

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No.301 - IA/988(AHM)2022
in
CP(IB)/30(AHM)2022

Order under Section 33 r.w 34 IBC

IN THE MATTER OF:

Atul Sheth RP for Bohra Fashions Pvt Ltd
V/s

.....Applicant

Mr. Sanjay Bohra Suspended Management of Bohra Fashions
Pvt Ltd & Ors

.....Respondent

Order delivered on 19/10/2023

Coram:

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

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court, vide separate sheet.

SD/-

SD/-

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

CHITRA HANKARE
MEMBER (JUDICIAL)

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT NO. II

IA /988(AHM)/2022

IN

CP (IB)30/(AHM)/2022

[An application filed under Section 33 r.w. Section 34 of the Insolvency and Bankruptcy Code, 2016]

In the matter of

Atul Sheth
Resolution Professional of
M/s. Bohra Fashions Private Limited
Having office at:
B-27, Saiyam Apartments,
Near Nehrunagar Ambawadi,
Ahmedabad-3800015

..... Applicant/RP

VERSUS

Suspended Management of
M/s. Bohra Fashions Private Limited

1. Mr. Sanjay Bohra
P-2, Shreeniketan Tower, Opp Darpan Academy,
Near Usmanpura Cross Roads, Usmanpura,
Ahmedabad-380013
2. Mr. Sunil Bohra
P-4, Shreeniketan Tower, Opp Darpan Academy,
Near Usmanpura Cross Roads, Usmanpura,
Ahmedabad-380013
3. Mr. Nileshkumar Rathod
6, Jainamangal Society, Opp. Navnirman School,
Rambaug, Sabarmati, Ahmedabad
4. Mrs. Asha Nilesh Rathod
6, Jainamangal Society, Opp. Navnirman School,
Rambaug, Sabarmati, Ahmedabad

...Respondents

(Suspended Directors of Corporate Debtor)

In the matter of:
CP (IB) 30/NCLT/AHM/2022

[An application under Section 9 of Insolvency and Bankruptcy Code, 2016]

Holzwood Industries Private Limited ..Operational Creditor

Versus

Bohra Fashions Private Limited ... Corporate Debtor

Order pronounced on 19/10/2023

CORAM:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

DR. V.G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Appearance:

For the Applicant: Mr. Kuldeep Adesara, Ld. Advocate

For the Respondent: Mr. Shivam D Parikh, Ld. Advocate

ORDER

1. The present Application is filed by Resolution Professional ("**RP**") under section 33 read with Section 34 of the Insolvency & Bankruptcy Code, 2016 ("**IBC**", **2016**) seeking order of liquidation of Corporate Debtor namely **M/s. Bohra Fashions Private Limited.**
2. The brief facts of the case are as under:

- i. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (“**CIRP**”) vide order dated 10.05.2022. On an application filed by the Operational Creditor namely Holzwood Industries Private Limited under Section 9 of the IBC, 2016 and Mr. Atul Jaswantrai Sheth having Registration No. (IBBI/IPA-001/IP-P-02463/2021-22/13854 was appointed Interim Resolution Professional (“**IRP**”).
- ii. The Applicant submitted that Respondents are the Directors of the Suspended Management of M/s. Bohra Fashions Private Limited.
- iii. The Applicant submitted that the first meeting of the CoC held on 21.06.2022. The Second meeting of the CoC held on 27.07.2022, wherein the Applicant has appointed as RP of the Corporate Debtor U/s. 22(3) (a) of the IBC, 2016 and fix the remuneration to be paid to the Applicant.
- iv. The Applicant has published Form –G Invitation for expression of Interest on 06.08.2022 in two daily newspapers being “**Sandesh**”, Ahmedabad edition in Gujarati and in “**Indian Express**” Ahmedabad edition in English.
- v. The Applicant submitted that in fifth meeting of CoC held on 28.10.2022, the Applicant informed the members that only one Resolution Applicant namely M/s.

Nakshatra Corporate Advisors Limited submitted Expression of Interest("EoI"), however, they failed to submit Resolution Plan by 06.10.2022. The Applicant further submitted that till date there was no resolution plan submitted by prospective Resolution Applicant. Hence, the members of CoC decided to issue fresh EoI or to initiate Liquidation process for the Corporate Debtor. The members of CoC with 100% voting approved to initiate liquidation process of the Corporate Debtor on the same date.

3. On issuance of notice the Respondent Nos. 1 to 4 have filed an affidavit-in-reply on 02.06.2023 through one Mr. Sanjaykumar Bajranglal Bohra, Respondent No. 1 objecting to the Application filed u/s 33(1), 33(2) and 34(1) of the IBC, 2016. The main objections are as narrated by the Respondents are as under:
 - a) The application filed under Section 33 r/w Section 34 of the IBC, 2016 is without making any attempt to revive the Corporate Debtor as a going concern.
 - b) The said application has been filed without applying proper legal mind and looking into evidence on record. Thus, the said application is required to be rejected.
 - c) The Respondents claimed that members of the CoC have not adopted a judicious

approach of exploring the possibility of resolution. The prayer contended in the application is required to be rejected and dismissed.

4. In response to the affidavit-in-reply filed by the Respondent No. 1, the Applicant filed Affidavit-in-rejoinder on 08.08.2023 denying all allegations and objections levied by the Respondent No.1.
2. We have heard the Learned Counsels and perused the material available on record. As the Corporate Debtor did not have any significant assets or any employees, the CoC has decided to liquidate the Corporate Debtor by 100% voting. COC has passed the resolution to liquidate the Corporate Debtor with requisite voting as given under Section 33(2) of the IBC, 2016. There are 3 Financial Creditors in CoC and the documents value as per form H is Rs. 59,56,176/-. The original application was filed under Section 9 of the IBC, 2016 for a debt of Rs. 1,14,34,390.28/-. It is observed that the Applicant had not filed any claim which was noted by the CoC in its first meeting. The Corporate Debtor had around Rs. 3.20 Crores of debts and Loan + Advances of which (Rs. 92.00 Lacs approx.) are recoverable from the Directors and related parties which was doubtful as they have told the RP their en-ability to pay.
3. 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 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.

1. In view of the facts and circumstances and documents available on record, we pass the following order:

ORDER

- i. The corporate debtor M/s. Bohra Fashions Private Limited shall be put into 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.
- ii. The Moratorium declared under Section 14 of the Code shall cease to have effect from the date of the order of liquidation.
- iii. We hereby order for liquidation of the Corporate Debtor. IBBI vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in 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. Pragnesh Mahendrabhai Jagasheth, having Registration No: IBBI/IPA-001/IP-P02219/2020-2021/13456** **Email: jagasheth@gmail.com** 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 :

- iv. 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 power henceforth vest with the liquidator.
- v. 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.
- vi. 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.
- vii. 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.
- viii. 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.

- ix. It is directed that 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.
- x. The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the corporate debtor, 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.
- xi. The present resolution professional is directed to hand over the relevant documents and control of the corporate debtor to the newly appointed liquidator forthwith.

2. Accordingly, the present **I.A. No. 988 of 2022 in CP (IB) 30 of 2022** is allowed and stands disposed of.

SD/-
DR. V.G. VENKATA CHALAPATHY
MEMBER(TECHNICAL)

SD/-
CHITRA HANKARE
MEMBER(JUDICIAL)