the CoC, in its 8th meeting, dated 06.10.2022, with a majority of 99.26%, approved the liquidation of the Corporate Debtor, without going for any further extension of the CIRP. It also resolved to appoint Mr. Umesh Chandra Sahoo, bearing IP Regn. No. IBBI/IPA-001/IPN00211/2018-2019/11855, as the Liquidator to administer the liquidation process of the Corporate Debtor.

Hence, the instant Application has been preferred, seeking an order to liquidate the Corporate Debtor.

3. In the light of the aforementioned factual matrix, the point that emerges for our consideration is:

   Whether an order of liquidation of the Corporate Debtor can be passed?

4. We have heard Ms. MS Mano Ranjani, learned counsel appearing for the Applicant and perused the record.

5. At the outset, it would be appropriate to refer to Section 33 of the Code, 2016, which reads as under:

Section 33. Initiation of liquidation.
(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).
[*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.]

(3) Where the resolution plan approved by the Adjudicating Authority under section 31 or under sub-section (1) of section 54L, is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority,

(6) the provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

6. Section 33 (1)(a)(i) mandates that this Adjudicating Authority shall pass an order requiring the Corporate Debtor to be liquidated where the Adjudicating

Authority does not receive a resolution plan, 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.

7. Further, Section 33(2) mandates that the Adjudicating Authority shall pass a liquidation order, when 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 CoC, approved by not less than 66% of the voting share, to liquidate the Corporate Debtor.

8. It is pertinent to note here that the CoC has, in its commercial wisdom, approved the liquidation of the Corporate Debtor unanimously, with a 99.26% majority, in view of the fact that no resolution plans had been received. Considering that the CoC has, within the period of the CIRP, voted in favour of liquidation of the Corporate Debtor with a 99.26% majority, much above the threshold mandated by the provision referred to above, the requirements of both, Section 33 (1)(a)(i) and Section 33 (2) have been satisfied in the instant case. Further, necessary resolutions for appointment of the Liquidator and payment of the Liquidator's fee have also been passed by the CoC.

9. On consideration of the facts and circumstances of the matter, we deem it proper to allow the instant Application and permit the liquidation of the Corporate Debtor, as prayed for. Hence, the point is answered accordingly.

10. In the result, in exercise of powers conferred under Sub-Clauses (i), (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the Code, 2016, we proceed to pass the order as follows:

(i) This Adjudicating Authority hereby order for Liquidation of M/S Harishankar Paper Products Pvt. Ltd., which shall be conducted in the manner as laid down in Chapter III of Part II of the Code, 2016;

(ii) This Adjudicating Authority, hereby, appoints Mr. Umesh Chandra Sahoo, with IP Regn. No. IBBI/IPA-001/IPN00211/2018-2019/11855, as the Liquidator as approved by the CoC, who has also filed his written consent to act as Liquidator. He shall issue a public announcement stating therein that the Corporate Debtor is in liquidation;

(iii) The moratorium declared under Section 14 of the Code, 2016, shall cease to have effect from the date of this order of liquidation.

(iv) Subject to Section 52 of the Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Adjudicating Authority.

(v) We make it clear that para (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

(vi) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the Liquidation process by the Liquidator.

(vii) All the 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 in the Company Liquidator. In addition to this, the Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the Code, 2016, read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(viii) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

(ix) The Liquidator shall be entitled to charge such fee for conducting the Liquidation proceedings in accordance with Regulation 4(2) of IBBI (Liquidation Process) Regulations, 2016.

(x) Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, registered office of the Corporate Debtor and the Liquidator, for information and compliance.

(xi) Registry is directed to furnish a copy of this order to the IBBI for confirmation of appointment of Liquidator.

5. Accordingly, this Application stands disposed of.

(Satya Ranjan Prasad) Member, Technical	**(Dr. N.V. Ramakrishna Badarinath)** Member, Judicial