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

ITEM No.303
IA/1767(AHM)2024
in
C.P.(IB)/147(AHM)2021

Order under Section 33(2) of IBC

IN THE MATTER OF:
Harish Taneja RP of H.V Synthetics Pvt. Ltd ....**Applicant**

........**Respondent**

Order delivered on: 11/12/2024

Coram:
Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:
For the Applicant :
For the Respondent :

ORDER
(Hybrid Mode)

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)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT–I, AHMEDABAD

IA/1767(AHM)2024
in
CP(IB) No. 147 of 2021

[filed under Section 33(2) *of the Insolvency and Bankruptcy Code, 2016]*

In the matter of:

Mr. Harish Taneja,

Resolution Professional of
M/s. H. V. Synthetics Private Limited
Having address at:
Basement, A-1/228, Safdarjung Enclave,
New Delhi-110029.

....Applicant/RP

Order pronounced on: 11.12.2024

Coram:

MR. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
MR. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant : Mr. MayurKishanchandani, Adv.
Mr. Harish Taneja, RP in person

ORDER
(Per: Bench)

1. Thisis an application filed by the Resolution Professional ("RP") under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") seeking the following prayers:

A. Pass an order for liquidation of the Corporate Debtor in accordance with sub-section (2) of Section 33 of the Insolvency and Bankruptcy Code, 2016.

B. Pass an order to appoint Mr. Harish Taneja, the Resolution Professional to act as the Liquidator of the Corporate Debtor.

C. Pass any other or further order(s) as this Adjudicating Authority may deem fit and proper in the facts and circumstances of the case.

2. It is stated that CIRP was ordered by this Tribunal vide order dated 31.10.2023 on an application under Section 7 of IBC, 2016 filed by one Intec Capital Limited. One Mr. S. Gopalkrishnan was appointed as the Interim Resolution Professional.

3. Vide order dated 20.02.2024, Interim Resolution Professional was replaced by one Mr. AnuragNirbhaya, Resolution Professional.

4. Vide order dated 30.07.2024, the Applicant herein was appointed as the Resolution Professional of the Corporate Debtor.

5. Post the admission of the Corporate Debtor to CIRP, public announcement was made under Form – A on 02.11.2023.

Post receipt of the claims, COC was formed comprising of two Financial Creditors viz.

Sr. No.	Name of Financial Creditors	Voting Share
1	Intec Capital Limited	90.1%
2	Central Bank of India	9.9%

6. Form – H was filed by the Resolution Professional vide Diary No. D-8680 on 03.12.2024. A perusal of the same reveals that 180 days of the CIRP period of the Corporate Debtor expired on 28.04.2024. Thereafter, this Adjudicating Authority extended the CIRP period on two occasions i.e. on 09.07.2024 and on 14.10.2024. The extended CIRP period expired on 07.11.2024.

7. In Para-11 of Page-6, the RP has stated that in the present case, in absence of assets and to reduce cost, neither the Registered Valuer was appointed nor Form–G was published inviting expression of interest.

8. The 11th COC meeting was held on 24.10.2024. At page-89 of the application, the relevant resolution is provided, which is as below:

"RESOLVED THAT pursuant to Section 33(2) of the Insolvency and Bankruptcy Code, 2016, the approval of the COC be & is hereby accorded for Liquidation and further RP to file an application with the Hon'ble NCLT for the Liquidation of the Corporate Debtor.

The members of CoC asserted to put the above Resolution on ballot paper. The RP received the voting sheet on 5.11.2024. Following the vote process Intec Capital, holding 90.10% of the voting share, assented in favor of the resolution. However, the Central Bank of India, holding 9.90% of the voting share, neither cast its vote nor responded to the email."

9. The said COC meeting was attended by only one Financial Creditor i.e. Intec Capital Limited having voting share of 90.1%. The said resolution was approved through a physical ballot. Copy of which is attached from page-93 to 95.

10. It is seen that the COC with 90.1% majority has approved the said resolution seeking liquidation of the Corporate Debtor and for appointment of the Applicant herein as the Liquidator of the Corporate Debtor.

11. We have heard the Ld. Counsel for the Applicant and perused the records.

12. From the averments of the application, it is seen that the Corporate Debtor was not in business at the time of commencement of CIRP. It is also seen that there are no assets of the Corporate Debtor and looking at the circumstances of the Corporate Debtor, the COC in its 3rd and 4th meetings decided not to appoint the Registered Valuer or to publish Form – G.

13. Further, it is also seen that the extended CIRP period of the Corporate Debtor has already ended on 07.11.2024 and that the COC in its 11th meeting with requisite majority has passed necessary resolution seeking qua the liquidation of the Corporate Debtor.

14. In view of the law laid down by 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-justiciable**, we are constrained to order for liquidation of the Corporate Debtor.In this case, it is seen that CoC with 90.1% majority has passed the resolution seeking liquidation of the Corporate Debtor.

15. Accordingly, we hereby order for liquidation of the Corporate Debtor.

16. The 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 **Mr. PinakinSurendra Shah, having Registration No. IBBI/IPA-002/IP-N00106/2017-18/10248,** as per the panel suggested by IBBI for this Bench for the period of July, 1 to December 31, 2024, 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. H. V. Synthetics Private 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/51(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, **Mr. PinakinSurendra Shah, having Registration No. IBBI/IPA-002/IP-N00106/2017-18/10248,**is hereby appointed as a Liquidator of the Corporate Debtor i.e., M/s.H. V. Synthetics Private 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) The Liquidator shall endeavour to explore the viability of selling the Corporate Debtor as a going concern in term of Regulation 32A of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

j) 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.

k) 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.

l) The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.

m) 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/1767(AHM)2024 in CP(IB) No. 147 of 2021 is disposed of.

18. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

-sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

SDP