

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD  
BENCH-II**

**IA No. 650 of 2021**

**IN**

**CP (IB)200/(AHM)/2018**

[An application filed under section 33 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016]

**IN THE MATTER OF:**

1. Gujarat State Financial Corporation  
Having its address at  
Udyog Bhavan,  
First Floor, Block No. 10  
Sector – 11,  
Gandhinagar 382 011
  
2. Gujarat Industrial Investment Corporation Limited  
6<sup>th</sup> Floor, Udyog Bhavan  
Block No. 11, Sector 11,  
Gandhinagar 382 011

Members of Committee of Creditors of  
M/s. Mono Acriglass Industries Limited ...

Applicants/  
Financial Creditors

Versus

1. Ms. Anjali Nirav Choksi  
The Resolution Professional of M/s. Mono Acriglass Industries Ltd.  
DJNV & Co., 2<sup>nd</sup> Floor, H.N. House  
Opp. Muktijivan Colour Lab  
Above Income Tax under bridge  
Stadium Circle, Navrangpura  
Ahmedabad 380 009



2. Suspended Management of  
M/s. Mono Acriglass Industries Limited  
Through Shri Shridhar Tripathy  
Having Address at  
Unit No. 2, Plot No. 243  
Prabhadevi Apartments  
Vile Parle (East)  
Mumbai – 400 057

....

Respondents

**Order Pronounced on: 01/08/2022**



**CORAM:**

**Dr. DEEPTI MUKESH  
MEMBER (JUDICIAL)  
AJAI DAS MEHROTRA  
MEMBER (TECHNICAL)**

Present:

For the applicants : Mr. Rajesh Bohra, Advocate  
For the RP : Ms. Anjali Choksi, Advocate  
For the CoC : Mr. Navin Pahwa, Sr. Advocate

**ORDER**

1 This is an application filed by the secured financial creditors having 100% voting share, under Section 33 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking liquidation of the corporate debtor, M/s. Mono Acriglass Industries Limited.

2. This application is filed by the applicants with the following prayers:

(a) This Hon'ble Adjudicating Authority may be pleased to allow this Interlocutory Application;

(b) This Hon'ble Adjudicating Authority may be pleased to pass an order for liquidation of the corporate debtor i.e. M/s. Mono Acriglass Industries Ltd., in the manner as laid down in Chapter III of the IB Code subject to appropriate orders and directions as may be deemed appropriate by this Hon'ble Adjudicating Authority;



(c) This Hon'ble Adjudicating Authority may be pleased to appoint Shri Ashish Shah having IBBI Regn. No. IBBI/11A-002/IP-N 0214/2017-18/10666 as the liquidator of the corporate debtor, in the interest of justice and equity;

(d) This Hon'ble Adjudicating Authority may be pleased to grant such other further reliefs, as are deemed fit and proper, in the interest of justice.

3. Ordinarily, application under Section 33 of the IB Code, seeking liquidation of the corporate debtor is filed by the Resolution Professional (RP), however, in the present case, in compliance of order dated 10.08.2021 in IA No. 355 of 2021, the applicants are filing this application.

Relevant portion of the order dated 10.08.2021 reads as under:

*“IA. No. 355 of 2021 is filed by RP for extension of CIRP, whereas Sr. Counsel appeared for CoC has opposed the application pointing out that CoC passed the resolution for liquidation of the Corporate Debtor.*

*We direct the CoC to file application before this Bench. Both applications shall be heard together.”*



4. The brief facts are summarized here under:

- (i) The Corporate applicant, M/s. Mono Acriglass Industries Limited filed an application under Section 10 of the Code read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 being CP (IB) No. 200 of 2018 to initiate Corporate Insolvency Resolution Process (CIRP) against itself.
- (ii) Vide order dated 05.11.2020, Mr. Mahendra Prasad Jindal was appointed to act as Interim Resolution Professional (IRP) under section 13 (1) (c) of the Code with directives to make public announcement for initiation of CIRP and call for submission of claims under Section 15 as required by Section 13 (1) (b) of the Code. Thereafter, vide order dated 13.11.2020, the present respondent No.1, Ms. Anjali Nirav Choksi was appointed as IRP replacing Mr. Mahendra Prasad Jindal as IRP, as originally appointed.
- (iii) The applicants further submit that thereafter, the applicants being the members of CoC deliberated the condition of corporate debtor and its assets and the reason for seeking liquidation was that the corporate debtor was non-functional and completely shut since the year 2002, the machineries had almost become scrap and the land



and building were in dilapidated condition. In 3<sup>rd</sup> CoC meeting held on 05.04.2021, unanimously CoC passed the following resolutions:

*“RESOLVED THAT the Committee of Creditors unanimously decide for the liquidation of Mono Acriglass Industries Ltd. in the event the Hon’ble Adjudicating Authority is pleased not to allow withdrawal from CIRP on an application to be filed pursuant to a separate resolution passed by the Committee of Creditors.*

*RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorised to make an appropriate application seeking an order of liquidation of the corporate debtor as per the provisions contained in Section 33 (2) of the Insolvency and Bankruptcy Code, 2016”*

- (iv) The applicants submit that in the 4<sup>th</sup> CoC meeting held on 03.05.2021, respondent No. 1 put forward a proposal to seek extension of the CIRP period under Section 12 (2) read with 13 of IB Code read with Regulation 40 of IBBI (CIRP) Regulations, 2016 which was rejected by the applicants and directed Respondent No. 1 to proceed with liquidation of the corporate debtor.
- (v) The applicants further submit that despite their opposing proposal to move an application for extension of CIRP period, the Respondent No. 1 filed IA No. 355 of 2021 which was disposed of on 02.11.2021 with following order:



*“Application filed by RP seeking extension of CIRP period by further 90 days from 23.05.2021 to 20.08.2021. Learned counsel for RP admits that there is no resolution passed by CoC for seeking extension and any direction to RP to file such application. Hence, minutes of such CoC meeting is not placed on record. Moreover, the period of 90 days has also expired and thereafter further 60 days of CIRP to bring it so completion to 330 days has also expired. In view of this, the application become infructuous and disposed of as infructuous.” (sic)*

(vi) Vide order dated 10.08.2021 this Bench had granted liberty to the applicants to file an application for liquidation of the corporate debtor.

5. Respondent No. 1, RP filed reply raising the following points:

- Order of admission and moratorium was passed vide order dated 05.11.2020 and the present RP Ms. Anjali Nirav Choksi was appointed as IRP vide order dated 13.11.2020;
- Upon appointment, IRP made public announcement on 26.11.2020 and claims were invited, due date for receiving claims being 07.12.2020. However, claims from applicant No. 1, Gujarat State Financial Corporation (GSFC) was received on 22.12.2020 and applicant No. 2, Gujarat Industrial Investment Corporation (GIIC) was received on 19.12.2020. RP constituted CoC on 06.01.2021 and submitted report on 07.01.2021.



- First CoC meeting was held on 08.01.2021 wherein RP requested CoC to share custody of assets of the corporate debtor which was in possession of applicant No. 2, the GIIC Ltd.
- RP informed applicants that she needs to visit factory situated at Valsad and be provided with all the documents lying in possession of the applicant No. 2.
- GSFC and GIIC having voting share of 28% & 72% respectively have the custody of assets. Even after eight reminders and 4 CoC meetings, custody and control of the assets were not handed over to RP. Due to non-co-operation by the applicants, RP could not take custody and control of the assets.
- 2<sup>nd</sup> CoC meeting was called on 03.03.2021 to consider withdrawal of petition under Section 12A of the Code wherein the CoC members handed over the Resolution already passed by them for withdrawing the case from CIRP and preferred to independently dispose of the assets of corporate debtor under Section 29 of the State Financial Corporation Act (SFC Act), 1951.
- RP shared her views to CoC on 13.03.2021 about proposed withdrawal from CIRP;



- On receiving no communication from CoC with regard to withdrawal from CIRP, RP called 3<sup>rd</sup> CoC meeting on 05.04.2021 wherein RP proposed the withdrawal process u/s 12A of IBC;
  - RP was working under the instructions of CoC, however, the CoC members being ignorant of the CIRP process were not giving the custody of the corporate debtor;
  - As the deadline for completion of CIRP was approaching, RP conducted 4<sup>th</sup> CoC meeting on 03.05.2021 and proposed to the CoC to get extended the time limit of CIRP which was expiring on 22.05.2021, however, the applicants rejected the proposal of the RP.
6. Respondent No. 2, the Suspended Management filed reply inter alia stating that:
- The corporate debtor was enjoying financial credit facilities from applicants, i.e., GSFC & GIIC;
  - Due to reasons beyond the control of management of the corporate applicant, the operation had been adversely affected, on account of which, the corporate applicant could not regularise the account of the applicants as a result of which the accounts of the applicants were classified as Non-Performing Asset (NPA) on different dates;



- In order to resolve the problems being faced by the corporate applicant as well as the present applicants, in the Board meeting held on 24.04.2018 the corporate applicant passed Resolution to file an application under Section 10 of the Code.
- Both the applicants filed objections to the application filed by the corporate debtor. Both the applicants had taken only one objection that the petition bearing Special Civil Application No. 17893 of 2014 is filed before the Hon'ble High Court of Gujarat under Article 226 & 227 of the Constitution of India against the order of the then AAIFR and the said case is still pending. Since two parallel applications are pending, the applicants were of the view that application under Section 10 of the Code can be considered once the petition pending before Hon'ble High Court of Gujarat is withdrawn. Accordingly, corporate applicant filed application before the Hon'ble High Court of Gujarat for withdrawal of petition filed against the dismissal order of AAIFR which was considered by Hon'ble High Court of Gujarat and passed order dated 18.09.2019 for withdrawal of petition.
- In the second CoC meeting held on 03.03.2021, the applicants instead of cooperating with the RP for carrying out the CIRP effectively,
- had taken a very contrary view completely against the spirit of IBC and considered implementation of Section 29 of SFC Act. Instructions were



given to RP to consider withdrawal of the petition under Section 12A of the Code which reads as under:

*“12A Withdrawal of application admitted under Section 7, 9 or 10 – The Adjudicating Authority may allow the withdrawal of application admitted under Section 7 or Section 9 or Section 10, on application made by the applicant with the approval of ninety per cent voting share of the CoC in such manner as may be specified”*

- In the third CoC meeting held on 05.04.2021, the issue of withdrawal of application was discussed once again. In the said CoC meeting, directors of the suspended board of the corporate debtor had objected for considering the withdrawal of the application. The submissions made by them are recorded in minutes and the same is reproduced herein below: *“The corporate applicant Sreedhar Tripathy and CoC member, Timitrtran Sahu of M/s. Geologging Industriess Ltd. opposed this resolution sharing that we are petitioner under Section 10 of IBC and the petition was filed by us. After the written consent of financial creditors, the application has been admitted by NCLT under Section 10. The right of withdrawal is with the applicant and only applicant can withdraw. Of course withdrawal application is to be supported by 90% of CoC but withdrawal application cannot be moved except by the applicant and that too on certain developments like settlement. We have not decided to withdraw and hence it cannot be decided by CoC abruptly without our application.”*

7. Suspended management had prayed for dismissal of this application and to continue CIRP by handing over possession to Resolution Professional.



8. Heard the submissions and perused the documents on record. On perusal of the application it is found that the reason for seeking liquidation by the applicants was that the corporate applicant was non-functional and completely shut since the year 2002, the machinery had almost become scrap and the land and building were in dilapidated condition. Therefore, the proposal put forward by RP to seek extension of the CIRP period under Section 12 (2) read with 13 of IB Code read with Regulation 40 of IBBI (CIRP) Regulations, 2016 was rejected by the applicants in the 4<sup>th</sup> CoC meeting held on 03.05.2021. On the contrary, prior to that in 3<sup>rd</sup> CoC meeting on 05.04.2020 resolution for liquidation was passed unanimously. Thereafter, vide email dated 21.05.2021, the applicants had requested the RP to conduct CoC meeting to transact and pass resolutions with regard to liquidation of corporate debtor, appointment of liquidator and discussion about fees of RP. Despite clear instructions from the CoC not to proceed with CIRP, Respondent No. 1 filed IA 355 of 2021 on 28.05.2021 seeking extension of CIRP period by further 90 days which was infructuous, was disposed of by this bench on 02.11.2021.
9. At this juncture, it is desirable to refer to relevant provision of section 33 (2) of the Code, which is reproduced hereunder:



*(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 66% 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).*

*[Explanation: for the purposes 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].*

10. Considering the submissions and documents on record, since the COC in its commercial wisdom has decided to take the Corporate Debtor into liquidation with 100% voting, there is no requirement to interfere with the said resolution for liquidation. The present application seeking liquidation of the Corporate applicant, M/s Mono Acriglass Industries Limited, in the manner laid down in Chapter III of Part II of the Code, is allowed.

11. The CoC has proposed name of Mr. Ashish Shah, Insolvency Professional having IBBI Registration No. IBBI/IPA-002/IP-N00214/2017-18/10666, who has also consented to act as a Liquidator and filed his written consent, having an address at 402, 4<sup>TH</sup> Floor, Shaival Plaza, Near Gujarat College, Ellisbridge, Ahmedabad 380 006, who is hereby appointed as liquidator of



corporate applicant, in terms of Section 34 (1) of the Code with the following directions:

- a) The liquidator to issue a Public Announcement in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and 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.
- b) This order is deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016.
- (c) The Liquidator 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.



12. As a consequence of the application being admitted, the moratorium as envisaged under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh moratorium under Section 33 (5) of the Insolvency and Bankruptcy Code shall remain in force.

13. A copy of the order shall be communicated to all the parties to this application and the corporate debtor as well as to the liquidator above named. The liquidator is to be informed of his said appointment by the Registry. In addition, a copy of said order shall also be forwarded to IBBI for its records and ROC for updating the Master Data. ROC shall send a compliance report to the Registrar, NCLT.

14. In view of the above, IA No. 650 of 2021 is disposed of.

Sd/-

**AJAI DAS MEHROTRA**  
**MEMBER (TECHNICAL)**

Sd/-

**DR. DEEPTI MUKESH**  
**MEMBER (JUDICIAL)**

Certified to be True Copy of the Original

*Sunil*  
Joint Registrar 22.8.22  
NCLT, Ahmedabad Bench  
Ahmedabad



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