

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD

COURT - 2

ITEM No.303

IA/614(AHM)2023

in

CP(IB)/128(AHM)2021

Order under Section 33 IBC

IN THE MATTER OF:

Nimai Gautam Shah RP Of M/S Kandla Energy And
Chemicals Ltd

.....Applicant

.....Respondent

Order delivered on: 29/01/2024

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-

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

-Sd-

**CHITRA HANKARE
MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-II

IA/614(AHM)2023

in

CP(IB)/128(AHM)2021

[Application under Sections 33 of the IB Code, 2016]

IN THE MATTER OF

Mr. Nimai Gautam Shah
RP of Kandla Energy and Chemicals Limited,
Corporate Debtor
[IP Reg. No. IBBI/IPA-001/IP-P00154/2017-18/10323]
Office of the Resolution Professional:
605-606-607, Silver Oaks,
Near Mahalaxmi Char Rasta,
Paldi, Ahmedabad, Gujarat-380007

...RP/Applicant

Order pronounced on 29.01. 2024

CORAM:
MRS.CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

DR. VELAMUR G VENKATACHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Appearance: Kamil Lokhandwala Adv for RP

Chaitanya Patel Adv for Suspended Management.

JUDGEMENT

1. The Present Application filed by Mr. Nimai Gautam Shah the Resolution Professional/Applicant of the Corporate Debtor under section 33 of the Insolvency and Bankruptcy Code,2016 (“IBC,2016”) for passing an order of Liquidation of the Corporate Debtor-Kandla Energy and Chemicals Limited and to appoint present applicant (RP) as a Liquidator.
2. The facts as narrated in the application and explain by the Ld. Counsel for the Applicant/RP is summarized hereunder:
 - i. The Corporate Debtor was incorporate under provisions of the Companies Act, 1956 and having a registered office at 11, Second Floor, Shri Kishna Centre, Nr. Mithakhali Six Road, Navrangpura, Ahmedabad-380009. State Bank of India (hereinafter “Financial Creditor”) had filed an application being CP(IB)/128(AHM)2021 under section 7 of the IB Code,2016 for the purpose of initiating CIRP against the Corporate Debtor. This Hon’ble Tribunal vide its order dated 21.10.2022 Admitted the Corporate Debtor into CIRP and appointed the applicant as the Interim Resolution Professional (hereinafter referred to as IRP) of the Corporate Debtor.
 - ii. The IRP issued a public announcement in Form-A under Regulations 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations,2016 for inviting all the creditors of the Corporate Debtor to submit their claim to the IRP. On receipt of claims from the creditors, the same were collated and verified by the

IRP and subsequently constituted the Committee of Creditors (hereinafter "CoC") as per Regulation 17 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016.

- iii. The first CoC meeting was held on 25.11.2022 wherein the Resolution passed for the appointment of IRP as the RP of the Corporate Debtor.
- iv. Pursuant to the commencement of CIRP, RP/Applicant published Form-G inviting Expression of Interest (EoI) from prospective Resolution Applicant. In pursuant to publication of from-G RP has received a Resolution Plan from one of the Resolution Applicant. The RP had put forward the said Resolution Plan before the CoC for its approval. It is further submitted that the CoC did not resolve to either approve or reject the sole Resolution Plan.
- v. The RP Conducted 3rdCoC meeting on 05.04.2023 wherein the CoC resolved to file application for extension of CIRP period with voting of 28 % in assent, 17 % dissent and 55 % of the CoC members abstained to vote pursuant to the said resolution of extension. Thereafter RP filed an IA 478 of 2023 for extension of CIRP period. Due to objections raised by some of the CoC members about problems in E-Voting in 3rd CoC meeting, the RP thereafter conducted 4th CoC meeting on 25.04.2023 wherein the said meeting the CoC failed to pass the Resolution for extension of CIRP period. The resolution failed with 28 %, assent, 32 % dissent and 40 % of CoC members abstain to vote. Hence RP was constrained to withdraw IA 478 of 2023. Hence, the RP withdrew the said IA 478 of 2023 on 01.05.2023. The liquidation Value was Rs.1,32,58,120 and fair value was Rs.1,65,73,275
- vi. Resolution Professional conducted 6th CoC meeting on

08.05.2023 wherein the members of CoC passed a resolution and directed the applicant to file application and to do all such act, deeds for liquidation of corporate debtor as per the provisions of IB Code, 2016.

3. In the 6th meeting of CoC held on 08.05.2023, the RP appraised the members about the developments in the CIRP of the Corporate Debtor. In the said meeting CoC approved the resolution for liquidation of the corporate debtor with 79 % of majority and appointing the applicant as the Liquidator of the Corporate Debtor were passed along with other resolutions. The CoC has, as enumerated in Para 5 (Page 51) of the Application, confirmed the estimated liquidation cost along with RP fees of Rs. 8,60,000/- (Rupees Eight Lakhs Sixty Thousand Only). This does not include fees for transaction audit and statutory audit. In case the amount to be realized/actually realized is not adequate the members of CoC would bear the cost of liquidation expenses.
4. The Liquidator is required to confirm and to comply with Circular dated 28.09.2023 of IBBI [Clarification w.r.t. Liquidator's fee under Clause (b) of sub-regulation (2) of Regulation 4 of IBBI (Liquidation Process) Regulations, 2016. The Liquidator is further ordered to complete the process of liquidation at an early period of maximum 1 year from the date of the order under Regulation 44 of IBBI (Liquidation Process) Regulations, 2016.
5. The Applicant submits that pursuant to the decision taken by the CoC vide Meeting held on 8th May, 2023 to Liquidate the Corporate Debtor, the COC directed the Resolution Professional to proceed for the Liquidation procedure. It is submitted that the Corporate Insolvency Resolution Process was initiated on 21st October, 2022 and in terms of the provisions of Section 12 of the Insolvency & Bankruptcy Code, 2016, the Corporate Insolvency Resolution Process shall end on 180 days, i.e., by 21st April, 2023. However,

as the Committee of Creditors resolved to liquidate the corporate debtor, the Applicant is filing the present application for Liquidation under Section 33 of the Insolvency and Bankruptcy Code, 2016 intimating the Adjudicating Authority of the decision of the Committee of Creditors with the 79% of voting to liquidate the Corporate Debtor.

6. The Applicant therefore, due to the inability to proceed with the CIRP, as the period of CIRP was over, filed this application under section 33 of the IB Code on the following amongst other grounds which are independent and taken without prejudice to another.
7. 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 79% majority has passed the resolution seeking liquidation of the Corporate Debtor.
8. Notice of this application was served upon the suspended management of the corporate debtor, since one of the director is in jail notice not served upon him. This Tribunal on 13.07.2023 again directed the applicant to serve the notice to suspended management through the concerned jail superintendent. Thereafter counsel for respondent appeared and filed an affidavit stating that suspended management has no objection if the liquidation order is passed as all the assets have been handed over and properties disposed off by financial creditors under SARFESI and DRT orders, subject to adjudication of other compliance and requirements.
9. On 07.11.2023 after hearing the parties order was reserved. On perusal of the applications and documents annexed with the application it was found that no Form-H is given as per Regulation 45 and any details of Form-G and newspaper details given. Therefore this matter was listed for clarification on 08.12.2023.

Pursuant to order dated 08.12.2023 RP filed an affidavit on 11.12.2023 attaching the Form-H and details of Form-G, it is stated in the affidavit that said Form-G was published on 02.01.2023 in Financial Express (Gujarati Edition) in both English and Gujarati languages.

10. We have heard the Learned Counsels and perused the material available on record. As CoC did not resolve to approve or reject the plan received by the RP and CoC failed the resolution to seek an extension of CIRP Period, the CoC in its commercial wisdom has decided to liquidate the Corporate Debtor by 79% 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 Kandla Energy and Chemicals Limited, in the manner laid down in Chapter III of Part II of the Code, deserves to be allowed.
11. The CoC also passed the resolution to appoint the present RP, 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 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.
12. We heard the learned counsel. We perused the record and pass following order :

ORDER

- i. Application is allowed.
- ii. In terms of the above, we hereby order for liquidation of the Corporate Debtor M/s Kandala Energy and Chemicals Limited in terms of the provisions of Section 33(2) of the Code r.w

Regulations made there under which shall be effective from the date of this order.

- iii. 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. Bimal Ashok Desai having Registration No. IBBI/IPA-001/IP-P00748/2017-2018/11281 and email id is bimal.a.desai@icai.org as per the panel suggested by IBBI for this Bench for the period of 01 January 2024 to 30 June 2024, as the Liquidator of the Corporate Debtor to carry the liquidation process following terms of directions.
- iv. All the powers of board of directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- v. The personnel of the Corporate Debtor are directed to extend all co-operations to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- vi. The Liquidator will charge fees for 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 proceeds of the liquidation estate under Section 53 of the Code.
- vii. That once having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suite or other legal proceeding on behalf of the corporate debtor with prior approval of this Adjudicating Authority as mentions in sub section 6 of

Section 33 of the IB Coe, 2016.

- 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. The liquidator shall endeavour to explore the viability of selling the Corporate Debtor as a going concern in term of Regulation 32A of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- x. The Liquidator shall co-ordinate with all the authorities and the respected Government Authorities and shall I provide complete information to facilitate the process of Liquidation.
- xi. The Moratorium declared under section 14 of the Code shall cease to have effect from the date of the order of liquidation.
- xii. The liquidator is at liberty to seek any directions, if need be from this Tribunal during the liquidation process.
- xiii. 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.
- xiv. 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.
- xv. 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.

- xvi. 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.
- xvii. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.
- xviii. The Registry is directed to communicate copy of this order to the concerned Registrar of the Companies, the registered office of the Corporate Debtor, IBBI, the Resolution Professional and the Liquidator within one week from the date of this order, after completion of all the formalities.
- xix. Accordingly, the present IA/614(AHM)2023 in CP(IB)/128(AHM)2021 is disposed of.

-Sd-

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

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)