

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

IA 348 of 2019 in/with C.P. (I.B) No. 222/NCLT/AHM/2018

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 19.07.2019**

Name of the Company: Ajay Gupta RP for Kasturi Exim Pvt. Ltd.

V/s.

Kasturi Exim Pvt. Ltd. & Ors.

Section of the Companies Act: Section 33(1) 33(2) & 34(1) of the Insolvency and
Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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ORDER

None for the parties.

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.


**HARIHAR PRAKASH CHATURVEDI
MEMBER (JUDICIAL)**

Dated this the 19th day of July, 2019.

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

Interlocutory Application No. 348 of 2019

In

CP (IB) No.222/9/NCLT/AHM/2018

*(Application under Section 33(1), 33(2) & 34(1) of The Insolvency &
Bankruptcy Code, 2016)*

In the matter of:

Mr. Ajay Gupta
Resolution Professional
A-701/702, La-Chapelle
Evershine Nagar
Malad (W)
Mumbai-400 064

Resolution Professional of
Kasturi Exim Private Limited
Corporate Debtor Company
Having its Registered Office at: 215,
Anhil Complex
Nr.Swastik Cross Road
Navrangpura
Ahmedabad-380 009
Gujarat

..... Applicant

Order delivered on 19th July, 2019

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)

Appearance:

Ms. Natasha Dhruman Shah, Advocate, for the Applicant.
Mr. Kushang Thakkar, CS, for the Suspended Management.


ORDER

1. The present Application is filed, under Section 33(1), 33(2) and 34(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I & B Code"), by Mr. Ajay Gupta,



Resolution Professional (hereinafter referred to as "RP"), in respect of the Corporate Debtor Company, viz., **M/s. Kasturi Exim Private Limited & Ors.**, seeking an order from this Adjudicating Authority for Liquidation of the Corporate Debtor Company, pursuant to a Resolution passed by the Committee of Creditors (hereinafter referred to as "CoC") in its sixth meeting held on 06.05.2019. A copy of the minutes of meeting of the CoC dated 06.05.2019 is annexed with the present application as Annexure-I.

2. This Tribunal, vide its order dated 13.11.2018, admitted the Company Petition, bearing No. CP (IB) 222/9/NCLT/AHM/2018, filed under Section 9 of the I & B Code, had appointed Mr.Ajay Gupta as an Interim Resolution Professional, in respect of the Corporate Debtor Company, later on he was further confirmed as the Resolution Professional by the CoC.
3. In the present matter, Mr.Kushang Thakkar, CS, representing for the Suspended Management appeared and has expressed his no objection for initiating Liquidation process of the Corporate Debtor company M/s. Kasturi Exim Private Limited.
4. We have gone through the contents and examined the merits of the present petition. It's some paragraphs, which seem to

 be relevant for initiation of Liquidation process of the corporate debtor company are stated as under;

- “6. The applicant humbly submits that the IRP made public announcement in English and Gujarati newspaper as contemplated under the provision of Section 15 of the Code and called for claims from all creditors. The applicant submits that last date of submission of claims was 19.12.2018. The applicant begs to annex copies of each announcement of Form A of public announcement dated 05.12.2018 as Annexure-B to this application.
7. The applicant further submits that the IRP received the claim of creditors of the corporate debtor. Accordingly, the report dated 20.12.2018 constituting the committee of creditors was prepared. The applicant submits that Report certifying Constitution of Committee of Creditors regulation 17(1) of IBBI (Insolvency Resolution Process for Corporate Person) Regulation and List of creditors under regulation 13(2) (D) of IBBI (Insolvency Resolution Process for Corporate Person) has been filed before this Hon'ble Tribunal. The applicant begs to annex copy of report certifying Constitution of Committee of Creditors as on 20.12.2018 as Annexure-C to the present application.
13. The applicant further submits that, in the sixth and final meeting of COC which came to be convened on 06.05.2019, it was resolved for to discuss further Action (Liquidation), to appoint Resolution Professional as liquidator and to fix the fees of liquidator. The applicant begs to annex copies each of notice of the Sixth meeting of COC sent by Email and courier dated 30.04.2019 and minutes of Sixth meeting of CoC dated 06.05.2019 as Annexure-I to this application”.

5. Thus, it may be seen as per material available on record that it is undisputed position that this Adjudicating Authority, vide its order dated 13.11.2018, has admitted the main Company Petition (bearing No. CP (IB) No.222/9/NCLT/AHM/2018) at the instance of an Operational Creditor Mr. Mitesh Milanbhai Solanki.
6. Further, we noticed that the IRP has duly complied with the relevant provisions for commencing the CIRP, by making announcement in respect of the Moratorium granted, thereafter, he constituted CoC and held its meetings from time to time. Finally, when no Resolution Plan was brought to the CoC for resolution of the company, the CoC considered the financial condition of the corporate debtor company. It ultimately took unanimous and conscious decision and recommended for initiation of the Liquidation process in respect of the Corporate Debtor company. The CoC has further resolved to keep continue with the Resolution Professional as a Liquidator of the Corporate Debtor Company.
7. We heard submissions of Ms.Natasha Shah, Ld. Counsel for the RP as well as CS Mr. Kushang Thakkar, for the Suspended Management. Further, by perusing the material available on record, it reflected that the Corporate Debtor company, at present is not a going concern, therefore, no



viable resolution plan was received by the CoC. Therefore, the CoC passed necessary resolution on 06.05.2019 for recommending Liquidation of the Corporate Debtor Company. In our view, it seems to be conscious and wise decision of the CoC. Hence, we do not find any contrary material available on record appealing to us to take a different view from the decision of the CoC.

8. In addition to the above, we carefully examined the relevant provisions of Section 33 of the Code, meant for Liquidation, which reads as under;

33. Initiation of Liquidation - (1) Where the Adjudicating Authority, —

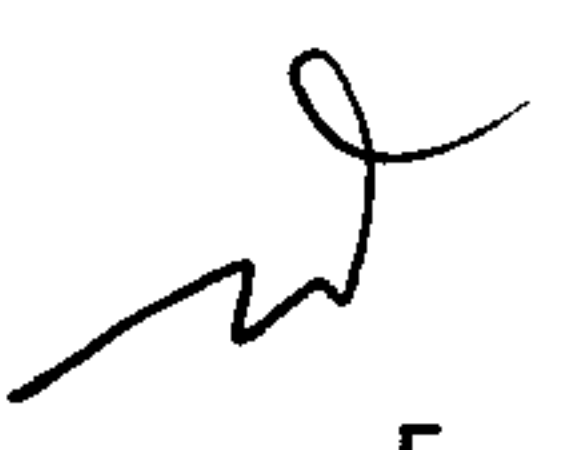
(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution 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 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) and (iii) of clause (b) of sub-section (1).

(3) Where the resolution plan approved by the Adjudicating Authority 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) and (iii) of clause (b) of 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.

9. We considered the facts of the present case and examined the merits of the present IA by following the above stated statutory provisions. Therefore, this Adjudicating Authority in exercise of its power conferred to it feels appropriate to confirm and approve the Resolution of the CoC dated 06.05.2019 recommending for Liquidation of the Corporate Debtor company and, thus, pass on order for Liquidation of the Corporate Debtor company.
10. In view of the above, it is hereby ordered that the Corporate Debtor company, viz., **M/s. Kasturi Exim Pvt. Ltd.** shall go into Liquidation under Section 33 (2) of the Code, with following observation/directions;
- i. That the Resolution Professional **Mr. Ajay Gupta** appointed for the Corporate Insolvency Resolution Process under Chapter II of the Code shall act as the **Liquidator** for the purpose of Liquidation in pursuant to Section 34(1) of the Insolvency and Bankruptcy Code, 2016.

- ii. 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 Liquidator pursuant to Section 34(2) of the Insolvency and Bankruptcy Code, 2016.
- iii. That the personnel of the corporate debtor shall extend all assistance and co-operation to the liquidator as may be required by him in managing the affairs of the corporate debtor.
- iv. Issue a public announcement stating that the Corporate Debtor is in liquidation.
- v. The Liquidator shall discharge his functions pursuant to the powers and duties under Section 35 and other relevant provisions of the Insolvency and Bankruptcy Code, 2016.
- vi. The Moratorium order passed by this Bench, vide its order dated **13.11.2018** in the matter of Mitesh Milanbhai Solanki vs. Kasturi Exim Pvt. Ltd. shall cease to have effect by the provision of Section 14(4) of the Insolvency and Bankruptcy Code, 2016, from the date of this order.
- vii. However, a further direction is issued under Sub-section (5) of Section-33 of the Code, which read as under;-


Section 33(5): Subject to section 52, when a liquidation order has been passed, no suit, or other legal proceedings shall be instituted by or against the corporate debtor: Provided that a suit or other legal proceeding may be instituted by the



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***liquidator, on behalf of the corporate debtor, with
the prior approval of the Adjudicating Authority.***

- viii. A copy of this order be sent to Registrar of Companies, Gujarat.
11. Thus, with the above stated directions / observations, the present Interlocutory Application No.348 of 2019 in CP(IB)No.222/9/NCLT/AHMD/2018 is allowed and stands disposed of.


**Harihar Prakash Chaturvedi
Adjudicating Authority &
Member (Judicial)**

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