



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No. 1593/2022 & 135/2022
in
CP (IB) No. 110/Chd/Hry/2019
(Admitted)**

**Under Section 33(1)(a) and
Section 19(2) of the IBC, 2016**

In the matter of:-

Corporation Bank

...Petitioner/ Financial Creditor

Versus

NDT Trade House Private Limited

...Respondent/ Corporate Debtor

In the matter of IA No.1593/2022: Under Section 33(1)(a) of the IBC, 2016

Arjun Gajwani

Resolution Professional

NDT Trade House Private Limited

...Applicant/Resolution Professional

Versus

1.Nidhi Dinesh Tanwar

Ex. Directors M/s NDT Trade House Pvt. Ltd.

Registered Office at

Plot No.556, Phase-V, Udhyog Vihar,

Gurgaon, Haryana-122015

Also at

Plot No.35, Mitrol Industrial Area,

Palwal, Haryana-121106

...Respondent No.1

2 .Vijay Pal

Ex. Directors M/s NDT Trade House Pvt. Ltd.

Registered Office at

Plot No.556, Phase-V, Udhyog Vihar,

Gurgaon, Haryana-122015

IA No. 1593/2022 & 135/2022

in

CP (IB) No. 110/Chd/Hry/2019

(Admitted)



Also at

Plot No.35, Mitrol Industrial Area,
Palwal, Haryana-121106

...Respondent No.2

**In the matter of IA No.135/2022: Under Section 19(2) R/w Section 60(5) of
the Insolvency and Bankruptcy Code, 2016**

Arjun Gajwani

IRP, NDT Trade House Pvt Ltd.
Registered Office at
Tower 3, Flat 503, Zion Lake View Apartment,
Sector 48, New Badkhal Lake Crossing,
Faridabad, Haryana-121001

Resolution Professional
NDT Trade House Private Limited

.....Applicant/IRP

Versus

1.Nidhi Dinesh Tanwar

Ex. Directors M/s NDT Trade House Pvt. Ltd.

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Gurgaon, Haryana-122015

Also at

Plot No.35, Mitrol Industrial Area,
Palwal, Haryana-121106

...Respondent No.2

Order delivered on: 10 .02.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**



Present:

For the Applicant/RP
in IA No.1593/2022 : Mr.Sunder Khatri, Advocate

For the Applicant/RP
in IA No.135/2022 : Mr.Sunder Khatri, Advocate

Respondent
in IA No.135/2022 : Mr. Dinesh Kumar Tanwar

Per: Subrata Kumar Dash, Member (Technical)

IA No.1593/2022

The present Application is filed by **Arjun Gajwani** (for short hereinafter referred to as Applicant) against **Nidhi Dinesh Tanwar** (for short hereinafter referred to as Respondent No.1) and **Vijay Pal** (for short hereinafter referred to as Respondent No.2) under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as Code).

2. The Applicant has prayed to pass an order for liquidation of the corporate debtor under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 and to appoint the present Resolution Professional as the liquidator of the present corporate debtor.

3. The brief facts of the case as stated in the application are that :-

- i) The petition under Section 7 of IBC, 2016 filed by Union Bank of India erstwhile Corporation Bank against the Corporate Debtor i.e. M/s NDT Trade House Private Ltd. was admitted by order dated 21.12.2021 and the applicant has been appointed as Interim Resolution Professional.



- ii) The IRP came to know about the initiation of CIRP on 30.01.2022 and subsequently, he filed an IA No.134/2022 for the exclusion of 39 days which was granted by this Tribunal by order dated 12.05.2022.
- iii) The applicant had made a public announcement in Form A inviting the claims of the public on 01.02.2022 in two newspapers i.e. 'Financial Express' (English) and 'Jansatta' (Hindi) .
- iv) After collating and verifying the claims, the applicant has constituted the Committee of Creditors comprising of sole financial creditor i.e. Union Bank of India for a claim of Rs. 9,84,70,215/-.
- v) In the 1st CoC meeting, the applicant has been confirmed as Resolution Professional with 100% voting.
- vi) In the 2nd meeting of CoC two independent valuers has been appointed for the valuation of class of assets. In the 3rd meeting of CoC it has been resolved to publish Form G as per the evaluation matrix decided in the meeting for invitation of expression of interest.
- vii) Form G was published in 'Financial Express' (English) and 'Jansatta' (Hindi) on 27.04.2022 and the last date for submitting EOI was fixed as 12.03.2022.
- viii) The Resolution Professional has received some preliminary enquiries and 3 entities submitted detailed EOIs. Since, no EOIs met the eligibility criteria and the conditions stipulated.
- ix) Form G was republished in 'Financial Express' (English) and 'Jansatta' (Hindi) on 28.05.2022 on the basis of Resolution



approved in the 4th CoC meeting held on 23.05.2022 and in the 5th CoC meeting held on 04.06.2022 by relaxing the eligibility criteria.

- x) The Resolution Professional has received EOIs from four entities and the last date for submission of Resolution Plan was fixed as 27.07.2022. However, no Resolution Plan has been received till the last date and an extension has been sought by two prospective Resolution applicants. The period of 180 days after the exclusion of 39 days from the Insolvency commencement date has been expiring on 29.07.2022. Therefore, RP has moved an application for extension of CIRP Process.
- xi) No resolution plan has been received from any prospective Resolution applicants till the commencement of 8th CoC meeting held on 23.08.2022. In the aforesaid meeting dated 23.08.2022, the sole financial creditor has resolved to liquidate the corporate debtor and the Resolution Professional is authorized to move an application for commencement of liquidation process. The Resolution Professional has expressed his willingness to continue as liquidator. The written consent in Form 2 dated 26.08.2022 given by the Resolution Professional is attached as Annexure-A13 of the application.

4. It is pertinent to mention that in the 8th meeting of CoC dated 23.08.2022 the CoC has advised that the fees can be decided later on in the due course. The CoC has also ratified the expense of Rs. 5,14,217/- from 5th CoC meeting to



8th CoC meeting as presented by the Resolution Professional. The expenses so ratified and approved be treated as part of Insolvency Resolution Process.

5. Now, coming to the merit of the application, before considering the prayer, we would like to refer the Section 33(1) and (2) of IBC, and the same is reproduced below:-

"Section 33(1): 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 the resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors ¹[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).

6. A bare perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

- i. Before the expiry of the Insolvency Resolution Process period;
- ii. 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; and



iii. It does not receive a resolution plan under sub-section (6) of Section 30.

7. It is observed that the present application has been filed under Section 33(1)(a) of IBC for the initiation of the liquidation process of the corporate debtor. The Resolution Professional has published Form G inviting the Expression of Interest (EOI) on 27.04.2022 and 28.05.2022. Pursuant to the above publications, four EOIs were received. However, after seeking various extensions by perspective resolution applicants, no resolution plan has been received. In the 8th Meeting of CoC held on 23.08.2022, the CoC decided to liquidate the Corporate Debtor by passing a Resolution in the aforesaid meeting.

8. It is noted that the agenda for the appointment of a Resolution Professional as Liquidator has been discussed in the 8th CoC Meeting held on 23.08.2022. It has been decided to appoint the present Resolution Professional as Liquidator. It has also been advised by the CoC that the fee of the liquidator can be decided in the due course. Moreover, the Resolution Professional has given his written consent in Form-2 along with AFA Certificate to act as a liquidator of the Corporate Debtor, which is attached at Annexure-13 of the application.

9. In the present case, the sole member of the CoC is the petitioner in the main petition for admission of the CIRP against the corporate debtor, and eight meetings of the CoC were held. The CoC has also approved the expenses of CIRP Cost in their meetings. The expenses accrued by the RP shall be treated as part of the Insolvency Resolution Process Cost. Further, the CoC has not discussed the assessment of the sale of the corporate debtor as a going concern



and the fees of the liquidator under Regulation 39C and Regulation 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The liquidator is directed to conduct a meeting of the Stakeholders' Consultation Committee to discuss the prospect of the sale of the corporate debtor as a going concern under Regulation 39C and the fees of the liquidator under Regulation 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is also seen that the RP has furnished consent in Form 2 for the appointment as liquidator, he is directed to furnish the consent in Form AA within three days from the date of order.

10. The Law Research Associate of this Tribunal has checked the credentials of Mr Arun Gajwani, and there is nothing adverse against him. In view of the above, we appoint Mr Arun Gajwani Regn No. IBBI/IPA-002/IP-N00568/2017-2018/11724 email: arungaj572@gmail.com as the Liquidator.

11. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor i.e. **M/s NDT Trade House Pvt. Ltd** is directed to be liquidated in the manner as laid down in Chapter III of the Code.

12. Accordingly, by exercising our power under Section 33(1) pass the following order:-

(i) The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016;



- (ii) Mr Arun Gajwani bearing Registration No. IBBI/IPA-002/IP-N00568/2017-2018/11724, Mobile No. 9810549696, email: arungaj572@gmail.com is hereby appointed as liquidator;
- (iii) Mr Arun Gajwani shall take over the charge of the entire records and assets of the corporate and perform his duty, as required under the Code and Regulations
- (iv) The Registry is directed to communicate a copy of the Order to the Liquidator;
- (v) A copy of this order be sent by the Registry to the concerned Registrar of Companies (RoC), for updating Master Data. After updating Master Data, RoC shall send a compliance report to the Registrar, NCLT within a period of 30 days;
- (vi) The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.
- (vii) The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.

13. Thus, IA No. 1593/2022 stands allowed and disposed of accordingly.

IA No.135/2022

14. The present Application is filed by Arjun Gajwani (for short hereinafter referred to as Applicant) against Nidhi Dinesh Tanwar (for short hereinafter referred to as Respondent No.1) and Vijay Pal (for short hereinafter referred to as Respondent No.2) under Section 19(2) read with



Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as Code).

15. The Applicant has prayed to issue directions to the respondents-Suspended Directors and associate persons to extend full cooperation to the Interim Resolution Professional/applicant under Section 19(2) of IBC, 2016.

16. It is stated in the application that the Interim Resolution Professional has come to know about the initiation of CIRP on 30.01.2022. The applicant on 01.02.2022 visited Palwal at the plant site of the corporate debtor but he was not given access to the workshop/shopfloor comprising of manufacturing facilities of the corporate debtor. The applicant has asked the suspended director Ms. Nidhi Tanwar to hand over the custody and possession of the assets of the corporate debtor at the plant but they have refused to do so citing the ignorance of such proceedings. The applicant had sent an e-mail on 01.02.2022 and other reminders on 03.02.2022, 04.02.2022 & 05.02.2022 seeking some relevant information from the directors to enable the applicant for the smooth completion of CIRP.

17. It is further stated the applicant has also visited the registered office of the corporate debtor but none was present at the site and the nameplate of some other company was present there. The applicant has also sent email to the alter of the corporate debtor for seeking information as per



Section 17(d) of the IBC, 2016. The statutory auditor by email dated 07.02.2022 has informed that they have worked for a period of three years i.e. from F.Y. 2013-14 to F.Y. 2015-16 and the signed scan copy of the financial statement of these years are sent by email dated 07.02.2022. When the applicant again visited the premises of the plant of corporate debtor on 07.02.2022 it was found to be locked. the applicant received an email from the husband of Ex-director of the corporate debtor that he is unable to hand over possession/records until 25.02.2022 due to his unavailability in India. The copy of the email dated 08.02.2022 is attached as Annexure A14 of the application.

18. The respondent-liquidator filed a reply by Diary No. 00247/9 dated 27.10.2022 stating that in the 1st meeting of the CoC on 28.02.2022 the respondent has requested the applicant to appoint security guards in the factory to control plants and assets along with the old security guards. On 04.03.2022 the respondent has handed over the keys of the factory locks to the guards appointed by the Resolution Professional. The guards of the RP are present in the premises of the factory from 04.03.2022 and till date the whole control over the factory is with the Resolution Professional. Respondent has requested the Resolution Professional to take recourse, bills from the Bank as all papers related to movable or immovable properties are deposited with the bank.



19. As per order dated 23.11.2022, the applicant has directed to send an email to the respondent to re-submit his specific requirements from the Ex-director of the respondent. The applicant has filed a compliance affidavit by diary No.00221/3 dated 15.12.2022 attaching the email sent by the RP and a comparative chart showing the status of the records which has not been received by the applicant. It is stated that the Respondent has replied vaguely to the emails sent by the applicant.

20. We have heard learned counsel for the applicant and the respondent and have perused the record carefully.

21. We have observed that the Mr. Dinesh Kumar Tanwar husband of Suspended Board of Director has replied to Email of Resolution Professional by Email dated 28.11.2022 wherein he has cited the non-corporation of old employees who have not been paid their dues. It is also mentioned that the records requisitioned have already been given to the Corporation Bank. The respondents are directed to submit the list of the old employees with their addresses and contact details to the Resolution Professional within seven days from the date of order. The Resolution Professional is directed to contact Corporation Bank and erstwhile employees for obtaining the necessary documents and records. In case the required records are not made available, the resolution professional is at liberty to move an application before this Adjudicating Authority.



22. Accordingly, IA No.135/2022 is allowed with aforesaid directions and disposed of.

23. Copy of this order be supplied to the parties by the Registry.

SD/-
(Subrata Kumar Dash)
Member (Technical)

SD/-
(Harnam Singh Thakur)
Member (Judicial)

February 10 , 2023

DS/SA