IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (SPECIAL BENCH)

(COURT NO.II)

IA No. 52 / NCLT / AHM / 2023

IN

CP(IB) No. 182 / NCLT / AHM / 2018

Application Under Section 33(1)(2) & 34 of the IB Code, 2016

IN THE MATTER BETWEEN

CA Pankaj Nahata
RP OF M/s. Arpita Filaments Pvt. Ltd. …. Applicant

Versus

Murli Goyal & Ors. …. Respondent

IN THE MATTER OF

SVG Fashion Ltd.
… Applicant / Operational Creditor

Versus

Arpita Filaments Pvt. Ltd. … Respondent/Corporate Debtor

Order pronounced on : 25 /10/2023

Coram:

SHAMMI KHAN,
HON'BLE MEMBER (JUDICIAL)
DR. VELAMUR G. VENKATA CHALAPATHY,
HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

CA Pankaj Nahata
RP OF M/s. Arpita Filaments Pvt. Ltd.
504/505, Himadri-2, Old High Court Lane,
Ashram Road, Ahmedabad, Gujarat – 380009
Email: cirp.afpl@gmail.com

… **Applicant**

Versus

1. Mr. Murli Goyal
   201, 2 nd Floor, Happy Exotica,
   Behind V R Mall, Dumas Road,
   Surat – 395007.

2. Ms. Ritu Goyal
   201, 2nd Floor, Happy Exotica,
   Behind V R Mall, Dumas Road,
   Surat – 395007.

… Respondents

Present:

For the Applicant: Mr. Tirth Nayak, Adv.
For the Respondent: Ms. Prachi Bohra, Adv.

ORDER

1. The present application is filed by Mr. Pankaj Nahata - 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 Arpita Filaments Pvt. Ltd. and to appoint RP as 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 Applicant Resolution Professional submitted that the present Application is filed under Section 33(1), 33(2) and 34 of the Code, for liquidation of the Corporate Debtor i.e., M/s.

Arpita Filaments Pvt. Ltd. and appointment of liquidator. The Corporate Debtor was incorporated under the provisions of the Companies Act, 1956 and having a registered office at 4/3310, H.K. Street, Begampur, Zamba Bazar, Surat – 395003 and was engaged in the business of supply of various fabrics.

2.2 M/s. SVG Fashions Limited (hereinafter "Operational Creditor") had filed an application before this Hon'ble Tribunal being C.P. (IB) 182 of 2018 under Section 9 of the Code, for the purpose of initiating CIRP against the Corporate Debtor. This Hon'ble Tribunal vide its order dated 26/09/2019 was pleased to admit the Corporate Debtor into CIRP and was pleased to appoint the Applicant herein as the Interim Resolution Professional of the Corporate Debtor as per the provisions of the Code.

2.3 The Applicant issued a public announcement on 4/10/2019 in Economic Times and Divya Bhaskar newspapers in the region where the registered office and principal place of business of Corporate Debtor was located. On receipt of claims from the Creditors, the same were collated and verified by the Applicant and subsequently as per Regulation 16 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Committee of Creditors (hereinafter "CoC") comprising of Central Bank of India was formed.

2.4 Pursuant to the commencement of CIRP, the Applicant published Form G dated 03/12/2019 inviting Expression of

Interest (EoI) from prospective resolution applicants with the last date for submission of EoI being 20/1 2/2019. A revised Form G was published by the Applicant dated 17/10/2022 inviting Expression of Interest (EoI) from prospective resolution applicants with the last date for submission of EoI being 01/11/2022.

2.5 In the 5th CoC meeting, held on 03/09/2022 the CoC members were informed that some activities required to be carried out in terms of the Code were pending which may not be completed within the remaining time frame of CIRP. The CoC members therefore authorised the Applicant to file an application for an extension of 90 days by 100 % voting and accordingly, an application under Section 12(2) seeking an extension of time limit by 90 days being I.A. No. 768 of 2022 was filed before this Hon'ble Tribunal and this Hon'ble Tribunal vide its order dated 23/09/2022 extended the CIRP period by 90 days.

2.6 In the 8th CoC meeting, the Applicant informed the CoC members that no resolution plan was received till the last date for submission of the resolution plan i.e., 17th December 2022 and the extended period of CIRP ends on 22/12/2022 and therefore, the CoC members decided to take steps and proceed for liquidation of the Corporate Debtor and authorised the

Applicant to file the instant Application for initiation of liquidation proceedings.

2.7 The Applicant submitted that the liquidation value as per the valuation of the assets of the Corporate Debtor is Rs. 6,14,000/- (Rupees Six Lakhs Fourteen Thousand Only) also mentioned in Form -H against the total outstanding of the Creditors of Rs. 1,64,32,492/-. As per Form H, the fair value of the assets of the Corporate Debtor is Rs.9,10,000/-

2.8 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:

3. There has been no objection by the Corporate Debtor who was present in the fourth meeting held on 28.07.2023 wherein the CoC took the decision that in the absence of any resolution plan, in the commercial wisdom of the CoC approving initiation of liquidation of the Corporate Debtor u/s 33 of the IBC, 2016. It also observed from the submissions that the Corporate Debtor was present in all the meetings of the CoC convened by the RP on various dates. Hence, no notices are served.

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-justificable. 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 270 days period has been completed and no resolution plan was received till the last date of submission of Plan, i.e. 17/12/2022, 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 Arpita Filaments Pvt. Ltd, 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. Pankaj Nahata, 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. Pragnesh Mahendrabhai Jagasheth, having registration IBBI/IPA-001/IP–P-02219/2020-2021/13456 and email id is jagaseth@gmail.com**,** 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:-

ORDER

a) The Corporate Debtor M/s Arpita Filaments Pvt. Ltd. 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. Pragnesh Mahendrabhai Jagasheth, having registration IBBI/IPA-001/IP–P-02219/2020-2021/13456**,** is hereby appointed as a Liquidator of the Corporate Debtor i.e. M/s Arpita Filaments Pvt. Ltd. The Liquidator so appointed shall file the Form A, written consent 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. The RP will abide by the order of the regulation and hand over the records to the incumbent liquidator.

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 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. 52(AHM)2023 in CP(IB) No. 182 of 2018 is allowed and disposed off.

S/d- **S/d-**

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

SHAMMI KHAN
MEMBER (JUDICIAL)