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

ITEM No. 309

IA(liq)/17(AHM)2024 in
C.P.(IB)/125(AHM)2021

Order under sec. 33 of IBC, 2016

In The Matter Of:

Shivkumar Madanlal Baser **.....Applicant**
IRP of M/s Ila Metals Pvt. Ltd.

.....Respondent

Order delivered on: 08/07/2024

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 the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH –I, AHMEDABAD

IA(liq)/17/AHM/2024 in CP (IB)/125/2021

(Filed under Section 33 r.w. Section 60 of the Insolvency and Bankruptcy Code, 2016) r.w. Rule 11 of NCLT Rules.

In the matter of **M/s Ila Metals Pvt. Ltd.**

Shivkumar Madanlal Baser
Interim Resolution Professional
of M/s Ila Metals Pvt. Ltd.
Having registered Address at:
D-222, International Trade Centre,
Majura Gate, Ring Road, Surat- 395002

.... *Applicant*

Order Pronounced on 08.07.2024

CORAM:

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

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

For Applicant : Mr. Arjun Sheth, Adv a.w. Ms. Kriti Kothari, Adv; Mr. Shiv Kumar Madanlal Baser, IRP

O R D E R

1. The IA(liq)/17/AHM/2024 has been filed by the Applicant Resolution Professional under Section 33 r.w. Section 60(5) of the Insolvency and Bankruptcy

Code, 2016 r.w. Rule 11 of NCLT rules, 2016 seeking relief as follows; -

a. *Your Lordship may be pleased to allow the present application;*
b. *Your Lordship may be pleased to pass an order under section 33 of the code for liquidation of the Corporate Debtor i.e. M/s Ila Metals Private Limited and be pleased to pass appropriate consequential orders;*
c. *Appoint a liquidator of the Corporate Debtor as this Hon'ble Tribunal may deem fit as per provision of the code;*
d. *Your Lordship may be pleased to grant any other relief which it may deem fit in the interest of justice;*

2. Facts of the Case are as follows:

i. It is stated that the M/s Somani Multibiz Private Limited, one of the Operational Creditor of the Corporate Debtor herein had filed an application under Section 9 of the Code for initiating insolvency proceedings against the Corporate Debtor. This Adjudicating Authority admitted the Corporate Debtor into Corporate Insolvency Resolution Process

(hereinafter referred to as "CIRP") vide order dated 08.02.2023.

ii. It is stated that a certified copy of the abovementioned order was received by the applicant on 13.02.2023. Thereafter, the Applicant made a public announcement with respect to the initiation of CIRP against the Corporate Debtor in FORM A on 15.02.2023.

iii. It is stated that as per the said FORM-A, the last date of the submission of the claim in relation to the pending dues of the Corporate Debtor was 20.02.2023. it was submitted by the applicant that as on 20.02.2023, the Applicant did not receive any claim from any of the financial creditors or operational creditors or any other statutory authorities.

iv. Later on the IRP received claim from one of the operational creditor, applicant in the main CP for an amount of Rs. 1,79,24,908.30 which was admitted and report certifying the CoC was stated to be filed on 07.03.2023

v. It is stated that the Applicant herein took control of the bank accounts of the Corporate Debtor and intimated the respective banks about initiation of CIRP against the Corporate Debtor.

vi. **1st Committee of Creditors Meeting:**

The Applicant herein issued the first Committee of Creditors meeting notice dated 09.03.2023 to the sole member of the Committee of Creditors for convening the First Committee of Creditors meeting on 15.03.2023. The first Committee of Creditors meeting was convened by the Applicant on 15.03.2023 through video conferencing. The IRP duly apprised the Committee of Creditors member about the actions undertaken by the IRP in relation to the CIRP of the Corporate Debtor. Further, the Applicant was apprised to the appointment of forensic auditors and registered valuers.

vii. 2nd Meeting of the Committee of Creditors:

The second Committee of Creditors meeting was convened by the Applicant on 17.04.2023 through video conferencing. In the second Committee of

Creditors meeting the IRP apprised the Committee of Creditors members that 2 registered valuers have been appointed for the valuation of the Corporate Debtor and further the IRP apprised that he has prepared an IM which can be disclosed to the Committee of Creditors members after submission of the non-disclosure undertaking.

viii. 3rd Meeting of the Committee of Creditors:

The third Committee of Creditors meeting was convened by the Applicant on 18.05.2023 through video conferencing. In the said meeting the Committee of Creditors was of the opinion to directly go for liquidation of the Corporate Debtor as there were no assets with the Corporate Debtor. The Committee of Creditors member had requested the Applicant to defer the agenda for publication of the EOI and Form G which was accepted by the Applicant.

ix. 4th Meeting of the Committee of Creditors:

The fourth Committee of Creditors meeting was convened by the Applicant on 03.07.2023 through video conferencing. In the said meeting the Committee

of Creditors was of the opinion that since there are no assets lying with the Corporate Debtor, it is better to go for the dissolution of the company directly to which the Applicant informed that the Applicant will inform the Committee of Creditors as to whether same could be done after taking legal opinion on the same.

x. 5th Meeting of Committee of Creditors:

The Fifth Committee of Creditors meeting was convened by the Applicant on 03.08.2023 through video conferencing. In the said meeting, the Committee of Creditors decided to go for the liquidation of the Corporate Debtor considering the fact that there are no assets lying with the Corporate Debtor.

xi. 6th, 7th and 8th Meeting of Committee of Creditors:

The Applicant herein issued letters to the Committee of Creditors for convening the 6th, 7th and 8th Committee of Creditors meeting. But the said meetings could not be convened due to the

unavailability of the sole Committee of Creditors member of the Committee of Creditors.

xii. It is stated that the Applicant herein received the claim of the State Tax Department in Form B on 12.10.2023 for the first time after a delay of almost 7 months which could not be accepted by the Applicant as it was filed after a delay of 7 months and the Applicant did not have the power to condone the said delay.

xiii. 9th Meeting of Committee of Creditors:

The Applicant herein issued the Ninth Committee of Creditors meeting notice dated 25.12.2023 to the sole member of Committee of Creditors for convening the Committee of Creditors meeting on 28.12.2023. During the said meeting it was ratified by the Committee of Creditors members that the Applicant should go for the liquidation of the Corporate Debtor.

xiv. The Applicant herein vide its letter dated 31.12.2023, requested the Committee of Creditors member to pay the fee of the Applicant and the expenses incurred by the Applicant till the present date. That even after

multiple reminders by the Applicant, the Committee of Creditors member did not reimburse the expenses incurred by the Applicant and further did not even pay the fee of the Applicant. The Applicant was not in a position to continue the CIRP of the Corporate Debtor at its own expenses.

xv. However, it is on 12.03.2024 that the Committee of Creditors member herein paid an amount of Rs. 50,000/- in the account of the Corporate Debtor for filing and proceeding with the liquidation application in the present matter.

xvi. It is submitted by the applicant that the Applicant had already conducted the whole CIRP from the personal account of the applicant and neither the costs incurred by the IRP nor the IRP fee was reimbursed by the Committee of Creditors member. Hence, there was a genuine difficulty on the part of the Applicant to file the present Application at the personal expenses of the Applicant.

xvii. It is stated that the Applicant herein has preferred the present Application as soon as the Applicant has

received an amount of Rs. 50,000/- from the sole Committee of Creditors member for initiating liquidation of the Corporate Debtor.

xviii. It is submitted that the applicant with a bona fide intention to resolve the debts of the Corporate Debtor has taken all the steps as per the provisions of the Insolvency and Bankruptcy Code, 2016 and has fulfilled all its responsibilities to be performed by him as an Interim Resolution Professional.

xix. It is further submitted by the applicant that the Corporate Debtor has no assets left with him, there have been no transactions in the bank account of the Corporate Debtor in the last 1-2 years and also there is no account balance left with the Corporate Debtor. There are no chances of the revival of the Corporate Debtor.

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-justifiable**. In this case, it is seen that CoC with a **91.16%** majority has passed the resolution seeking liquidation of the Corporate Debtor.

5. Form H was e-filed on 01.07.2024.

6. The Timeline of the proceedings as under:

Date	stage

08.02.2023	Admittance order
15.02.2023	Public Announcement
22.02.2023	The last date of submission of claims.
15.03.2023	1st CoC Meeting
17.04.2023	2nd CoC Meeting
18.05.2023	3rd CoC Meeting
03.07.2023	4th CoC Meeting
03.08.2023	5th CoC Meeting
07.08.2023	180 days of CIRP lapsed.
02.09.2023-12.11.2023	6th to 8th CoC Meeting(not conducted)
12.10.2023	State Tax Department filed its claim
28.12.2023	9th CoC Meeting
10.06.2024	Present Application for liquidation is filed.

7. We have heard the learned counsel for the applicant and perused the documents attached with the application.

8. The observations of this Tribunal are as under:

   i. It is seen from the pleadings that the Corporate Debtor was admitted under CIRP on 08.02.2023.

   ii. The 80 days of the CIRP expired on 07.08.2023.

iii. The present Application was filed on 10.06.2024 which is after 488 days from the date of the order of admission of Corporate Debtor under CIRP.

iv. The Applicant did not seek any extension for the CIRP after the expiry of 180 days of the CIRP and continued with the CIRP.

v. No Progress Reports were filed by the Applicant in the present matter.

vi. Violation of the provision of IBC by the Applicant are as under:

a) No Progress Reports were filed by the Applicant in the present matter.

b) The Applicant has violated the provision laid down under section 12 of the IBC. Section 12 of IBC is reproduced as under:

> ***"Section 12. Time-limit for completion of insolvency resolution process. –***
> *(1) Subject to sub-section (2), the* ***corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process****.*
>
> *(2) The* ***resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days****, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of [1][sixty-six] per cent. of the voting shares.*

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once:

[Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.]"

The Applicant did not file the application seeking extension of the CIRP nor take any approval from the CoC for the same.

c) It is seen that the Applicant blamed CoC for the delay in filing of the Liquidation Application. The Applicant stated that due to non-payment of the IRP costs he was not able to file for the liquidation application but it cannot be

considered a ground for late filing of the liquidation application. The Applicant could have come before this Tribunal if there was such an issue but the Applicant chose not do so.

vii. It is seen from Form H that there are no assets left with the Corporate Debtor. The Liquidation and Fair Value of the Corporate Debtor are **Nil**.

viii. It is seen that the time for CIRP has expired and the Resolution of CoC for liquidation is provided from the minutes of the CoC meetings.

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

10. 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. In terms of the above circular of IBBI, we hereby

appoint **Mr. Rahul Shah (9925151588) (carahulnshah@gmail.com)** an IPA having registration No. IBBI/IPA-001/IP-P-02170/2020-2021/13367, as per the panel suggested by IBBI for this Bench for the period of July, 1 to December 31, 2023, 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. Ila Metals 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)/17(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. Rahul Shah** an IPA having registration No. IBBI/IPA-001/IP-P-02170/2020-2021/13367 is hereby appointed as a Liquidator of the Corporate Debtor I.e. M/s Ila Metals 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.

11. Accordingly, **IA(liq)/17(AHM)2024** in CP(IB) No. 125 of 2021 is disposed off.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

ST