

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

ITEM No.301

IA/746(AHM)2022 in CP(IB) 35 of 2020

Proceedings under Section 33(1) of IBC,2016

IN THE MATTER OF:

Devvart Rana RP For Sunshine Hi-Tech Infracon Ltd

.....Applicant

.....Respondent

Order delivered on: 30/08/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, 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.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

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

IA/746(AHM)2022 in CP(IB) No. 35 of 2020
[Under Section 33(1) of the Insolvency and Bankruptcy Code, 2016]

In the matter of **Sunshine Hi-Tech Infracon Limited**

Mr. Devvart Rana

Resolution Professional of
M/s. Sunshine Hi-Tech Infracon Limited
Reg. No. IBBI/IPA-002/IP-N00680/2018-2019/12025
Flat No. 4&5, Swastik Apartment,
Mehrauli, New Delhi-110030.
Email id: devvartrana@gmail.com

....Applicant

Order pronounced on: 30.08.2023

Coram:

SHAMMI KHAN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For the Applicant : Mr. Shravan Chandrashekhar, Adv., Mr.
Devvart Rana,
: RP in person

For the Respondent : Mr. Maulik Nanavati, Adv.

ORDER
(Per: Bench)

1. This application has been filed by the Resolution Professional (RP) under Section 33(1) of the Code seeking the following reliefs:

a. Allow the present Application.

- b. Initiate the Liquidation Process of Sunshine Hi-Tech Infracon Private Limited, having CIN: U70101GJ2012PLC069165, to be liquidated in the manner as laid down under Chapter III of the Code;*
 - c. Appoint the Applicant, Devvart Rana as the Liquidator of Sunshine Hi-Tech Infracon Private Limited.;*
 - d. Direct all the personnel of the Corporate Debtor to extend all assistance and co-operation to the Liquidator, as may be required in managing the affairs of the Corporate Debtor, in discharging his functions, as specified under Section 35 of the Code;*
 - e. Pass an order for the distribution of surplus cash flows of the Corporate Debtor, among the operational creditors, after setting aside amounts for unpaid insolvency resolution process cost and the estimated liquidation costs of the Corporate Debtor, upon preparation of the liquidation estate in terms of Section 36 of the Code.*
 - f. Pass any other order as deemed fit and proper to this Hon'ble Tribunal.*
2. From the application, it is seen that CIRP was initiated vide order dated 05.10.2021 in CP(IB) No. 35 of 2020 and the applicant herein was appointed as Interim Resolution Professional (IRP).
3. The IRP made public announcement on 10.10.2021 and pursuant to the receipt of claims formed the Committee of Creditors (CoC). On an application by the RP vide order dated 21.12.2021, Ms. Indira Suresh Vora was appointed as the Authorised Representative (AR).
4. It is stated that the first meeting of CoC held on 23.11.2022, IRP was appointed as RP of the Corporate Debtor.

5. It is stated that certain properties belonging to the Corporate Debtor are under the attachment with DM Mandsaur and DM Balod.
6. It is stated that Information Memorandum was prepared by the RP which was published on 28.12.2021.
7. It is stated that pursuant to the issuance of Form- G, 4 (Four) EoIs were received, however, no Resolution Plan was submitted by any of the Prospective Resolution Applicants (PRAs) within the stipulated time.
8. After taking necessary consent from COC, Form-G was re-published on 04.03.2022.
9. Meanwhile, on an application bearing IA No. 322 of 2022, this Tribunal extended the CIRP period by a period of 90 days from 03.04.2022. Despite the re-publication of Form-G, no Resolution Plan was received by the RP.
10. CoC in the 5th meeting held on 25.05.2022 decided for initiation of liquidation process against the Corporate Debtor. A copy of the minutes of the 5th CoC meeting held on 25.05.2022 are annexed at Annexure-18.
11. It is stated that such resolution seeking liquidation of the Corporate Debtor was passed with 100% majority and that CoC further recommended for the appointment of the applicant herein as the Liquidator of the Corporate

Debtor. The e-voting with respect to the resolution is annexed at page no. 164 of the application.

12. Heard the counsel for the applicant.
13. It is seen that CoC in the present matter, with 100% majority has passed resolution recommending liquidation of the Corporate Debtor.
14. The provisions of Section 33(2) of the Code are reproduced below:-

“(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 ¹²[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).

¹²[Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of [section 21](#) and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]”.

15. The Hon’ble Supreme Court in the matter of ***K. Sashidhar Versus Indian Overseas Bank & Ors in Civil Appeal No. 10673 of 2018*** has held that the commercial decision of CoC is non-justifiable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.

16. In terms of the above, we hereby order for liquidation of the Corporate Debtor. IBBI vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in exercise of its powers conferred under section 34 (4) (b) of the Code, had recommended that an IP other than the RP/IRP may be appointed as liquidator in all the cases where liquidator (*read liquidation*) order is passed henceforth. In terms of the above circular of IBBI, we hereby appoint **Truvisory Insolvency Professionals Private Limited** an IPE having registration no. IBBI/IPE-0103/IPA-2/2022-23/50020, as per the panel suggested by IBBI for this Bench for the period of July, 1 to December 31, 2023, as the Liquidator of the Corporate Debtor to carry the liquidation process subject to the following terms of the directions:-

- a) The Corporate Debtor **M/s. Sunshine Hi-Tech Infracon Limited** shall be ordered for liquidation in terms of the provisions of section 33(2) of the Code r.w. Regulations made thereunder which shall be effective from the date of this order. Accordingly, we allow IA/746(AHM)2022.
- b) The Moratorium declared under section 14 of the Code shall cease to have effect from the date of the order of liquidation.
- c) As per section 34(4)(b) of the Code, **Truvisory Insolvency Professionals Private Limited** IPE having registration no. IBBI/IPE-0103/IPA-2/2022-23/50020 is hereby appointed as a Liquidator of the Corporate Debtor i.e. M/s Sunshine Hi-Tech Infracon Limited. The Liquidator so appointed shall complete

the liquidation process as per the provisions of the Code r.w. the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- d) All the powers of the Board of Directors, key managerial persons, and the partner of the Corporate Debtor, as the case may be, hereafter cease to exist. All these powers henceforth vest with the Liquidator.
- e) The personnel of the Corporate Debtor are directed to extend all cooperation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- f) The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by IBBI and same shall be paid to the Liquidator from the proceed of the liquidation estate under section 53 of the Code.
- g) Once the liquidation process is initiated, subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor. The Liquidator has the liberty to institute a suit and other legal proceedings on behalf of the Corporate Debtor with the prior approval of this Adjudicating Authority, as provided in sub-section (5) of section 33 of the Code.
- h) This liquidation order shall be deemed to be 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.

- i) This Adjudicating Authority directs the Liquidator to issue a public announcement stating that the Corporate Debtor is in liquidation. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the liquidation order timely. The Liquidator will also provide a copy of this order to the trade unions/employee associations of the Corporate Debtor so that the workman/employees could also be informed of this liquidation order through their association.
- j) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- k) The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the Corporate Debtor, IBBI, the resolution professional, and the Liquidator by speed post as well as e-mail within one week from the date of this order, after completion of all the formalities.

17. Accordingly, IA/746(AHM)2022 in CP(IB) No. 35 of 2020 is disposed off.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)