

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH at AHMEDABAD
COURT 1**

IA 89 of 2018 in TP 162 of 2019 [CP (IB) 18 of 2017]

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 29.05.2020**

Name of the Company: Nitin Hasmukhlal Parikh RP of Bhatia
Global Trading Ltd
V/s
IDBI Bank Ltd
Section: 33 of Insolvency and Bankruptcy Code, 2016

| <u>S.NO.</u> | <u>NAME (CAPITAL LETTERS)</u> | <u>DESIGNATION</u> | <u>REPRESENTATION</u> | <u>SIGNATURE</u> |
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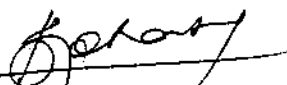
- 1.
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ORDER

The case is taken up through video conferencing.

The case is fixed for pronouncement of order today.

The order is pronounced in open Court as order in detail is recorded vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 29th of May, 2020



I.A. No. 89 of 2018
in
C.P. (I.B.) No. 18/7/NCLT/AHM/2017

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

I.A. No. 89 of 2018
in
C.P. (I.B.) No. 18/7/NCLT/AHM/2017

In the matter of:

Mr. Nitin Hasmukhlal Parikh,
Resolution Professional of
Bhatia Global Trading Limited,
Having its office at:
737, Fortune Tower,
Sayajigunj,
Vadodara 390 007

.....Applicant

Versus

IDBI Bank Limited
IDBI Towers,
WTC Complex,
Cuffe Parade,
Mumbai 400 005

Specialized Corporate Branch at

Upper Ground Floor,
Captain CS Naidu Arcadé,
Near Greater Kailash Hospital,
10-2, Old Palasia,
Indore - Asian Natural Resources (India) Limited
Corporate Debtor
Having registered office at
102, Sundram Complex,
Gurmeet Nagar,
Indore 452001

.....Respondent

Order delivered on 29.05.2020

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**



Handwritten signatures and initials.

Appearance: Mr. Baiju Bhagat, Advocate for CoC. Mr. Saurabh N. Soparkar, Sr. Advocate, Mr. Monaal J. Davawala, Mr. Aditya Krishnamurthy, Tripti Sharma, Ruchir Goenka and Pabitra dutta, Advocates for Curator. Mr. Percy Kavina, Senior Counsel for Harmish K Shah, Advocate and Mr. Harmish K Shah, Advocate for the RP.

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. This I.A. No. 89 of 2018 has been filed under Section 33 and 34 of the Insolvency and Bankruptcy Code, 2016 by the Resolution Professional, Mr. Nitin Hasmukhlal Parikh before this Tribunal seeking liquidation of the Corporate Debtor on the ground that no resolution plan could be accepted, hence this application under Section 33 and 34 of the Insolvency and Bankruptcy Code, 2016.
2. The Financial Creditor filed a petition for initiation of Corporate Insolvency Resolution Process under Section 7 of the Code and an admission order was passed by this Adjudicating Authority on 23.05.2017, wherein moratorium was declared under Section 14 of the Code and appointed the Applicant Mr. Nitin Hasmukhlal Parikh as Interim Resolution Professional.
3. The Applicant has stated that first meeting of CoC was held on 20.06.2017 wherein the Applicant was appointed as the Resolution Professional.
4. The second CoC meeting was held on 16.08.2017 wherein the Promoters of the Corporate Debtor Company submitted the resolution plan for consideration of the Committee of Creditors.
5. It is submitted that since the period of 180 days getting over on 19th November, 2017 the application was made to this Adjudicating Authority requesting extension of time. This Adjudicating Authority granted extension of 30 days only vide its order dated 16.11.2017. The Applicant filed an application before NCLAT against the order of this Adjudicating Authority of 16.11.2017 and NCLAT was pleased to modify the order and extended the period upto 90 days for the resolution process.



6. At CoC meeting held on 01.12.2018 it was unanimously decided to invite expression of interest from public as the earlier plan submitted by the promoters could not be considered in view of the amendment made in the Insolvency and Bankruptcy Code, 2016 on 23rd November, 2017. Accordingly, an advertisement was published in Economic Times and Dainik Bhaskar.

7. Pursuant to the advertisement, only one resolution plan was received which was placed for the consideration of CoC at its meeting held on 7th February, 2018 and the CoC advised the Resolution Applicant to submit the modified plan by 09.02.2018. **However, through e-voting, the said Resolution Plan was rejected by CoC.**

8. It is submitted that maximum period permissible under Insolvency and Bankruptcy Code, 2016 is of 270 days from the date of admission of the application for initiation of CIRP and the said period was over on 18th February, 2018 and hence the **CoC at its meeting held on 26.02.2018 recommended and authorized the Resolution Professional, the Applicant to make an application before this Adjudicating Authority for liquidation of the Corporate Debtor M/s. Bhatia Global Trading Company. The CoC has also recommended the RP to be appointed as the Liquidator.**

9. Accordingly, the Applicant has prayed for the following reliefs:

i. That an order of liquidation in respect of Corporate Debtor M/s. Bhatia Global Trading limited having its registered office at BCC House, 8/5 Manoramaganj, Navratan Bagh Main Road, Indore, MP 452 001 be passed.

ii That the Resolution Professional Mr. Nitin H Parikh having registration No. IBBI/IPA-002/IP-N00058/2017-18/10110 be appointed as Liquidator of Corporate Debtor M/s. Bhatia Global Trading Limited as name of the Liquidator has been approved by 9 members of CoC and he is required to perform his duties as per Section 7.

Since allegations have been made against the Liquidator by some of the Creditors, it is made clear that Resolution Professional is only a Facilitator and he is not the deciding authority for the claims and it is only the CoC who



decides the claim. Therefore, I do not find any reason to differ from the decision of the CoC not to appoint Mr. Nitin H Parikh as the Liquidator of the Corporate Debtor. In case some of the Operational Creditors who have complained against the proposed Liquidator, they may refer the matter to the IBBI as IBBI is the Regulator for all Insolvency Professionals registered with them for their investigations and doing the needful at their end.

10. **Having gone through the papers submitted by the RP and the arguments of the learned Lawyer of the RP, I am of the view that present application filed under Section 33 of the Insolvency and Bankruptcy Code, 2016 for liquidation of the Corporate Debtor, Bhatia Global Trading limited and resolution passed by the CoC with a voting percentage of 100% needs to be passed.**

Hence, the Corporate Debtor is ordered to be liquidated.

11. Consequently, the RP Shri Nitin Hasmukhlal Parikh, Reg. No. IBBI/IPA-002/IP-N00058/2017-18/10110 as per the resolution of CoC and written consent, **is appointed as the Liquidator as provided under Section 34(1) of the Code.**

12. As envisaged under Section 34(2) of Insolvency and Bankruptcy Code, 2016 on the appointment of a Liquidator under this section, all 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 with the Liquidator.

13. The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 shall apply in relation to liquidation process.

14. **Since the Liquidation order has been passed, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor under Section 33(5) of the Insolvency and Bankruptcy Code, 2016, save and except as mentioned in Section 52 of the Code. However, a suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor with the prior approval of this Adjudicating Authority.**

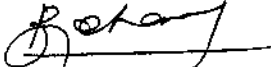


15. As envisaged under Section 33(6) of the Insolvency and Bankruptcy Code 2016 the provisions of Sub-Section of **Section 33 shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government** in consultation with any financial sector regulator.
16. **This order for liquidation under Section 33(7) 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.**
17. The Liquidator shall charge such fee for the conduct of liquidation proceedings and in such proportion to the value of the Liquidation Estate assets, as may be specified by the Board as envisaged under Section 34(8) of Insolvency and Bankruptcy Code, 2016.
18. The Liquidator appointed herein is **directed to issue public announcement in Form B of Schedule II within 5 days from the date of appointment stating that the Corporate Debtor is in liquidation and also required to send the copy of this order to the concerned Registrar of Companies as required under Section 33(1) of the Code.**
19. The Liquidator is hereby advised to **adhere to the time limit as stipulated for completion of Liquidation Process and perform all his functions and duties contemplated inter alia in Section 35, 36, 37, 38, 39, 40, 41, 43, 45, 50, 53, 54 of Insolvency and Bankruptcy Code, 2016 and Rules of 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 23, 25, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 44, 45 & 46 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.**
20. **Accordingly, this application is hereby allowed, directing the Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 by following the liquidation**



11407(1)/2020/CRU-IBBI

process given in Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.


(Prasanta/Kumar Mohanty)
Adjudicating Authority
Member (Technical)

LCT



IA No.89 of 2018 in TP 162 of 2019 [CP (IB) No. 18/7/NCLT/AHM/2017]

[Per: Mr. Harihar Prakash Chaturvedi, Member (J)]

While agreeing with the conclusion of the present IA seeking Liquidation of the Corporate Debtor Company, as per Section 33 and 34 of the I & B Code, I would like to submit express my reason and observation separately as under:-

As per record, the present IA, i.e., IA No.89 of 2018 in CP (IB) No. 18/7/NCLT/AHM/2017, was filed before this Bench on 6th March, 2018. This Adjudicating Authority passed an admission order in the main IB Petition, CP (IB) No.18/7/NCLT/AHM/2017, on 23.05.2017 and, thereafter, the Moratorium was declared under Section 14 of the Code by appointing Mr. Nitin Hasmukhlal Parikh, as IRP, later on he was further confirmed, by the CoC, to act as RP to conduct and complete the CIRP in respect of the Corporate Debtor Company.

As per material available on record, during the period of CIRP, the learned RP has invited claims from creditors by making publication and further invited Expression of Interest through paper publication.

Pursuant to this, only one Resolution Plan was received by the RP. However, the same could not be approved even after due consideration and deliberation in the meeting of the CoC. Therefore, the CoC, in its meeting dated 07.02.2018, passed a resolution with its requisite majority to reject the Resolution Plan. Thereafter, the CoC, in its meeting dated 26.02.2018, passed necessary resolution to recommend to go for Liquidation of the Corporate Debtor



company. Thus, it authorized the present Applicant-RP to file an application for Liquidation, before this Adjudicating Authority, for liquidation of the corporate debtor company, viz., **M/s. Bhatia Global Trading Limited**. The CoC also recommended that the present RP, Mr.Nitin Hasmukhlal Parikh, to be continued as Liquidator of the corporate debtor company, if the corporate debtor company is ordered for Liquidation by this Adjudicating Authority, in exercise of power conferred under Section 33 and 34 of the I & B Code, because the CoC has taken a conscious decision with its 100% majority of voting to recommend for liquidation of the corporate debtor company. in view of this, the liquidation order needs to be passed.

Notwithstanding the above, the issue arise for our consideration is that as to whether the present RP, **Mr.Nitin Hasmukhlal Parikh** should be allowed to continue to act as the liquidator of the corporate debtor as per the provisions of the I & B Code, because some claimants have raised objection about the attitude and way of conducting the CIR Process by the RP and, thus, has expressed not only its dissatisfaction but raised doubt about his independence and impartiality.

A perusal of material available on record shows that one of the claimants/objectors, viz., M/s.Vitol SA (Switzerland) has made complaint that it had lodged a claim of **Rs.532.91 crores** against the corporate debtor company, **M/s. Bhatia Global Trading Limited**, but the RP did not properly consider its claim and has rejected it arbitrarily. It is now well settled legal position, after the decision of the Honourable Supreme Court in the matter of **ArcelorMittal India**



Private Limited Vs. Satish Kumar Gupta &Ors. and Swiss Ribbons Pvt. Ltd. &Anr. Vs. Union of India &Ors, that the RP has been vested with no such adjudicatory power.

The RP's role is to collate the information about claim and to update the list of claim and to place it before the CoC for its proper consideration. In case the RP feels some procedural difficulty or hardship in respect of admissibility of such claim, then the RP is expected to consult with the CoC or he can move with an application before this Adjudicating Authority seeking appropriate direction.

Since this Adjudicating Authority and CoC are assigned supervisory role over the function of the RP as per decision of the Hon'ble Supreme Court in the matter of *Swiss Ribbon vs. Union of India &Ors.*, it is legally settled that the RP has been vested with no such adjudicator power to reject any claim in fact it can register/collate the claim and update the list of claim including the disputed claim. Since this issue is not the subject matter of the present IA, we do not express our view on its merits of such claim.

It is further settled legal position that the Liquidator is to be appointed in respect of the corporate debtor company by this Adjudicating Authority, under the provision of the I & B Code. Since one of the claimants, viz., Vitol S.A, has raised objection that its claim has been rejected arbitrarily and not considered properly by the present RP, hence, it may not get fair treatment before the proposed Liquidator while making further verification of admissibility of its claim, during proposed liquidation process, which can be adjudicated by the Liquidator, as per the provisions of the I&B Code.



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Then in such circumstances, the Liquidator may show biased approach and attitude to such claimant. Hence, it made such request to replace the present RP cum proposed liquidator with some other IP as Liquidator.

We heard the rival submission put forth before us by the learned counsel for the parties, i.e. Sr. Advocate, Mr. Percy Kavina along with Advocate Mr. Harmish K. Shah, for the Resolution Professional. Advocate, Mr. Baiju Bhagat, for the Committee of Creditors. Sr. Advocate Mr. Saurah Soparkar along with Advocates, Mr. Monaal J. Davawala, Mr. Aditya Krishnamurthy and Pabitra Dutta, for Caveator, i.e. Vitol S.A.

Therefore, the issue arises for our consideration in the present IA as to whether the present RP can be allowed to continue with and to act as Liquidator of the Corporate Debtor company **M/s. Bhatia Global Trading Limited.**

We duly considered the statutory provision of Section 33 of the I&B Code, if such application is moved before the Adjudicating Authority, it can pass an appropriate order under Section 33 (1) (i) *to pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in this Chapter (IBC).*

Further, *Section 34 (1) of the I & B Code, provides such that if the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under [Chapter II shall, subject*



to submission of a written consent by the resolution professional to the Adjudicating Authority in specified form] act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).

Thus, this Adjudicating Authority has been conferred with necessary power to replace the liquidator and may direct the Insolvency and Bankruptcy Board of India (IBBI) to propose another name of Insolvency Professional to be appointed as Liquidator and the Board shall propose another name of IP, as per provisions of Section 34 of the I & B Code.

Considering such statutory provisions and keeping in view of the serious grievance made by one of the claimants/objectors by raising doubt about impartiality and independence of the RP, without expressing our view on merits of such allegation / contention, we feel appropriate to consider the paramount interest of the corporate debtor company proposed for liquidation and about the smooth conduct of its liquidation process. Therefore, it is expedient to ensure transparency and fairness in the proposed liquidation process to rule out possibility of any alleged partiality or discrimination with any claimant / stakeholder. Therefore, the CoC is legally expected to reconsider its decision for appointment of proposed liquidator in the above given circumstances and in the light of this order. Therefore, the CoC is directed so accordingly.

Further, in exercise of power conferred to it this Adjudicating Authority, a formal request is made with the IBBI to propose the

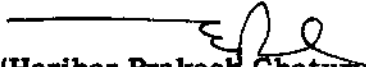


name of two Insolvency Professionals who can be considered for appointment as Liquidator. Their candidature can be considered along with the candidature of the present RP, Mr. Nitin Hasmukhlal Parikh, in the light of the observation of this Adjudicating Authority. Thereafter, the CoC can take conscious and appropriate decision in the light of Honourable Supreme Court's decision in the matter of **Committee of Creditors of M/s. Essar Steel Ltd. vs. Satish Kumar Gupta and K. Sashidhar Vs. Indian Overseas Bank** to make fresh recommendation of the name of more deserving and suitable person to act as Liquidator among from them.

With the above said observation, the present IA is partly allowed and accordingly stands disposed of.

A copy of this order be communicated to the CoC, through the Applicant-RP.


Registry is directed to communicate a copy of this order to the **IBBI**, for doing the needful.


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

SR



Certified to be True Copy of the Original


Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad

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