

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

ITEM No.147

IA/763(AHM)2021 in CP(IB) 665 of 2019

Order under Section 33 IBC,2016

IN THE MATTER OF:

Arvind Damodar Gaudana IRP of Gujarat State Construction Corporation Ltd

.....Applicant

Order delivered on ..02/03/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :


ORDER

The case is fixed for pronouncement of the order.

The order is pronounced in the open court, vide separate sheet.



**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**



**MADAN B GOSAVI
MEMBER (JUDICIAL)**

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

**IA 763 of 2021 In
CP (IB) No. 665/NCLT/AHM/2019**

In the Matter of IA 763 of 2021:

Mr. Arvind Damodar Gaudan
Insolvency Resolution Professional of
Gujarat State Construction Corporation Limited
Having Registered Office at
6, Sahajanand Bunglows, Opp Karnawati Club,
Ahmedabad 380015

...Applicant

And

In the Matter of:

M/S. Gujarat State Construction Corporation Limited,
CIN: U99999GJ194SGC002635
Having its registered office at:
G-1, 201, Sector – 30,
Gandhinagar – 382030

...Corporate Applicant

Order Reserved on: 16.02.2022
Order Pronounced on: 02.03.2022

**Coram: MADAN B GOSAVI, MEMBER (JUDICIAL)
AJAI DAS MEHROTRA, MEMBER (TECHNICAL)**


Appearance: Ld Adv. Mr. Pavan S. Godiawala, for the Applicant.



ORDER

[Per Bench]

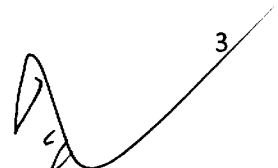
1. IA 763 of 2021 filed under Section 33 read with Section 34 of the Insolvency and Bankruptcy Code, 2016 (‘IB, Code’) for passing an Order for Liquidation in the case of the Corporate Debtor, viz., Gujarat State Construction Corporation Limited.
2. The facts in brief, are that the aforementioned Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) by this Adjudicating Authority under section 10 of IB Code vide order dated 11.11.2020. The applicant Mr. Arvind Gaudana was appointed as Interim Resolution Professional (IRP) who made public announcement as per Section 15 of the IB Code, 2016. The Applicant was later confirmed as Resolution Professional (RP).
3. The Corporate Debtor had defaulted to the Government Financial Institution, for the debt amounting to total Rs. 65,80,37,840/- as per financial statement for the year ended on 31.03.2018.
4. It is evident from the record that in compliance of Section 21 of IB Code, 2016 read with Rule 6 & 8 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate



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Persons) Regulations, 2016 (hereinafter referred to as "CIRP Regulation"), the IRP constituted CoC.

5. The CoC in its 2nd meeting held on 03.09.2021 had discussed that the Corporate Debtor is a closed Company and there are no remote chances for revival and further there are meager movable assets, hence it would be futile exercise to undertake the further actions of publishing the Form G, as there is no claim lodged except of one financial creditor being the Gujarat Government Financial Institution. Thereby, the CoC in its 2nd meeting decided to pass a resolution for liquidation and also resolved to appoint the Applicant herein Mr. Arvind Gaudana bearing registration No. IBBI/IPA-002/IP-00154/2016-17/1439 as a liquidator under Section 34 (4) of the Code. Further in accordance with Regulation 32 of Liquidation Process Regulations, 2016 the CoC had resolved to fix liquidator's fee out of pocket expenses at Rs. 75,000/- per month.
6. We have carefully heard and considered the arguments of the learned counsel for the RP and have also perused the records. We noted that the Corporate Debtor was incorporated as a private limited company on 16.12.1974 having CIN: U99999GJ1974SGC002635 there are no claims lodged by Operational Creditor and the only Financial Creditor is Government



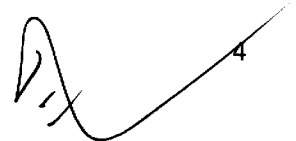
of Gujarat. The Corporate Debtor is also fully owned by the Government of Gujarat. We noted that CoC has recommended liquidation of the company, as no resolution plan was forthcoming and the company has meager movable assets of approximately Rs. 1.72 lakhs.

7. The Hon'ble National Company Law Appellant Tribunal ('NCLAT'), in Praveen Kumar Nand Kumar Vs. VSL Securities Pvt. Ltd. in CA No. 1/2020 in CA No. 308/2000, dated 09.06.2020, observed as under:

"Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review."

8. In view of the foregoing, we hereby pass the order of liquidation of the Corporate Debtor M/s Gujarat State Construction Corporation Limited., and consequently allow IA No. 763 of 2021 and issue following directions:

- i) The liquidation of the Corporate Debtor is effective from the date of this order and the Moratorium declared vide order dated 11.11.2020 in CP (IB) No.665/10/NCLT/AHM/2019, henceforth, ceases to exist.



- ii) The CoC had resolved to appoint the RP as the Liquidator. It is noted that Applicant has failed to file its written consent to act as liquidator in prescribed form. Thus subject to filing of written consent to act as liquidator in Form AA within five days from this Order, this Adjudicating Authority appoints Applicant / Resolution Professional Mr. Arvind Gaudana (Registration No. IBBI/IPA-002/IP-00154/2016-17/1439) as a liquidator of the Corporate Debtor i.e. M/s Gujarat State Construction Corporation Limited who shall complete the liquidation process as per the provision of Code read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.
- iii) It is noted that as no resolution is passed by CoC under Regulation 39B and 39C of CIRP Regulations, the liquidator is directed to take necessary action in accordance with relevant regulations of the IBBI (Liquidation Process) Regulations, 2016.
- iv) 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;
- v) The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such

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transactions as may be notified by the Central Government in consultation with any financial sector regulator; and

- vi) 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
- vii) All the 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 in the Liquidator; and
- viii) 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 CIR process with the substitution of references to the Interim Resolution Professional for references to the Liquidator.
- ix) The Liquidator shall publish public announcement in accordance with Regulation 12 of the CIRP (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stakeholders to submit their claims as on liquidation commencement date and provide the last date



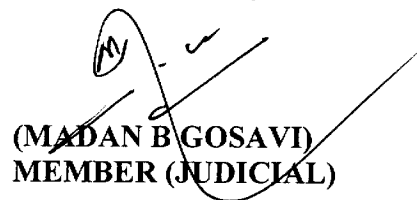
for submission of claim which shall be 30 days from the liquidation commencement date.

- x) The announcement shall be published in accordance with Regulation 12(3) of the CIRP (Liquidation Process) Regulation, 2016.
- xi) That in accordance with Regulation 13 of the CIRP (Liquidation Process) Regulations, 2016, the Liquidator shall file preliminary report within 75 days and also file regular progress reports as per Regulation 15.
- xii) 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 be sent by the registry to the 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. 763 of 2021 stands disposed of.



(AJAI DAS MEHROTRA)
MEMBER (TECHNICAL)



(MADAN B GOSAVI)
MEMBER (JUDICIAL)