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04/02/2022

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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD, BENCH-2

IA NO. 709 OF 2021

IN

COMPANY PETITION NO.(IB)/248/(AHM)/2020

[An application filed under section 33(2) and 34(1) of the Insolvency and Bankruptcy Code,2016 for initiation of liquidation of the Corporate Debtor]

IN THE MATTER OF:

MR. KEYUR J. SHAH
(The Resolution Professional of
Nizamiya Construction Private Limited)
Office of RP:
1007, Sun Avenue One,
Near Shreyas Foundation,
ManekbaugSociety,Ambawadi,
Ahmadabad,Gujarat-380051

... Applicant/ Resolution Professional

Order Pronounced on: 27.01.2022

Coram:
Dr. DEEPTI MUKESH, MEMBER (JUDICIAL)
KAUSHALENDRA KUMAR SINGH,MEMBER (TECHNICAL)

NATIONAL COMPANY LAW TRIBUNAL * AHMEDABAD *

MEMO OF PARTIES

IN THE MATTER OF:

MR. KEYUR J. SHAH
(The Resolution Professional of Nizamiya Construction Private Limited, Corporate Debtor)
[IP Reg. No. IBBI/IPA-002/IP-N00244/2017-18/10729]
Office of RP:
1007, Sun Avenue One,
Near Shreyas Foundation,
ManekbaugSociety,Ambawadi,
Ahmadabad,Gujarat-380051

... Applicant/ Resolution Professional

Present:
For the RP: Ms Noopur K Dala, Adv.
For the Suspended Management: Mr. MJ Khan

ORDER

Kaushalendra Kumar Singh, Member (Technical)

1 This is an application filed by the Resolution Professional (hereinafter referred to as "RP") under Section 33(2) and 34(1) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") for passing an order of liquidation of the Corporate Debtor, M/s. Nizamiya Construction Private Limited.

2 The facts as narrated in the application and explained by the counsel for the applicant RP are summarized hereunder :

(i) The Operational Creditor, M/s. Patel Traders (Partnership Firm) had filed an application under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as the 'CIRP'), against the Corporate Debtor, M/s. Nizamiya Construction Private Limited, which was admitted vide order dated 26.04.2021 and Mr. Keyur J Shah was appointed as Interim Resolution Professional (hereinafter referred to as "IRP").

(ii) The IRP under Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, made a public announcement in FORM-A on

29.01.2020. The last date for submission of a claim by the creditors was 12th May 2021.

(iii) The IRP collated all claims submitted by the creditors pursuant to Public Announcement and accordingly constituted a Committee of Creditors (hereinafter referred to as the "CoC") as per Regulation 16 of CIRP Regulations. Thereafter, the 1st CoC meeting was held on 27.05.2021 which comprised of a sole member beingthe operational creditor M/s. Patel Traders itself has a 100 % voting share and in the same CoC meeting, the IRP was appointed as RP.

(iv) In the 2nd CoC meeting held on 19th June 2021, the RP was authorised to appoint the Registered Valuers under Regulation 27 of CIRP Regulations, 2016; thereafterone claim from a financial creditor Mr. Arun Thatee was also received on 2nd July 2021 and the said claim was admitted. Following that, the CoC was reconstituted in accordance with the provisions of Section 21(1) of the Code and Regulation 17(1) of IBBI (CIRP) Regulations, 2016 comprising of that lone Financial Creditor with 100 % voting share.

(v) In the 4th CoC meeting held and convened on 7th August 2021, RP shared the Information Memorandum, Valuation Report along with Fair and Liquidation Value with the CoC and the CoC gave their opinion that asthe Corporate Debtor does not have any assets as on a date, investment of time for invitation for expression of interest [i.e. Form G]shall not be fruitful to any of the parties.

The RP had also requested the CoC in the same meeting, for getting the audit of transactions under sections 43,45,50, and 66 of the Code, and further requested for a forensic audit of the affairs of the Corporate Debtor. Since there were no realisable assets except a bank balance of Rs. 37,462/-, which was even insufficient to cover up CIRP cost, the CoC had rejected the request of RP.

In that 4th CoC meeting, the CoC had passed a resolution and directed the RP to file the necessary application for dissolution of the Corporate Debtor under section 54 read with 60(5)(c) of the Code read with Rule 11 of NCLT Rules,2016.As per thatsaidresolution, the RP filed an application being IA/573/2021 for dissolution of the Corporate Debtor but this Adjudicating Authority vide order dated 07.09.2021, rejected the application and directed the RP to follow the prescribed procedure as per the Code.

(vi) In the 5th CoC meeting dated 15.09.2021in compliance withthe order passed by this Adjudicating Authority, the sole CoC member passed the resolution with 100% voting for liquidation and instructed the RP to file an application under section 33(2) of the Code for liquidation of the Corporate Debtor.

(vii) It is further submitted by the applicant RP that CIRP was initiated on 28.04.2021 and period of 180 days of CIRP was to end on 24th October 2021, but in compliance with the order of this Adjudicating Authority, the CoC resolved to go into the liquidation prior to expiry of 180 days. The CoC also recommended to appoint the RP as a Liquidator who has also given his written consent and the same is annexed with this application.

3. For the sake of ready reference, the relevant provision of section 33 (2) of the Code, which is applicable 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].

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4. Considering the documents and submission made, since the CoC in its commercial wisdom has decided to take the Corporate Debtor in liquidation, we are of opinion that the decision of CoC should not interfere. The present application seeking liquidation of the Corporate Debtor M/s Nizamiya Construction Private Limited, in the manner laid down in Chapter III of Part II of the Code is allowed.

5. We appoint RP Mr. Keyur J. Shah who has also consented to act as a Liquidator and filed his written consent, having registration no. IBBI/IPA-002/IP-N00244/2017-18/10729, having an address at 1007, Sun Avenue One, Near Shreyas Foundation, Manekbaug Society, Ambawadi, Ahmedabad, Gujarat- 380015, as liquidator in terms of Section 34(1) of the Code with the following directions:

a) 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.

b) The liquidator 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.

c) The liquidator to follow up and continue to investigate the financial affairs of the corporate debtor to determine any undervalued and preferential transactions etc.

d) 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.

(e) 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.

6. 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 commence.

7. A copy of the order shall be communicated to the applicant RP 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.

Sd/-	Sd/-
(Kaushalendra Kumar Singh)	**(Dr. Deepti Mukesh)**
Member (Technical)	**Member (Judicial)**

Rahul/LRA

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Prepared by VIMAL
Signature
Date 04/01/2022

Certified to be True Copy of the Original
4.2.22
Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad