



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

ITEM No.301
IA(Liq.)/25(AHM)2024
in
C.P.(IB)/183(AHM)2023

Orders under Section 33 & 34 IBC

IN THE MATTER OF:

Modilal Dhanraj Pamecha RP of Cupid Estatecon Pvt. LtdApplicant

Order delivered on: 03/10/2024

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.

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SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)



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

IA(liq)/25/AHM/2024 in CP (IB)/183/2023

(Filed under Section 33 r.w. Section 34 of the Insolvency and Bankruptcy Code, 2016).

In the matter of **M/s Cupid Estatecon Pvt. Ltd.**

Modilal Dhanraj Pamecha,
Resolution Professional
of M/s Cupid Estatecon Pvt. Ltd.
Having registered Address at:
Flat No. N-203, Parshwanath Metro
City, Nr. H.B. Kapdia School,
Ahmedabad- 382424

.... Applicant

Order Pronounced on 03.10.2024

CORAM:

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

For Applicant : Mr. Saumitra Chaturvedi, Advocate a.w.
Mr. Modilal Pamecha, RP in person

ORDER

1. The IA(liq)/25/AHM/2024 has been filed by the Applicant Resolution Professional under Section 33 r.w. Section 34 of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows; -

a. That this Hon'ble Adjudicating Authority may be pleased to allow the present application;



- b. *That this Hon'ble Adjudicating Authority may be pleased to pass an order under Section 33(1) and 33(2) of the Insolvency and Bankruptcy Code, 2016 for liquidation of the Corporate Debtor having Corporate Identification no. U45202DN2006PTC000209;*
- c. *That this Hon'ble Adjudicating Authority may be pleased to pass an order under Section 34(1) of the Code for appointing Mr. Paresh Chandulal Mehta, having IBBI Registration No. IBBI/IPA-003/IP-N00099/2017-2018/1108, as the Liquidator as resolved in the 3rd COC meeting;*
- d. *That this Hon'ble Adjudicating Authority may be pleased to direct Mr. Paresh Chandulal Mehta, having IBBI Registration No. IBBI/IPA-003/IP-N00099/2017-2018/1108, to make public announcement stating that the Corporate Debtor is in Liquidation;*
- e. *That this Hon'ble Adjudicating Authority may be pleased to direct Mr. Paresh Chandulal Mehta, having IBBI Registration No. IBBI/IPA-003/IP-N00099/2017-2018/1108 to serve a copy of the order of Liquidation on the Registrar of Companies.*
- f. *That this Hon'ble Adjudicating Authority may be pleased to hold and declare that all the powers of the Board of Directors, Key Managerial Persons, as the case may be, shall cease to have effect and be vested in Mr. Paresh Chandulal Mehta, having IBBI Registration No. IBBI/IPA-003/IP-N00099/2017-2018/1108, in the capacity of the liquidator of the Corporate Debtor.*
- g. *That this Hon'ble Tribunal may be pleased to direct that the personnel of the Corporate Debtor shall extend full co-operation and assistance to Mr. Paresh Chandulal Mehta, having IBBI*



Registration No. IBBI/ IPA- 003/IP-N00099/2017-2018/1108, in carrying out liquidation process.

- h. That this Hon'ble Adjudicating Authority may be please to pass any further necessary orders as the Hon'ble Adjudicating Authority deems fit, in the interest of justice.

2. Facts of the Case are as follows:-

- i. The applicant i.e. the Resolution Professional (hereinafter to be referred to as RP) herein, submits that the present application is filed under sections 33(1), 33(2) and 34 of the Code, for liquidation of Corporate Debtor and appointment of Liquidator.
- ii. It is submitted that the Corporate Debtor is a Company incorporated under the provisions of the Companies Act, 1956 and is situated at Kamleshbhai Ki Chawl Block-B, R. No.1, Samarani, Silvassa, Dadra & Nagar Haveli, India, 396230 having Corporate Identification no. U45202DN2006PTC000209.
- iii. The applicant submits that one Financial Creditor, filed an application under Section 7 of the Code for initiation of Corporate Insolvency



Resolution Process (hereinafter to be referred to as "CIRP" for short) against the Corporate Debtor. The said application was numbered as C.P.(I.B.) No. 183 of 2023. It is submitted that the Hon'ble Adjudicating Authority vide order dated 16.04.2024 passed in CP(IB) No. 183 of 2023 (Order copy received on 16.04.2024) admitted the application and CIRP was initiated. In terms of the said order, the Hon'ble Adjudicating Authority appointed the Applicant herein, as the IRP in the said matter.

- iv. The applicant submitted that the applicant in the capacity of an IRP issued a public announcement under Form-A dated 17.04.2024 of the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations, 2016 (hereinafter to be referred to as "the CIRP Regulations") to invite claims from the creditors of the Corporate Debtor. It is submitted that the aforementioned advertisement was published in the Free Press Gujarat on 17.04.2024 in



Ahmedabad Edition in English Edition and Lokmitra on 17.04.2024 in Surat Edition in Gujarati Edition. The applicant submits that the last date of submission of claims was 30/04/2024.

- v. The applicant submitted that in response to Form-A dated 17.04.2024 the applicant received claim from 1 (One) financial creditor and 1 (One) operational creditor i.e. the Income Tax Department. The claim of the financial creditor was accepted.
- vi. The applicant submitted that as on 30.04.2024, the applicant did not receive any claims from workmen/ employee/ Authorized representative of workmen and employees of the Corporate Debtor before the last date of the submission of claims.
- vii. Thereafter, the applicant, in the capacity of being an IRP held the 1st meeting of the COC on 16.05.2024. In this meeting, it was resolved to regularise the applicant as an RP from an IRP.



- viii. Thereafter, the applicant received another claim of Rs 86,89,21,304 towards Corporate Guarantee Invocation from one Eloquent Traders Pvt. Ltd. The said claim is kept under verification on account of want of documents.
- ix. Thereafter, on 05.06.2024, the applicant filed an updated list of claims with the IBBI website as the remaining claim of the Income Tax Department was verified and admitted by the applicant.
- x. The applicant submitted that therefore as per Regulation 17(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter to be referred to as "CIRP Regulations" for short") and in light of the report dated 09.05.2024, the Committee of Creditors was constituted. Which is thereafter confirmed by the Adjudicating Authority vide order dated 04.06.2024 passed in I.A. No. 827 of 2024, consisted of a sole Financial Creditor.



- xi. Thereafter, the applicant conducted and convened the 2nd meeting of the members of the COC on 08.06.2024 wherein amongst other the steps, steps to publish Expression of Interest as per Regulation 36A of the CIRP Regulation and conducting of Transactional Audit and appointment of Registered Valuers was brought to the notice of the members of the CoC and necessary resolutions were passed. It is submitted that in the meeting dated 08.06.2024, the CoC decided the minimum net worth of Rs 10(Ten) Lakhs as a criteria to be fulfilled by the Prospective Resolution Applicant.
- xii. The applicant submitted that the applicant thereafter issued a public announcement as per Form G dated 15.06.2024 calling for Expression Of Interest on or before 30.06.2024 (15 Days from the date of Issue of EOI) as statutorily required under the provisions of the Code. It is submitted that the same was published in Free Press Gujarat in English language (Gujarat/



Ahmedabad Edition) & Lokmitra in Gujarati Language (Gujarat/ Surat Edition).

- xiii. The applicant submitted that thereafter, pursuant to the provisions of Regulation 27 the CIRP Regulations and after following the due procedure, applicant herein appointed valuers for the valuation exercise to be conducted for the Corporate Debtor. It is submitted that the valuers by report dated 16.08.2024 has fixed the liquidation value of the Corporate Debtor as Rs. 14.36 Lakhs.
- xiv. The applicant submitted that in pursuance to the 2nd meeting of the CoC, the applicant herein appointed M/s MODH & Co., Chartered Accountants for conducting the Transaction Audit of the Corporate Debtor for assisting the applicant to determine transactions under sections 43, 45, 50 or 66 of the Code. It is submitted that the copy of the audit is still on-going and the copy of the report is awaited.



xv. The applicant submitted that as per the advertisement for invitation of expression of interest, the last date for submission of expression interest was specified as 30.06.2024. However, within the specified date the Applicant did not receive any expression of interest applicant for the resolution of the Corporate Debtor.

xvi. The applicant submitted that in view of the aforementioned facts the applicant convened the 3rd meeting the members of the CoC on 16.08.2024. It is submitted that in the 3rd meeting of the COC the Applicant appraised the CoC that as on CIRP commencement date, there are no Assets in form of Land and Building Class or in form of Plant and Machinery and hence the valuers were appointed for valuation of Securities and Financial Assets of the Corporate Debtor. It is noted in the minutes of the meeting that the applicant after procuring the necessary undertaking from the Financial Creditor had



provided the copy of the valuation report to the CoC as the applicant was not in receipt of any the Corporate Debtor.

- xvii. The applicant submitted that thus in view of the aforementioned facts it was established that the Corporate Debtor neither was a Going Concern nor did it have any physical assets. Thus, in light of the same and recurring cost of CIRP, the CoC thought it fit to apply for liquidation of the Corporate Debtor in terms of section 33 of the Code. During the 3rd meeting of the CoC, following resolutions were passed :

"RESOLVED THAT in view of the Corporate Debtor not being able to resolved in view of the fact no prospective Resolution Applicant came ahead with any expression of interest, the approval of the CoC be and is hereby accorded to authorise Resolution Professional to apply to hon'ble NCLT Ahmedabad Bench for the purpose of Liquidation of the Corporate Debtor under section 33(2) of Insolvency and Bankruptcy Code, 2016"

"RESOLVED FUTHER THAT pursuant to provision of section 34 of the Insolvency and Bankruptcy Code, 2016, In case of Liquidation Order passed by Hon'ble NCLT. Mr. Paresh Chandulal Mehta having IBBI Registration No. IBBI/ IPA-003/IP-N00099/2017-2018/1108 Consented to act as Liquidator be and is hereby



appointed as Liquidator for the Purpose of Liquidation of Cupid Estatecon private Limited and such appointment shall take effect from the date of passing of the necessary order by the Hon'ble NCLT."

"RESOLVED FURTHER THAT Pursuant to section 34 of the Insolvency and Bankruptcy Code, 2016 and in accordance with Regulation 39 D of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulation, 2016 ("Liquidation Process Regulations"), where an order for liquidation is passed by the Adjudicating Authority under section 33 of the Insolvency and Bankruptcy Code, 2016, the Committee of Creditor, hereby fix the fees payable to the liquidator as per the Regulation (4) (2) of the Liquidation Process Regulation."

3. 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 [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.]”.

4. 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-justiable**. In this case, it is seen that CoC with a **100%** majority has passed the resolution seeking liquidation of the Corporate Debtor.

5. The Timeline of the proceedings as under:

Date	stage
16.04.2024	Admittance order
16.04.2024	Appointment of IRP
17.04.2024	Public Announcement
09.05.2024	Constitution of CoC
16.05.2024	1 st CoC Meeting
16.05.2024	Appointment of Resolution Professional
02.06.2024 & 05.06.2024	Appointment of Valuers



08.06.2024	2 nd CoC Meeting
15.06.2024	Issuance of Invitation for EOI
30.06.2024	No EOI received
16.08.2024	3 rd CoC Meeting
05.09.2024	Present Application for liquidation is filed.
13.10.2024	Expiry of 180 days of CIRP

6. We have heard the learned counsel for the applicant and perused the documents attached with the application.
7. The observations of this Tribunal are as under:
- i. It is seen from the pleadings that the Corporate Debtor was admitted under CIRP on 16.04.2024.
 - ii. The 180 days of the CIRP are going to expire on 13.10.2024.
 - iii. No application was filed by the applicant for further extension of the CIRP period nonetheless an application for Liquidation was filed by the applicant on 05.09.2024.
 - iv. It is seen from Form H that there are some assets left with the Corporate Debtor. The Liquidation and Fair Value of the Corporate Debtor are **Rs. 14.36 Lakhs** both.



v. It is seen the Resolution of CoC for liquidation is attached and was approved with 100% majority. As the CoC had already approved for Liquidation of the CD we are forced to order for the Liquidation of the CD .

8. In terms of the above, we hereby order for liquidation of the Corporate Debtor.

9. As CoC has recommended the name of the Liquidator, we hereby appoint Mr. Paresh Chandulal Mehta having reg. no. IBBI/IPA-003/IP-N00099/2017-2018/11008 as the Liquidator, 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. Cupid Estatecon 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(liq)/25(AHM)2024.
- 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. Paresh Chandulal Mehta** an IP having registration No. IBBI/IPA-003/IP-N00099/2017-2018/11008, is hereby appointed as a Liquidator of the Corporate Debtor I.e. M/s Cupid Estatecon 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) 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 present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.
- l) 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, **Indian Institute of Insolvency Professionals of ICAI, IPA of RP**, 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 for records and action, if any.

10. Accordingly, **IA(liq)/25(AHM)2024** in CP(IB) No. 183 of 2023 is disposed off.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)
SP

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)