

**IN THE NATIONAL COMPANY LAW
TRIBUNAL, MUMBAI BENCH - I**

I.A. 1487 OF 2021

Under Section 33(2) of
Insolvency & Bankruptcy Code,
2016

Filed by

Mr. Bhaskar Gopalshetty

Having registered office at: C-77,
Shanti Shopping Center Mira Road
East, Maharashtra- 401107

....Resolution Professional/Applicant

In the matter of

C.P. No. 571 of 2019

STPM LOGISTICS LLP

V/s

**MIRAGE CERAMICS PRIVATE
LIMITED**

Order delivered on: 15.06.2023

Coram:

Hon'ble Member (Judicial) : Mr. H. V. Subba Rao Hon'ble

Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Applicant : Mr. Nevil M. Chopra

The above application is filed by Resolution Professional, Mr. Bhaskar Gopalshetty seeking liquidation of MIRAGE CERAMICS PRIVATE LIMITED., (hereinafter referred as Corporate Debtor) under Section 33(2) of Insolvency and Bankruptcy Code, 2016 (*hereinafter "IBC, 2016"*) for the

following reliefs:

- a. To pas an order of liquidation of the Corporate Debtor in accordance with Section 33(1) of the IBC; and
- b. To pass any such order as this Hon'ble Tribunal may deem fit.

The brief facts of the Application are as follows:

1. The applicant submits that the CIRP of the Corporate Debtor was initiated vide order dated 14th February, 2020 by this Hon'ble Tribunal. Through the same order, Mr. Bhasker Gopalshetty was appointed as the Interim Resolution Professional ("IRP").
2. That pursuant to receipt of the aforesaid order, the IRP took necessary steps as directed in the order as per the provisions of the code and Rules made thereunder, took over the control and custody of the Corporate Debtor.
3. Thereafter the IRP made a public announcement calling for submissions of claims and after scrutinizing the claims, the Committee of Creditors ("COC") was formed on 11th March, 2020. The constitution of the COC is as under:

Sr no.	Name	Percentage/Voting Rights
1.	Kamlesh Mehta	56.86%
2.	Abhyudaya Co-op Bank Ltd.	43.14 %
3.	Deputy Commissioner of State Tax, Mumbai	0 %

4. In the first COC held on 17-03-2020, the IRP i.e. Mr. Bhaskar

Gopal Shetty was proposed and appointed as Resolution Professional till conclusion of CIRP ("RP"). Since then the RP has made substantial progress in the CIRP process and the same was evident from the various Progress Reports filed by the RP with this Hon'ble Tribunal in respect thereof; on (1) 10th March, 2020 (2) 28th March, 2020 (3) 31st August, 2020, (4) 16-02-2021, (5) 02-04-2021 and (6) 22-06-2021.

5. The Applicant further submits that, Abhyudaya Bank has assigned their Loan to Asrec (India) Ltd. A Securitisation and Asset Reconstruction Company on 26-08-2020. Hence COC has been reconstituted as follows accordingly.

Sr. No.	Name	Percentage/Voting Rights
1.	Kamlesh Mehta	56.86%
2.	Asrec (India) Ltd.	43.14%
3.	Deputy Commissioner of State Tax, Mumbai	0%

6. The Applicant further submits that, valuers have been appointed and Valuation Reports were obtained for all the three class of Assets i.e. 1. Land and Building 2. Plant and Machinery and 3. Financial Asset and Stock as per the Regulations. The details of the valuation of Corporate Debtor as on 14th February, 2021 as under :

Particulars	Final Value	Fair Value	Final Liquidation Value
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Land and Building	36,91,53,500	27,68,65,000
Plant and Machinery	17,76,55,024	12,86,53,517
Financial Assets and Stock	1,14,64,645	94,78,086
Total	55,82,73,169	41,49,96,603

7. As per Section 25(2)(h) of IBC Code, Applicant invited prospective resolution applicants, who fulfill criteria and with the approval of COC, to submit resolution plan as under:

Particulars	Date of Publication	Status
First invitation for Expression of Interest	24 th November, 2020	Failed
Second invitation for Expression of Interest	13 th January, 2021	Failed
Third Expression of Interest	24 th February, 2021	A. Five (5) Resolution Applicants have expressed their interest. B. Out of which Three (3) were

		found eligible and were requested RFRP. C. Only one (1) Resolution Applicant submitted the Resolution Plan which was rejected by COC at the Seventh COC meeting held on 10-05-2021.
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8. The RP in consultation with the COC appointed Kirtane & Pandit LLP (“auditors”). Chartered Accountants to conduct transaction audit under the provisions of IBC covering the period starting from February 14, 2017 upto February 13, 2020 (“Relevant Period”) with regards the following:

- (i) Preferential Transactions section 43 of the Code;
- (ii) Undervalued Transactions section 45 of the Code;
- (iii) Transactions defrauding creditors section 49 of the Code;
- (iv) Extortionate Credit Transactions section 50 of the Code; and
- (v) Fraudulent Trading or Wrongful Trading section 66 of the code;

9. Upon a thorough transaction forensic audit conducted by the Auditors with regard the aforesaid items for the Relevant Period, a detailed report dated 12th March, 2021 ("Audit Report") was issued by them. Based on the findings in the Audit Report, the RP has filed an application bearing no. IA 935/2021 before this Hon'ble Tribunal seeking reliefs inter alia for declaring such transactions as void and reversal of the same. The said application is still pending before Hon'ble Bench.
10. The Applicant further submits that, On 26th March, 2021, out of 5 Resolution Applicants who have expressed their interest, the Applicant requested 3 eligible Resolution applicants i.e. (i) J.C. Flowers Asset Reconstruction Pvt. Ltd ; (ii) Consortium of Mr. Syed Fahad and Mr. S.M. Kamal Pasha; and (iii) Shri Kamlesh G. Mehta (being the Financial Creditor and member of COC) to submit their respective Resolution Plans. Last date of submission of the Resolution plans by these Eligible Resolution applicants was 25th April, 2021.
11. Out of these 3 Eligible Resolution Applicants, only one Resolution Applicant i.e. Shri Kamlesh Mehta (being the Financial Creditor and member of COC) submitted resolution Plan ("**Resolution Plan**"), which was put for consideration in the 7th COC meeting held on 10th May, 2021.
12. During the said 7th meeting of COC, the representatives of Asrec (India) Limited rejected the Resolution Plan submitted by Shri Kamlesh Mehta stating that what they would get under the said Resolution Plan was much lower than what they had paid to acquire the said Loan Asset from Abhyudaya Bank through Assignment Deed.
13. In reply to the same, it was explained by Mr. Kamlesh Mehta that the assignment of this loan by Abhyudaya Bank in favour of Arsec was itself illegal and hence cannot be assigned as it had

become a Non Performing Asset within one year from the date of its sanction. Mr. Kamlesh Mehta had further explained during the meeting that Asree has bought this Loan Asset from Abhyudaya Bank along with other 11 [Eleven] Loan Accounts at average price of 50%.

14. Shri Kamlesh Mehta reiterated that Resolution Plan submitted by him takes care of the interests of all the stakeholders, as all stakeholders including the dues of government are taken into consideration and upon implementation of the said Resolution Plan, the factory of the Corporate Debtor would re-start and employment would also be generated. The Deputy Commissioner of State Tax, Mumbai was also of the view that the Resolution Plan was viable as it takes care of the interests of all the stakeholders.

15. The said Resolution to approve the Resolution Plan was put to E-voting by the Applicant. Mr. Kamlesh Mehta (with voting share of 56.86%) voted in favour of the Resolution Plan, however, Arsec (with voting share of 43.14%) voted against the Resolution Plan. Thus, the COC did not approve the Resolution Plan.

16. As the Resolution Process failed the COC decided to go ahead with liquidation of the Corporate Debtor. The Applicant conveyed the 8th meeting of COC on 31st May, 2021, and placed his consent to act as Liquidator. COC unanimously voted and resolved to appoint the RP i.e. Mr. Bhaskar Gopal Shetty to continue as the Liquidator and his fees were fixed and the estimated liquidation costs were also approved. As decided in the 8th COC Meeting, following Resolution is put for e-voting:

“Resolved that the Committee hereby recommends the Liquidator that he may first explore sale of the Corporate Debtor as a Going Concern under clause(e) of Regulation 32 of the Insolvency and Bankruptcy Board of India

(Liquidation Process) Regulations 2016 or sale of the Business of the Corporate Debtor as a Going Concern under clause (f) thereof read with Regulations 39C of Insolvency Resolution Regulations, 2016. The Committee also approves that the assessment of sale as a going concern as described under Regulation 39C of IBC 2016, shall be decided by the Stakeholders Consultation Committee.”

17. The Applicant has complied with all the requirements under the CIRP Regulations and has also intimated to Insolvency and Bankruptcy Board of India ("**IBBI**") regarding such compliances as and when required under the IBC Code, 2016.

18. The Applicant submits before this Hon'ble Tribunal that no EOI or Resolution Plan has been received during the pendency of the CIRP term.

Therefore, the Applicant humbly prays that the Corporate Debtor be hereby liquidated under section 33(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is pertinent to note that the CoC has appointed Resolution Professional i.e. the Applicant herein to act as the Liquidator and thereby sought consent of the Applicant.

19. Heard the arguments of the counsel appearing for the Applicant and perused the material available on record. It is observed from the minutes of the 8th COC meeting dated 31.05.2021 that the COC has, with 100% voting, decided to liquidate the Corporate Debtor and relying on the settled principle of law regarding the Commercial Wisdom of the COC, we hereby allow this Interlocutory Application Number 1487 of 2021 by passing the following:

ORDER

- a. The I.A. 1487 of 2021 is allowed and liquidation order is passed against the Corporate Debtor MIRAGE CERAMICS PRIVATE LIMITED.
- b. **Mr. Bhaskar Gopal shetty**, having Registration No. *IBBI/IPA- 001/IP-P01285/2018-2019/12003* is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- d. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e. The Liquidator appointed under section 34(1) of the Code. Will have 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.
- f. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- g. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.

- h. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- i. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
- j. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

With the above directions, this application i.e. I.A. No. 1487 of 2021 is hereby **allowed and disposed of**.

Sd/-

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

H.V. SUBBA RAO
MEMBER (JUDICIAL)

Jagdish