



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

ITEM No. 143
IA/803(AHM)2022 in CP(IB) 599 of 2019

Order under Section U/s 33 IBC, 2016

Mr. Rajubhai Patel RP of Cooltech Containers Private Limited

.....Applicant/RP

IN THE MATTER OF:

Salem Stainless Steel Suppliers Pvt Ltd.

...Operational Creditor

V/s

Cooltech Containers Private Limited

...Corporate Debtor

Order delivered on ..11/01/2022

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)

Kaushalendra Kumar Singh , Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
DR. MADAN B GOSAVI
MEMBER (JUDICIAL)



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

**I.A. No. 803 of 2022 IN
C.P. (I.B.) No.599/NCLT/AHM/2019**

(Application under Section 33 of the Insolvency and Bankruptcy Code,
2016)

Mr. Rajubhai Patel

Resolution Professional of,
Cooltech Containers Private Limited,
Address at: 314, Phoenix Complex, Near Suraj Plaza
Sayajigunj, Vadodara, Gujarat 380013

...Applicant/ RP

In the Matter of:

CP (IB) No. 599 of 2019

[An application under section 9 of the Insolvency and Bankruptcy Code,
2016]

Salem Stainless Steel Suppliers Pvt Ltd.

Address:

33, Lawyer Chinnathambhi Street
Kondihope, Chennai,
Tamilnadu - 600079

...Operational Creditor

Versus

Cooltech Containers Private Limited,

Address:

Plot No. 7-8,
Sachin Notified Industrial Area,
GIDC Block No 378/P

...Corporate Debtor

Order Pronounced on: 11.01.2023

**Coram: Dr. Madan B. Gosavi, Member (Judicial)
Kaushalendra Kumar Singh, Member (Technical)**

Appearance: Mr. Rushabh Shah, PCS for the Applicant.



ORDER

1. The instant Application is filed by Mr. Rajubhai Patel, Resolution Professional of Corporate Debtor Cooltech Containers Private Limited, under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “Code”) for liquidation of the Corporate Debtor.

2. This Adjudicating Authority, vide order dated 17.12.2020, had admitted the application filed by M/s. Salem Stainless Steel Suppliers Private Limited, under Section 9 of Code for initiation of Corporate Insolvency Resolution Process (‘CIRP’) of the Corporate Debtor and appointed Mr. Kedar Ramratan Laddha as the Interim Resolution Professional (‘IRP’). Thereafter, Mr. Rajubhai Patel was appointed as Interim Resolution Professional (‘IRP’).

3. The Applicant submitted that the Public Announcement dated 30.07.2021 in Form- A was published and circulated in the newspapers in Financial Express (English), Gujarat Guardian (Gujarati), and in website of IBBI (Insolvency and Bankruptcy Board of India). The IRP had constituted Committee of Creditors (CoC) with Operational Creditors as per regulation 17(1) of CIRP regulations, 2016 which are as follows:

Sr. No.	Name of the Creditor	Amount of Claim (in INR)
1.	Employees P.F. Organisation, Regional Office, Coimbatore	10,11,689/-
2.	State Sale Tax Office, Surat	7,25,590/-

4. The Applicant further submitted that the IRP intimated suspended Directors of the Corporate Debtor in respect of the initiation of CIRP and requested for the handing over of the charge of Corporate Debtor and further



requested to list all the relevant documents and information of the corporate debtor and there after filed an application u/s 19 for non-cooperation. An IA 409 of 2022 is attached with the application with copy of order dated 09.05.2022.

5. In the 1st CoC meeting, the IRP was approved for appointment as Resolution Professional. The agenda for approval of the professional fees and expenses of resolution professional was put for voting. However the member of CoC abstained from voting on agenda.

6. Thereafter the Applicant filed an application u/s regulation 33 for reimbursement of CIRP expenses from the original operational creditor namely "Salem Stainless Steel Suppliers Pvt Ltd." who initiated the CIRP proceedings and this Adjudicating Authority directed the Operational Creditor to pay sum of Rs. 2,95,026/- vide order dated 23.02.2022 in IA 851 of 2021. Against that order, and the Operational Creditor filed an appeal before Hon'ble NCLAT. The matter is still pending in NCLAT for adjudication.

7. The Applicant submitted that they have not issued Expression of Interest (EOI) in Form G. An application u/s 19(2) is filed before NCLT Ahmedabad Bench, which is pending for adjudication.

8. The Applicant stated that despite of repeated requests and notices to the members of CoC, they did not attend the CoC meetings resulting the halt in entire CIRP proceedings. It is also stated that the original operational creditor "Salem Stainless Steel Suppliers Pvt Ltd." On whose application CIRP was initiated also has not filed his claim. The applicant had issued notices to the members of CoC comprising of only two Operational Creditors for attending the CoC meeting for completion of CIRP process.

9. It is further stated that the applicant has filed an application u/s 60(5) of the IBC 2016 seeking necessary directions before this Bench for filing



appropriate application for liquidation of the Corporate Debtor. The matter was listed on 30.05.2022 and this Adjudicating Authority instructed RP to file appropriate application for liquidation of the Corporate Debtor. Copy of order in IA 432 of 2022 is attached with the Application. The Compliance Certificate in Form H under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency resolution process for Corporate Persons) Regulations, 2016 is also attached with the application.

10. Further the compliance w.r.t Regulation 39 B (Meeting liquidation costs), Regulation 39 C (Assessment of sale as a Going Concern) and Regulation 39 D (Fees of Liquidator) could not be decided as CoC comprising of operational creditors were not attending the meetings.

11. We have carefully heard and considered the arguments of the learned counsels and have also perused the records. The CIRP period upto 270 days have already been completed on 23.04.2022 and there is no resolution during the CIRP. Taking into consideration the above facts in relation to the affairs of the Corporate Debtor, the provisions of Section 33 of Code are as follows:

“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 creditor 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-clause (i), (ii) and (iii) of clause (b) of Sub-Section (1)”

12. In view of the above facts, and in view of the Provisions of Section 33 of the Code, we proceed to pass the following order:

- i. We hereby pass the order of liquidation of the Corporate Debtor “Cooltech Containers Private Limited”, and allow IA No. 803 of 2022. The liquidation of the Corporate Debtor is effective from the date of this order.
- ii. The liquidation of the Corporate Debtor is effective from the date of this order and the Moratorium declared vide order dated 17.12.2020 in CP (IB) No. 599/NCLT/AHM/2019, henceforth, ceases to exist.
- iii. As per the Section 34(1) of the I.B. Code, Mr. Ravi Kapoor having Registration No. IBBI/IPA-002/IP-NOO121/2017-18/10290 is hereby appointed as a Liquidator of the company, Cooltech Containers Private Limited, who shall complete the liquidation process as per the provisions of Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- iv. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter cease to exist. All these powers henceforth vest with the Liquidator.



- v. 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 of the Code shall apply in relation to liquidation process as they apply in relation to CIRP process with the substitution of references to the Interim Resolution Professional for references to the Liquidator.
- vi. As per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;
- vii. The provisions of sub-section (5) of Section 33 of the Code 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.
- viii. This order of liquidation under Section 33 of the Code 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; and
- ix. Registry is directed to upload this order on the official website within maximum two working days from the date of this order. The authenticated copy of this order also to be sent by the registry to Operational Creditor, Corporate Debtor, Registrar of the Company, Resolution Professional cum Liquidator by Speed-post within one week from this order.



Accordingly, the present I.A. No. 803 of 2022 in CP (IB) 599/NCLT/AHM/2019 allowed and stands disposed of.

**-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

**-SD-
DR. MADAN B GOSAVI
MEMBER (JUDICIAL)**

Divya/LRA