

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

ITEM No.8-IA/415(AHM)2023
in C.P.(IB)/241(AHM)2021

Proceedings under Section 9 IBC

IN THE MATTER OF:

Kadam Kirtibhai Patel Proprietor Pearl Impex
V/s

.....**Applicant**

Map Oil Learned Lawyer, appeared on behalf of the
Petitioner

.....**Respondent**

Order delivered on: 24/04/2023

Coram:

Mr. Ashok Kumar Bhardwaj, Hon'ble Member(J)
Mr.Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant : Mr.Monaal Davawala, Advocate for the applicant in
IA/415(AHM)2023

For the Respondent :

ORDER

IA/415(AHM)2023

1. Indubitably the CIRP in the captioned matter commenced on 26.04.2022 i.e. approximately a year ago. Ld. Counsel appearing for the RP could draw our attention to the Minutes of the Meeting of CoC held on 20.02.2023, and could espouse that the CoC could pass a resolution with 100% voting share to send the CD to liquidation. He could also refer to the voting pattern in the meeting of CoC. The relevant excerpts of the Minutes of Meeting of CoC dated 20.02.2023 (ibid) reads thus:-

“ The Chairman apprised the members of the CoC that on the basis of the outcome of the simultaneous voting by the Committee of Creditors on the resolution plan, the successful resolution applicant would be declared and for the purpose of filing the resolution plan received from the successful resolution applicant, the resolution for authorizing the Resolution Professional

to file the application before the Hon'ble NCLT for seeking approval of the resolution plan submitted by the successful resolution applicant or liquidation shall be placed before the members for their consideration.

After due deliberations, the members of Committee of Creditors may pass the following resolution:

A) **“RESOLVED THAT** in terms of Section 30(4) of the Insolvency and Bankruptcy Code, 2016 and the rules and regulations thereunder, the Committee of Creditors be and is hereby approves the Resolution Plan submitted by Mr.Kirtibhai Kalidas Patel”.

Sr. No.	Name and Address	Assent / dissent / Abstain	Voting share Assent (%)	Voting Share Dissent	Voting Share Abstain
1	State Bank of India	Dissent	-	100	-
TOTAL			-	100	-

The member of the CoC voted on the same and rejected with 100% vote in disfavour

“RESOLVED FURHTER THAT, in the event of a liquidation order being passed by the Hon'ble NCLT against the Corporate Debtor, the assent of the Committee of Creditors, be and is hereby accorded to sale of the corporate debtor as a going concern or sale of the business of the corporate debtor as a going concern”.

Sr. No.	Name and Address	Assent / dissent / Abstain	Voting share Assent (%)	Voting Share Dissent	Voting Share Abstain
1	State Bank of India	Assent	100	-	-
TOTAL			100	-	

The member of the CoC voted on the same and approved with 100% vote in favour

“RESOLVED THAT, in the event of a liquidation order being passed by the Hon'ble NCLT against the Corporate Debtor, the assent of the Committee of Creditors, be and is hereby accorded, to approve the liquidation cost, as per the below tables-

Sr. No.	Particulars	Amount (INR)
1	Estimated Legal Cost	2,00,000
2	Publication cost estimated	4,00,000
3	Insurance and Other	5,00,000
4	Misc. Cost	2,00,000
TOTAL		13,00,000

“RESOLVED FURTHER THAT contribution of estimated liquidation cost shall be contributed by secured financial creditor in their claim ratio:

Sr. No.	Name and Address	Assent / dissent / Abstain	Voting share Assent (%)	Voting Share Dissent	Voting Share Abstain
1	State Bank of India	Assent	100	-	-
TOTAL			100	-	

The member of the CoC voted on the same and approved with 100% vote in favour”

2. As can be seen from Section 30(2) of the IBC, 2016 where the Resolution Professional at any time during the CIRP but before the confirmation of Resolution Plan intimate the Adjudicating Authority of the decision of Committee of Creditors approved by not less than 66% of the voting share to liquidate the Corporate Debtor the Adjudicating Authority shall pass a liquidation order as referred to in Sub-Clause (i), (ii) and (iii) of Clause-(b) of Sub-Section (1). In the present case, apparently the Resolution Professional has moved the captioned petition / application for the purpose. In the wake, the CD is ordered to be liquidated, the RP shall make a public announcement stating that the corporate debtor is in liquidation and shall provide a copy of this order to the concerned RoC. The Resolution Professional, who has given consent to conduct the liquidation process, viz., CA Mr. Vinod Tarachand Agrawal, Registration No. IBBI/IPA-001/IP-P00641/2017-18/11090, to carry the

liquidation process with due deference to the provisions of Section 34 to 40 of IBC, 2016.

3. Accordingly, we appoint CA Mr. Vinod Tarachand Agrawal with **Reg. No:** [IBBI/IPA-001/IP-P00641/2017-18/11090] who has given his consent for the purpose (ibid), as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions:

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the extant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date enjoined upon him.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file a suitable application before this Adjudicating Authority. The financial affairs of the Corporate Debtor shall also be investigated 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.
- d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and the Insolvency and Bankruptcy Board of India;
- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

- g) The Liquidator is directed 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.
- h) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further reports as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.
- i) Copy of this order be sent to the Financial creditors, Corporate Debtor and the Liquidator for taking necessary steps qua the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.
- j) The Liquidator appointed as above may take steps to sell the Corporate Debtor as a Going Concern.

4. The liquidator may file the periodical status/report in terms of the IBBI (Liquidation Process) Regulations, 2016.

5. With the above directions, this IA/415(AHM)2023 stands **allowed** and **disposed of**.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

ASHOK KUMAR BHARDWAJ
MEMBER (JUDICIAL)