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10-11-2023

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IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No.302

IA/559(AHM)2023 in CP(IB)/320(AHM)2022

Proceedings under Section 33(1)(a) and 34(1) IBC,2016

IN THE MATTER OF:

Keyur J Shah The RP of Shree Ramrajya Cotex Pvt Ltd

.....Applicant

Order delivered on 09/11/2023

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, 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-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-sd-

CHITRA HANKARE
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD

(COURT NO.II)

IA No. 559 / NCLT / AHM / 2023

IN

CP(IB) No. 320 / NCLT / AHM / 2022

[Application Under Section 33(1)(a)& 34(1) of the IB Code, 2016]

IN THE MATTER BETWEEN

Keyur J. Shah

RP Of M/s. Shree Ramrajya Cotex Private Limited,

Corporate Debtor

[IP Reg. No. IBBI/IPA-002/IP- N00244/2017-18/10729]

Office of Resolution Professional :

1007, Sun Avenue One,

Near Shreyas Foundation,

Manekbaug Society, Ambawadi,

Ahmadabad, Gujarat- 380015

....RP/Applicant

Order pronounced on:09.11.2023

Coram:

MRS. CHITRA HANKARE,

HON'BLE MEMBER (JUDICIAL)

DR. VELAMUR G. VENKATA CHALAPATHY,

HON'BLE MEMBER (TECHNICAL)



MEMO OF PARTIES

Keyur J. Shah

RP Of M/s. Shree Ramrajya Cotex Private Limited,
Corporate Debtor

[IP Reg. No. IBBI/IPA-002/IP- N00244/2017-18/10729]

Office of Resolution Professional :

1007, Sun Avenue One,

Near Shreyas Foundation,

Manekbaug Society, Ambawadi,

Ahmadabad, Gujarat- 380015

....RP/Applicant

Appearance:

For the Applicant: Ms. Noopur K Dalal, Adv.

ORDER

1. The present application is filed by **Mr. Keyur J Shah** - the Resolution Professional/Applicant of the Corporate Debtor under section 33(1)(b) read with section 34(1) of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") for passing an order of liquidation of the Corporate Debtor- M/s Shree Ramrajya Cotex Private Limited and to appoint RP as a liquidator.



2. The facts as narrated in the application and explained by the Ld. Counsel for the Applicant/RP is summarized hereunder :

2.1 The Corporate Debtor was incorporated under the provisions of the Companies Act, 1956 and having a registered office at a-63, New Sardar Marketing Yard, Bypass Gondal, NH- 8 B, Gondal (Gujarat) – 360311.M/s. Raj Radhe Finance Limited (hereinafter “Financial Creditor”) had filed an application being C.P. (IB) 320 of 2022 under Section 7 of the Code, for the purpose of initiating CIRP against the Corporate Debtor. This Hon’ble Tribunal vide its order dated 03/02/2023 admitted the Corporate Debtor into CIRP and appointed the Applicant herein as the Interim Resolution Professional (hereinafter referred to as **IRP**) of the Corporate Debtor.

2.2 The IRP issued a public announcement in Form -A on 07/02/2023 and the same was published on 08.02.2023 in Times of India(English Language) and Jai Hind (Gujarati Language) both Rajkot Edition where the registered office of the Corporate Debtor is situated for inviting all the creditors of the corporate debtor to submit their claim to the IRP. The last date for submission of the claim by the creditors was 20.02.2023. On receipt of claims from the Creditors, the same were collated and verified by the IRP and subsequently constituted the Committee of Creditors (hereinafter “CoC”) as per Regulation 17 of the



Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 consisting of Sole Financial Creditor (i.e. Original Applicant).

- 2.3 The 1st CoC meeting was held on 04.04.2023 wherein the resolution passed for the appointment of the IRP as RP of the Corporate Debtor.
- 2.4 Pursuant to the commencement of CIRP, the RP/Applicant published Form G on 04/04/2023 inviting Expression of Interest (EoI) from Prospective Resolution Applicants with the last date for submission of EoI being 19/04/2023. However, till the last date, no EOI was received by the RP. In the absence of EOI, the RP called the next COC meeting for further discussion.
3. In the 3rd CoC meeting held on 28/04/2023, the RP apprised the members about the developments in the CIRP of the Corporate Debtor. Based on the undertaking pursuant to Section 29 of the Code read with Regulation 36(4) IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 from the members of the committee of creditors on 28th April, 2023. Information Memorandum was also shared amongst the members of the CoC during the meeting by the Resolution Professional. As there are no physical assets of corporate debtor and debtors are mostly time barred. The resolutions for liquidating the affairs of the company and appointing the applicant as



Liquidator of the Corporate Debtor were passed along with other resolutions.

3.1 The RP/Applicant further submitted that the CoC Member proposed that as all the assets of the Corporate Debtor have already been disposed of, the Corporate Debtor is no more a going concern, the Corporate Debtor has no employees, operations were already shut down since 2015, valuation submitted by Valuers shows that the fair value and liquidation value of the Security and Financial assets of the Corporate Debtor comprises of only bank balance to the tune of Rs. 8,044/- which would not even cover CIRP cost, and since there is no possibility of having the resolution plan, there is no option or resources left with the Corporate Debtor to repay the liabilities outstanding, it is appropriate to go ahead with Liquidation of the Corporate Debtor.

3.2 The CoC has, as enumerated in Para 11 (Page 74) of the application, confirmed the provisional liquidation cost of Rs.9,80,000/- (Rupees Nine Lakhs Eighty Thousand only) and resolved in Page 76 to make the necessary contribution in term of Section 2A of IBBI (Liquidation Process) Regulations, 2016 and approved by 100% majority.

3.3 The Liquidator is required to confirm and to comply with Regulation dated 28.09.2023 of IBBI [Clarification w.r.t. Liquidator's fee under Clause (b) of sub-regulation (2) OF Regulation 4 of IBBI (Liquidation



Process) Regulations, 2016 and claim from members of CoC who will form the SCC under the provisions of Regulation 31A(1)(c).

- 3.4 The Liquidator is further ordered to complete the process of liquidation at an early period of maximum 1 year from the date of the order due to non-availability of liquid assets for recovery under Regulation 44 of IBBI (Liquidation Process) Regulations, 2016.
- 3.5 The Applicant submits that pursuant to the decision taken by the CoC vide Meeting held on 28th April, 2023 to Liquidate the Corporate Debtor, the CoC directed the Resolution Professional to proceed for the Liquidation procedure. It is submitted that the Corporate Insolvency Resolution Process was initiated on 03 February, 2023 and in terms of the provisions of Section 12 of the Insolvency & Bankruptcy Code, 2016, the Corporate Insolvency Resolution Process shall end on 180 days, i.e., by 01 August, 2023. However, as the Committee of Creditors resolved to liquidate the corporate debtor, the Applicant is filing the present application for Liquidation under Section 33 (1)(a) of the Insolvency and Bankruptcy Code 2016 intimating the Adjudicating Authority of the decision of the Committee of Creditors with the 100% of voting to liquidate the Corporate Debtor. The Applicant further filed the valuation report by way of an affidavit wherein the fair value and the liquidation value of the



Securities and Financial Assets of the Corporate Debtor are Rs. 8000/- respectively.

3.6 The Applicant has therefore, due to the inability to proceed with the CIRP and the value of the assets being very low, filed this Application under Section 33 of the Code on the following amongst other grounds which are independent and taken without prejudice to one another:

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-justifiable. In this case, it is seen that CoC with a 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.
5. We have heard the Learned Counsels and perused the material available on record. As no EOI was received till the last date of submission of Plan, i.e. 19/04/2023, the CoC in its commercial wisdom has decided to liquidate the Corporate Debtor by 100% voting as given under Section 33(2) of the IBC, 2016, we are of the opinion that the decision of the COC should not be interfered with. The present application seeking liquidation of the Corporate Debtor M/s Shree Ramrajya Cotex Private Limited, in the manner laid down in Chapter III of Part II of the Code, deserves to be allowed.
6. The CoC also passed the resolution to appoint the present RP/Applicant Mr. Keyur J Shah, as liquidator in terms of



Section 34(1) of the Code. However, as per *IBBI vide its circular number Liq-12011/214/2023-IBBI/840* dated 18/07/2023 in the 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.

7. In terms of the above, we hereby order for liquidation of the Corporate Debtor. Further, in terms of the above circular of IBBI, we hereby appoint Mr. Iqbal Singh Gandhi, having registration IBBI/IPA-001/IP-P-02365/2021-2022/13524 and email id is iqbalsingh2659@yahoo.co.in, as per the panel suggested by IBBI for this Bench for the period of July 1 2023 to December 31, 2023, as the Liquidator of the Corporate Debtor to carry the liquidation process subject to the following orders:-

- a) The Corporate Debtor **M/s Shree Ramrajya Cotex Private Limited** is ordered to be liquidated 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.
- 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. Iqbal Singh Gandhi**, having registration IBBI/IPA-001/IP-P-02365/2021-2022/13524, is hereby appointed as a Liquidator of the Corporate Debtor i.e. **M/s Shree Ramrajya Cotex Private Limited**. The Liquidator so appointed shall file written consent in Form - A and 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) The liquidator to issue a public announcement stating that the corporate debtor is in liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e) The liquidator is to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- f) The liquidator to follow up and continue to investigate the financial affairs of the corporate debtor to determine any undervalued and preferential transactions, etc. 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.
- g) This order is deemed to be a notice of discharge to the officers, employees and workmen of the corporate



debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016.

- (h) 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
- (h) The Liquidator is to submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- (i) 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.
- (j) It is further directed that the Personnel of the Corporate Debtor extend all assistance and co-operation to the Liquidator as may be required in liquidating the affairs of the Company in discharging his function as specified under Section 35 of Insolvency & Bankruptcy Code, 2016.



- (k) 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 the same shall be paid to the Liquidator from the proceed of the liquidation estate under section 53 of the Code.
- (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.
- (n) Accordingly, the present application IA No. 559(AHM)2023 in CP(IB) No. 320 of 2022 is allowed and disposed off.

-sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

Prepared by

Shuifesh

Signature

[Signature]

Date

10-11-2023

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Certified to be True Copy of the Original

[Signature]
10/11/23
Assistant Registrar
NCLT, Ahmedabad Bench
Ahmedabad

