

FREE OF COST COPY

IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI

I.A. No. 2713/(ND)/2021  
Connected with IB-1625/(ND)/2019

Section: Under Section 33(1)(a) of the Insolvency and Bankruptcy Code 2016, Read with Regulations of IBBI (Liquidation Process) Regulations, 2016.

In the matter of:

**ASHMIT CORPORATION PRIVATE LIMITED**

**...Operational Creditor**

*versus*

**FLEXI INFOTECH PRIVATE LIMITED**

**...Corporate Debtor**

In the matter of:

**VIKAS GARG**

(Interim Resolution Professional of the Corporate Debtor)

Office at: 809, 8<sup>th</sup> Floor, Arunachal Building,  
New Delhi- 110001

**...Applicant/IRP**

**versus**

**ASHMIT CORPORATION PRIVATE LIMITED**

(Through Mr. Amit Mathur and Mr. Varun Dhama, Directors)

Office at: 53/159, V.T. Road, Mansarovar,  
Jaipur, Rajasthan- 302020

**... Sole Member of COC**

Coram:

**SH. P.S.N. PRASAD, Hon'ble Member (Judicial)**

**SH. RAHUL BHATNAGAR, Hon'ble Member (Technical)**

I.A. No. 2713 of 2021

Connected with IB no. 1625/(ND)/2019

Ashmit Corporation Pvt. Ltd. v. Flexi Infotech Pvt. Ltd.



MP/ite  
23/11/21

PS

For Applicant: Mr. Vikas Garg, IRP


**ORDER**

**Per P.S.N. PRASAD, MEMBER (JUDICIAL)**

**Date: 22.12.2021**

1. This is an application filed by Mr. Vikas Gupta, the Interim Resolution Professional of the Corporate Debtor 'M/s Flexi Infotech Private Limited', seeking the following:
  - a) Allowing the present application and for passing an order of Liquidation of the Corporate Debtor under section 33(1)(a) of the Insolvency Bankruptcy Code, 2016.
  - b) Appointment of a Liquidator from the panel maintained by the Hon'ble Tribunal.
  - c) Pass such Order as may be deemed fit and proper in the matter.
2. The details of transactions leading to the filing of this application as averred by the applicant is that:
  - i. The application under section 9 of the IBC, 2016 was filed by the Operational Creditor 'M/s Ashmit Corporation Private

I.A. No. 2713 of 2021  
Connected with IB no. 1625/(ND)/2019  
Ashmit Corporation Pvt. Ltd. v. Flexi Infotech Pvt. Ltd.







Limited' against the Corporate Debtor M/s Flexi Infotech private Limited and the same was admitted by the Hon'ble Tribunal vide order dated 16.03.2020 and the applicant was appointed as the IRP vide abovementioned order.

- ii. The Applicant submitted that the IRP made a public announcement in Form A as required under regulation 6 of IBBI (CIRP) 2016 on 20.03.2020 in Financial Express (English) and Jansatta (Hindi) for intimation and for calling the creditors to submit their claims. That the IRP received claim of petitioner Operational Creditor on 16.06.2020 and Constituted the COC on 24.06.2020 by including it as sole member of COC.
- iii. The Applicant submitted that the Operational Creditor on whose application the CIR Process commenced did not comply with the directions of the Hon'ble Tribunal regarding remittance of Rs. 2 Lakhs to facilitate the expenses of CIR Process over a period of 5 months. On receiving no positive response from the sole COC member the applicant filed a contempt application on 04.8.2020 bearing IA No.

  
\_\_\_\_\_





3117/2020. Further, the IRP/applicant filed an application u/s 19(2) bearing IA No. 3297/2020 on 14.08.2020 seeking directions to the sole COC member to co-operate with the IRP.

- iv. The applicant submitted that in the 1<sup>st</sup> COC meeting which was held on 03.07.2020 and in 2<sup>nd</sup> COC Meeting held on 28.10.2020, wherein the COC consisting of sole COC member did not approve the resolution for approval of fee and expenses of IRP and also did not approve the confirmation of IRP to act as Resolution Professional.
- v. The applicant submitted that on 18.01.2020 the legal counsel of the sole COC member sent an email proposing that Mr. Tara Chand Sharma be appointed as the new Resolution Professional in this matter. However, the consent of new Resolution Professional was neither placed before the COC meeting held on 21.01.2021 nor sent to the IRP/Applicant till date.
- vi. That the 3<sup>rd</sup> COC meeting was held on 20.01.2021. wherein, the COC did not approve the resolution for approval of fee

and expenses of IRP and also did not approve the Confirmation/Replacement of IRP. However, extension of CIRP Period by 90 days along with exclusion of 131 days from 23.03.2020 to 31.07.2020 was approved by the COC.

vii. That in the 4<sup>th</sup> COC Meeting held on 12.03.2021, the COC did not approve the resolution for approval of fee and expenses of IRP and also did not approve the Confirmation/Replacement of IRP. Also, approval for making an application u/s 33(2) for initiation of Liquidation process of Corporate Debtor was not granted by the COC.

viii. That the applicant called for the 5<sup>th</sup> meeting of COC on 19.04.2021. However, the sole member of COC sent an email to the applicant to postpone the meeting post 22.04.2021. The applicant submitted that he replied to the above said email stating that the scheduled period of 270 days of CIRP is expiring on 21.04.2021. The 5<sup>th</sup> COC meeting was rescheduled for 20.04.2021 and the concerned representative of the sole COC member failed to attend the



meeting. On 21.04.2021 the stipulated period of 270 days expired.

3. The Applicant further submitted that in terms of section 34(1) the undersigned Interim Resolution Professional is not willing to be appointed as Liquidator and the Hon'ble Tribunal may appoint any Liquidator from panel maintained by the Adjudicating Authority.
4. The Tribunal vide its order dated 22.09.2021 directed the applicant to serve a copy of this application to the sole member of COC to file his response if any. However, no response till date was received from the sole COC member.
5. In IA No.3117 of 2020 which was filed by the applicant regarding remittance of Rs. 2 Lakhs to facilitate the expenses of CIR Process, the counsel for the IRP on 27.10.2021 submitted before the Tribunal that the Operational Creditor paid Rs. 1,50,000/- earlier and the balance of Rs. 50,000/- has also been paid.
6. We have gone through the Documents filed and heard the arguments advanced by the Applicant. The Applicant has submitted that no Resolution Plan was received within the period

I.A. No. 2713 of 2021  
Connected with IB no. 1625/(ND)/2019  
Ashmit Corporation Pvt. Ltd. v. Flexi Infotech Pvt. Ltd.

6


of 270 days which included (90 days extension). The applicant has also submitted that he is not willing to be appointed as Liquidator and prayed for appointment of Liquidator from the panel.

7. This application has been filed as per the provisions of section 33 of IBC, 2016 of which the relevant sub-section 1 and 2 of section 33 is reproduced hereunder;

*“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 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.”*

I.A. No. 2713 of 2021  
Connected with IB no. 1625/(ND)/2019  
Ashmit Corporation Pvt. Ltd. v. Flexi Infotech Pvt. Ltd.



*(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).*

8. This Tribunal under the circumstances, taking into consideration the provisions of law, as no Resolution Plan has been received within the period of 270 days and as the Insolvency Resolution Process Period has expired, therefore the Tribunal passes an order for liquidation of the corporate debtor 'M/s Flexi Infotech Private Limited', and the incidence of liquidation to follow, on and from the date of this order in terms of the provisions of IBC, 2016 and more particularly as given in Chapter - III of IBC, 2016 and also in terms of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 along with the following directions:

I.A. No. 2713 of 2021  
Connected with IB no. 1625/(ND)/2019  
Ashmit Corporation Pvt. Ltd. v. Flexi Infotech Pvt. Ltd.



- a. As per section 34(5) and 34(6) of IBC, 2016 the name of Insolvency professional as proposed by the Board to be appointed as Liquidator is of Mr. Parveen Kumar Adlakha, Insolvency Professional holding registration No. IBBI/IPA-002/IP-N01034/2020-2021/13336, having email id- praveenadlakha@gmail.com, is proposed to be appointed as the Liquidator and he is directed to comply with section 34(6) of IBC, 2016 and to furnish his written consent in specified form within ten days of the direction issued by the Adjudicating Authority under sub-section (5).
- b. The fees of the Liquidator shall be in accordance to the Provisions of section 34(8) and 34(9) of IBC, 2016.
- c. The Liquidator is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- d. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;

I.A. No. 2713 of 2021  
Connected with IB no. 1625/(ND)/2019  
Ashmit Corporation Pvt. Ltd. v. Flexi Infotech Pvt. Ltd.

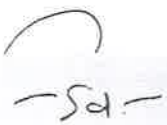


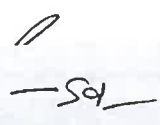
- e. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. Similarly in relation to other fiscal and regulatory authorities which governs the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation
- f. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- g. This order is deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- h. 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 and in accordance with the relevant regulations.



FREE OF COST COPY

- i. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
9. Copy of this order be sent to the Corporate Applicant/Corporate Debtor and the Liquidator for taking necessary steps.
10. That the IA/2713/(ND)/2021 filed in connection with IB-1625/ND/2019 is disposed of in the aforesaid terms.

  
(SH. RAHUL BHATNAGAR)  
MEMBER (TECHNICAL)

  
(SH. P.S.N. PRASAD)  
MEMBER (JUDICIAL)

(RDS)



  
सहायक पंजीयक  
ASSISTANT REGISTRAR  
राष्ट्रीय कम्पनी विधि अधिकरण  
NATIONAL COMPANY LAW TRIBUNAL  
C.G.O. COMPLEX, NEW DELHI-110003

I.A. No. 2713 of 2021  
Connected with IB no. 1625/(ND)/2019  
Ashmit Corporation Pvt. Ltd. v. Flexi Infotech Pvt. Ltd.