

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



ITEM No.5

IA/380(AHM)2023 in CP(IB) 83 of 2020

Proceedings under Section 33(1),33(2) & 34(1) IBC,2016

IN THE MATTER OF:

Chandra Prakash Jain RP of Doshion Water Umbrella
(Cuddalore) Pvt Ltd

.....Applicant

Order delivered on: 13/09/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr.Kaushalendra Kumar Singh, 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-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING
AUTHORITY NATIONAL COMPANY LAW
TRIBUNAL AHMEDABAD BENCH
COURT 1**

**I.A. No. 380 of 2023 in
C.P. (I.B.) No. 83 of 2020**

[An application filed under Section 33(1), 33(2) & 34(1) of the
Insolvency and Bankruptcy Code, 2016]

Chandra Prakash Jain

Resolution Professional of:
Doshion Water Umbrella
(Cuddalore)
Having his office at:
D-501, Ganesh Meridian,
Opp. High Court, S. G. Highway,
Ahmedabad.

..... Applicant/ RP

In the matter of:

CP (IB) 83 of 2020

[An application under Section 7 of Insolvency and
Bankruptcy Code, 2016]

Union Bank of India

.....Financial Creditor

V/s.

Doshion Water Umbrella (Cuddalore) Pvt. Ltd.

...Corporate Debtor

Order pronounced on 13/09/2023

**Coram: Shammi Khan, Member (Judicial)
Kaushalendra Kumar Singh, Member (Technical)**

Appearance:

Ld. Counsel Mr. Ravi Pahwa, for the Applicant.

Ld. Counsel Mr. Nipun Singhvi for the CoC

Ld. Counsel Mr. Arpit Singhvi for Suspended Manangment.



ORDER

1. The present Interlocutory Application is filed by Resolution Professional (“RP”) under section 33(1), 33(2) & read with Section 34(1) of the Insolvency & Bankruptcy Code, 2016 (“IBC”, 2016) seeking order of liquidation of Corporate Debtor namely M/s. Doshion Water Umbrella (Cuddalore) Private Limited.
2. The brief facts of the case are as under:
 - (i) The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (“CIRP”) vide order dated 01.07.2022 passed by this Adjudicating Authority on an application filed by the Financial Creditor namely Union Bank of India under Section 7 of the IBC, 2016 and Mr. Chandra Prakash Jain having Registration No. (IBBI/IPA-001/IP-00147/2017-2018/10311) was appointed Interim Resolution Professional (“IRP”).
 - (ii) The Applicant states that in compliance with Sections 13, 15 and other relevant provisions of the Code read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) Regulations, 2016, a public announcement was made in “Business Standard” in English edition and in “Sandesh” in Gujarati edition dated 07.07.2022 for inviting claims from various class of Creditors of Corporate Debtor.
 - (iii) The Applicant in accordance with the claims constituted Committee of Creditors (“CoC”) comprising one Financial Creditor i.e.



Name of Creditors	Claim Amount	Admitted Amount	% of voting
Union Bank of India	1,65,25,87,105	1,65,25,87,105	100 %

(iv) The Applicant submitted that in the 2nd CoC meeting held on 01.09.2022, the members of CoC approved to continue the Applicant as Resolution Professional. The Applicant with approval of the CoC appointed M/s. Pipara & Co. LLP as Transaction Auditor for the period from 01.07.2020 to 01.07.2022. The Applicant also appointed registered Valuers viz. Mr. Devang Shah, Mr. Alok Gupta, Mr. Mohit Tibrewala and Mr. Rajiv Ahujha for conducting valuation of the plant & machineries and Securities and Financials Assets of the Corporate Debtor. The copy of the minutes of the 2nd meeting is attached with the application.

(v) The Applicant submitted that in 3rd meeting held on 28.09.2022, it was placed on record that Invitation for Expression of Interest (“EoI”) is to be invited not later than 75th days from the Insolvency Commencement date and placed Minimum Eligibility Criteria for approval. Later the CoC finalized the Minimum Eligibility Criteria. The RP also placed before the CoC the estimated cost of CIRP and requested the CoC to process the same. The Copy of the minutes of 3rd meeting is attached with the application.

(vi) The Applicant published “Form-G” i.e. Initiation for Expression of Interest from prospective Resolution Applicant in “Business Standard”, and “Divya Bhaskar” both Ahmedabad edition on 30.09.2022 and in Dina Kural Cuddalore on 01.10.2022. The last date of receipt was 15.10.2022. However, as only one Resolution

Applicant submitted the EOI, the CoC asked the Applicant to further extend the timeline till 19.10.2022 and the CoC again confirmed to further extend the timeline till 30.10.2022. The Applicant published e-notice dated 19.10.2022 extending the further timeline of submission of EOI by 30.10.2022. The copy of Form-G, email by CoC for further extension dated 18.10.2022 and copy of E-notice dated 19.10.2022 annexed with the application.

(vii) The Applicant submitted that the deadline for submitting the EOI was extended till 30.10.2022, wherein, following two parties had submitted the EOI :

Sr. No.	Name of Prospective Resolution Applicants ("PRA")
1	Indira Ispat Udyog
2	Roopyaa Finbizz Limited

It is further stated that both PRA's had paid Rs. 10,00,000/- each along with EOI. It is also submitted by the Applicant that one of the PRA Roopyafinbiz ltd., is falling short on Net worth Criteria. Hence, the Applicant sought approval of the CoC to consider the PRA or not. The Applicant also placed before the CoC draft RFRP and Evaluation Matrix to be submitted to the PRA's for submission of Resolution Plan. The Applicant further appraised that the evaluation of Section 29A eligibility will be conducted by the Applicant to confirm the eligibility of the PRA. The Copy of Minutes of 4th CoC meeting is annexed with the application.

(viii) The Applicant states that the CoC approved the RFRP and Evaluation Matrix via E-mail. The CoC also approved the exemption for net-worth criteria for PRA via

e-mail dated 09.11.2022. Copy of e-mail CoC dated 09.11.2022 is annexed with the application.



(ix) The Applicant states that in 5th CoC meeting held on 13.12.2022, it was placed before the CoC that due to non-payment of CIRP Cost, the earlier security agency viz. Chennai Security Services withdrew their services and hence new security agency M/s. Security and Intelligence Services (India) Ltd has been appointed to safeguard the assets of the Corporate Debtor. The Applicant further informed the CoC that Vidhyut Patel, CA has been appointed to conduct the Eligibility Criteria of the PRA's as per Section 29 A and accordingly as per the certificate both the PRAs are eligible to submit the Resolution plan. The Copy of the 5th CoC meeting is annexed with the application.

(x) The Applicant further placed before the CoC that as per EOI the last date for submission of Resolution Plan was 07.12.2022 and one of the PRA M/s. RoopayFinbiz ltd has submitted its Resolution Plan and the other PRA Indra Ispat Udyog Limited submitted its offer prices for the plan but did not submit the detailed Resolution plan and sought extension for submission of Resolution Plan. Thus, the CoC approved extension of timeline for submission of Resolution plan till 17.12.2022. Copy of minutes of the meeting is annexed with the application.

(xi) The Applicant states that in the 6th CoC meeting held on 27.12.2022, the PRA IndraIspatUdyog Limited again requested for further extension for submission of Resolution Plan and the CoC instructed the RP to give one last chance to the PRA to submit the Resolution Plan till 20.12.2022. The PRA 's submitted information i.e. (a) ~~The total offer by Roopyafinbiz Ltd- Rs 2.50 Crores~~ (b)

The Total offer by Indra Ispat Udyog-Rs. 2.52 Crores. The Copy of the minutes of the meeting of 6th CoC is annexed with the application.

(xii) The Applicant further apprised to CoC members that 180 days of CIRP period was getting completed on 03.01.2023 and the CoC is yet to take decision regarding the Resolution Plan submitted by the PRA. The CoC with 100% majority passed resolution for seeking extension of CIRP by 90 days, the copy of the same is annexed with the application.

(xiii) The Applicant further states that the status of approval of Resolution plan was sought by the Applicant from CoC via email dated 13.01.2023, however, there was no response from CoC. Therefore, the Applicant called for the 7th CoC meeting which was held on 30.01.2023. In the meeting the Applicant apprised the CoC member regarding the decision taken by them in the matter of Resolution Plan. The CoC rejected the plan and showed willingness to go for liquidation of the Corporate Debtor. The CoC again asked the Applicant whether the Valuation reports have been shared with the CoC to which the Applicant informed the CoC that the valuation reports were shared with them on 11.10.2022 and asked the CoC whether the plan can be taken as rejected or any further negotiation can be done with the PRA, to this the CoC mentioned that they are not willing to negotiate. The Applicant further apprised the CoC that the transaction audit report was already shared with the CoC members and sought clarification on the same from the Suspended Management. However, the suspended management did not submit the reply and hence the applicant is yet to file IA under PUF

transactions before this Tribunal. The suspended management sought time until 30.02.2022 from the CoC to submit the reply. The CoC agreed and allowed the Suspended Management to submit the reply within given timeline. The CoC took note for the liquidation process. The copy of the minutes of the 7th CoC meeting is annexed with the application.

(xiv) The 8th CoC meeting was held on 20.03.2022 wherein following resolution was passed as regards liquidation:

“ Agenda-2 Resolution for approval for liquidation of the Company

Resolved that pursuant to Section 33, sub Section (2) of the Insolvency and Bankruptcy Code, 2016 (“Code”) and other applicable provisions of the Code and in accordance with the Insolvency and Bankruptcy Code of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 and other applicable provisions of the Insolvency and Bankruptcy Code of India (Liquidation process) Regulation, 2016, if any, and in accordance with Rules and Regulations made there under, the Committee of Creditors hereby recommend that M/s Doshion Water Umbrella (Cuddalore) pvt. Ltd. Corporate Debtor under the Corporate Insolvency Resolution Process, be **Liquidated**.

The copy of the e-voting results and agenda dated 21.03.2023 are annexed with the application.

- (xv) The Applicant had submitted the list of CIRP unpaid cost and estimated CIRP cost in the application (at page 129).
3. This Adjudicating Authority vide order dated 17.07.2023 directed to call for a meeting of the CoC and pass the resolution as required under Regulation 39B, 39C, 39D, 39BA for giving any order of liquidation.

4. This Adjudicating Authority vide order dated 07.08.2023 observed as under :



“Ld. Counsel for the RP has pointed out the various resolutions as required under the Regulation 39B, 39C, 39D, and 39BA etc. In the context, the Ld. Counsel for the CoC undertakes to file an affidavit to the effect that if the liquidation cost is less than the liquid asset, the balance shall be borne by the sole CoC member i.e., Union Bank of India. At this stage, the counsel for Suspended Management namely Mr. Arpit Singhvi appears and submits that he would like to file by way of an affidavit information regarding available GST credit. In the context, it is noted that this information by the Suspended Management could have been placed before the RP during the CIRP process and if not done, the same may be done even now either before the RP or the liquidator in the event of liquidation order is made in the matter. Ld. Counsel for the CoC may file an affidavit in the course of the day as regards to why the decision was taken not to liquidate the asset as a going concern.”

5. In response to this one Mr. Rakshit Doshi has filed an additional affidavit stating statement of objection on behalf of Respondent to the Application filed u/s 33(1), 33(2) and 34(1) of the IBC, 2016.
6. We have heard the learned counsel of the Applicant and perused the material on record. It is noted that the CoC has decided to liquidate the Corporate Debtor by 100% voting. COC has passed the resolution to liquidate the Corporate Debtor with requisite voting as given under section 33(2) of the IBC, 2016.
7. 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.

8. IBBI in its letter dated 18.07.2023, has recommended that IP other than the IRP/RP may be appointed as liquidator in all the cases where a liquidation order is to be passed henceforth, and the liquidator can be appointed from the panel list of IBBI.

9. In view of the facts and circumstances and documents available on record, we pass the following order:

(i) The corporate debtor M/s Doshion Water Umbrella (Cuddalore) Private Limited shall be put into 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/380/AHM/2023.


(ii) The Moratorium declared under section 14 of the Code shall cease to have effect from the date of the order of liquidation.

(iii) As proposed by the COC, we hereby appoint **Mr. Chirag Shah, having Registration No: IBBI/IPA-001/IPP01169/2018-2019/11837 Email: chirag.irp@gmail.com** as a liquidator of the corporate debtor i.e. M/s Doshion Water Umbrella (Cuddalore) 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.

(iv) 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.

(v) 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.



(vi) 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.

(vii) 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.

(viii) 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.

(ix) 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.

(x) The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the corporate debtor, the resolution professional, and the liquidator by speed post as well as e-mail within one week from the date of this

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order, after completion of all the formalities.



(xi) The present resolution professional is directed to hand over the relevant documents and control of the corporate debtor to the newly appointed liquidator forthwith.

10. Accordingly, the present **I.A. No. 380 of 2023** in CP (IB) 83 of 2020 is allowed and stands disposed of

-Sd-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

Vaishali PS