



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

ITEM No.110-IA/119(AHM)2022
In
CP(IB) 169 of 2019

Order under Section 33 of the IBC

IN THE MATTER OF:

Canara Bank

.....Applicant

V/s

Nakoda Ltd

.....Respondent

Order delivered on ..08/02/2023

Coram:

Dr.Madan B. Gosavi, Hon'ble Member(J)

Mr.Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

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

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

DR. MADAN B GOSAVI
MEMBER (JUDICIAL)



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

IA No.119 of 2022 in
CP (IB) 169 of 2019

[Application under Section 33 of the Insolvency and Bankruptcy Code]

In the matter of:

Mr.Vikas Prakash Gupta
Interim Resolution Professional of
M/s. Nakoda Ltd.
(Corporate Debtor)
G-19, Shreewardhan Complex
Mezzanine Floor
Besides Landmark Building
Ramdaspath, Wardha Road
Nagpur, Maharashtra-440 010

..... Applicant

In CP (IB) No. 169 of 2019

(An application under Section 7 of the IB Code)

In the matter of

Canara Bank

..... Financial Creditor

Versus

M/s. Nakoda Limited

..... Corporate Debtor

Order Pronounced on: 08.02.2023

**Coram: Dr.Madan Bhalchandra Gosavi-Member (Judicial)
Mr.Kaushalendra Kumar Singh-Member(Technical)**



For the Applicant : Mr.Arjun Sheth, Advocate.
For the CoC : Mr.Masoom K.Shah, Advocate
For the Income Tax Department : Ms.Pankti Shah, Advocate on behalf of Ms.Maithili D. Mehta, Advocate.

ORDER

1. The present application is filed by Mr. Vikas Prakash Gupta, the Interim Resolution Professional (IRP) of M/s. Nakoda Limited, under Section 33 of the Insolvency and Bankruptcy Code, 2016 (IB Code) seeking an order of Liquidation of M/s. Nakoda Limited (Corporate Debtor).

2. The averments made by the applicant are summarized as under:-

- i) The Financial Creditor, namely, Canara Bank, had filed an application under Section 7 of the IB Code for the initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor-M/s. Nakoda Limited, which was admitted by this Adjudicating Authority vide order dated 12.07.2021 and Mr. Vikas Prakash Gupta was appointed as the Interim Resolution Professional (IRP), the applicant herein.
- ii) Pursuant to Regulation 6 of the IBBI (CIRP) Regulations, 2016, the IRP had caused the Public Announcement, for inviting claims from the creditors of the Corporate Debtor in Form-A and that was published on 16.07.2021 and 17.07.2021 in the newspapers. The copy of the said public announcement is annexed and marked as



Annexure-B to the application. Pursuant to the public announcement, the applicant received claims from the Financial Creditors and Operational Creditors.

- iii. The Committee of Creditors was constituted on 05.08.2021 with Financial Creditors and the constitution of Committee of Creditors was filed with the Adjudicating Authority on 05.08.2021.

The first CoC meeting was held on 13.08.2021. During that meeting, the IRP apprised the CoC regarding the following actions taken by him since the commencement of CIRP of the Corporate Debtor.

- a) *Publication of Form-A in the newspaper and giving intimation in respect of initiation of CIRP of the Corporate Debtor to various creditors, bankers, the Suspended Directors of the Corporate Debtor and to various regulatory as well as statutory authorities.*
- b) *IRP's visit at the registered office of the Corporate Debtor for taking custody of the assets of the Corporate Debtor. On the basis of the visit to the registered office, plant and other places where the properties/assets of the Corporate Debtor are situated, the IRP apprised the CoC as follows:-*

Plant at Surat- *The plant was not in operation since 2014, there was no power, no labour, no security guards. Much of the parts of machineries were found missing and were also cut off and displaced. All the records prior to 2016 were seized by CBI as informed to the IRP by the Suspended Management.*

Windmills at Tirunelveli- *There are 9 Windmills, which are not in operations and no maintenance work was carried out since 2017.*

Properties at Lonavala- *There are two vacant bungalows which are not in good condition pending maintenance and also there are seepage and ceiling damage including damage in the walls.*



Property at Surat- One flat at Surat, which is also not in a good condition as there is seepage issue and issues with respect to rodents.

Vehicles at Surat- Two vehicles, one Mercedes Bens and one Corolla (both are not in working condition).

Records of the Corporate Debtor- There was no Fixed Asset Register. One of the Suspended Directors, viz., Mr. Babulal Jain, informed to IRP that all the data/ files/ folders (including hard disk and IBM Server) prior to 2017 were seized by CBI.

Analysis of the other assets of the Corporate Debtor- There are many discrepancies from the ledger account and the Audited Balance Sheet.

Litigations against the Corporate Debtor- There are a lot of litigations pending against the Corporate Debtor, which includes Prevention of Money Laundering Act (PMLA), matters with High Court, District Court, Civil Courts, Labour Court, Metropolitan Magistrate(s), SEBI, etc.

- c) IRP further apprised that various authorities i.e. Enforcement Directorate (ED), Income Tax Department, State Tax and two other have attached the properties of the Corporate Debtor.
- d) During the first meeting, the Suspended Director of the Corporate Debtor Mr. Babulal Jain stated that in his estimate an investment of Rs.100 crore is required to start and revive the plant.

Hence, the applicant/IRP invited the views of the CoC members in respect of the same.

- iv. The representative of Canara Bank suggested that the Plant of the Company is closed since 2013 and considering the conditions of the plant as per their internal valuation report, the value of the plant is much less as compared to the total exposure of the lenders to the company. Also the internal forensic report is also qualified indicating the diversion of the



fund, further considering very less chances for recoverability of debtors due to alleged fraud and current condition of the plant, it does not seem that there are possibilities for revival of the company and hence they can go directly for liquidation of the Corporate Debtor. The representative of the Axis Bank concurred with the views of Canara Bank and said that they will go with the suggestions of Canara Bank. The representative of Canara Bank added that they can put the agenda for Liquidation of the Corporate Debtor.

- v. Hence, the CoC at its 1st meeting held on 13.08.2021 resolved and approved with 90.2% voting share for Liquidation of the Corporate Debtor and the following resolution was passed.

“RESOLVED THAT *in accordance with Section 33(2) of the Insolvency and Bankruptcy Code, 2016 approval of the members of the Committee of Creditors (CoC) be and is hereby accorded for Liquidation of the Corporate Debtor”.*

- vi. Further, in the second CoC meeting, the members of the CoC passed the a resolution with 70.23% votes in favour of the appointment of Insolvency Professional, Mr. Ravindra Goyal as the Liquidator of the Corporate Debtor. The resolution passed by the CoC at its 2nd meeting is placed at page 76 of the application, which is reproduced hereinbelow: -

“RESOLVED THAT *as per section 33 of Insolvency and Bankruptcy Code, 2016 (Code), approval of the members of the CoC be and is hereby accorded for appointment of Ravindra Kumar Goyal, Insolvency Professional bearing IP Registration No.IBBI/ IPA-001 /IP-P-02019/ 2020-2021/ 13098 as a Liquidator at a fees as proposed to be at concession of 50% of the fees as prescribed in Regulation 4(2)(b) Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and other*



necessary costs, in the event an order of liquidation is passed under section 33 of the Code”.

The consent of Mr. Ravindra Kumar Goyal to act as the Liquidator of the corporate debtor, is annexed to the application at Annexure-F

- vii. Further, the CoC passed a resolution with 96.39% votes in respect of the Liquidation Cost. The resolution passed by the CoC is placed at page 77 of the application, which is reproduced hereinbelow: -

“RESOLVED THAT *in pursuance of Regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 read with any other applicable regulations and section 5(16) of Insolvency and Bankruptcy Code, 2016 and Regulation 2(ea) and Regulation 2A of Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016 (“Liquidation Process Regulations”), considering that where an order for liquidation is passed by the Adjudicating Authority under section 33 of the Insolvency and Bankruptcy Code, 2016, approval of the Committee of Creditors be and is hereby accorded for the best estimate of liquidation Costs as set out in Annexure-1, and in case there is any shortfall to meet the liquidation costs, financial creditors, being financial institutions, shall contribute to fund the excess of the liquidation costs over the liquid assets of the corporate debtor, in proportion to the financial debts owed to them by the corporate debtor as per Regulation 2A of the Liquidation Process Regulations on monthly, quarterly or need basis”.*

- viii. Further, the COC also agreed that in the event of liquidation order is passed under Section 33(2) of the Code against the Corporate Debtor, in accordance to Regulation 39C of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016) the liquidator will be required to first explore sale of the Corporate Debtor as a



going concern under clause(e) of Regulation 32 of the Insolvency and Bankruptcy Board of India(Liquidation Process) Regulations, 2016 ('Liquidation Process Regulations") or sale of the business of the Corporate Debtor as a going concern under clause(f) thereof, Pursuant to the 2 meeting of the Committee of Creditors, the same was put to vote as Item No. 3. The Committee of Creditors by a majority of 67.53% of the voting share, voted in favor for liquidation as a going concern in accordance with Section 33(2) of the Code read with Regulation 39C of the CIRP Regulations.

3. The CoC has been served with notice of this application. The CoC appeared through Ld. Counsel, Mr.Masoom K. Shah, and filed an affidavit in reply dated 20.08.2022. Upon perusal of the said reply, it is observed that the contentions in the said reply are similar to the contentions made by the IRP in the CoC meetings.

4. Heard Learned Counsel for the applicant/Interim Resolution Professional and Ld. Counsel for the CoC and perused the material on record and also Affidavit dated 04.01.2023.

5. In the present case, the CoC, in its commercial wisdom, at its 1st meeting held on 13.08.2021 with 90.2% votes resolved to liquidate the corporate debtor as the Corporate Debtor has a huge amount of outstanding debt and that the plant of the Corporate Debtor has been shut down since 2013 for almost 8 years, which is fortified by the applicant in the affidavit dated 04.07.2023 from which it can be inferred that the Corporate Debtor is not a going concern. One of the suspended directors of the corporate debtor estimated that an investment of Rs.100 crore would be required to restart and revive the plant. Further, there are negligible chances of the corporate debtor being revived, in view of the plant's deteriorated condition and huge value depletion.



6. Further, the CoC had resolved to appoint Mr. Ravindra Goyal, an Insolvency Professional, having registration number IBBI/IPA-001/IP-P-02019/2020-2021/13098 as the Liquidator of the corporate debtor. Mr. Goyal has accorded his written consent in Form A to act as Liquidator of the Corporate Debtor. It is also noted that the excess Liquidation cost is to be borne by the CoC as agreed / approved in the 2ndCoC meeting held on 01.10.2021 by vote of 96.39%. It is further agreed therein that in case there is any shortfall to meet the liquidation costs, financial creditors, being financial institutions, shall contribute the excess of the liquidation costs over the liquid assets of the Corporate Debtor, in proportion to the financial debts owed to them by the Corporate Debtor as per Regulation 2A of the Liquidation Process Regulation on monthly, quarterly or need basis.

7. It is also seen from the record that the IRP filed an IA No. 120 of 2022, against the Assistant Commissioner of Income Tax &Ors., seeking release of attachment of the properties of the Corporate Debtor, which is presently pending before this Adjudicating Authority. On the basis of facts and circumstances, as well as documents on record and the applicant's submission, we pass the following order/direction:-

- a) IA 119 of 2022 in CP (IB) 169 of 2019 filed by the IRP seeking an order of the Liquidation of M/s. Nakoda Limited-Corporate Debtor, (CIN No. L17111GJ1984PLC045995), is allowed. The liquidation of the Corporate Debtor is effective from the date of this order.
- b) The Moratorium declared vide order dated 12.07.2021 in CP(IB)No.169/7/NCLT/AHM/2019, henceforth, ceases to exist.



- c) As per Section 34(1) of the I.B. Code, Mr.Ravindra Goyal, holding Registration No. IBBI/IPA-001/IP-P-02019/2020-2021/13098is hereby appointed as a Liquidator of the Corporate Debtor, who shall complete the liquidation process as per the provisions of Insolvency and Bankruptcy Code, 2016 r.w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d) The Liquidator shall submit a Preliminary Report to this Tribunal within seventy-five (75) days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further reports as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by the Liquidator with this Tribunal.
- e) All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter cease to exist. All these powers henceforth vest with the Liquidator.
- f) It is directed that the Liquidator shall first explore to sell the Corporate Debtor as a going concern, in compliance with the provisions of Regulation 39(c) of IBBI CIRP Regulation, 2016, as decided by the CoC members in second CoC meeting.
- g) 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.
- h) Once the liquidation process is initiated, subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, however, the liquidator shall have the liberty to institute the suit or 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 IB Code.

- i) 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.
- j) The Registry is directed to upload this order on the official website within a maximum of two working days from the date of this order. The authenticated copy of this order is also be sent by the Registry to the Financial Creditor, Corporate Debtor, Registrar of the Companies, and Liquidator by Speed-Post within one week from this order.

8. Accordingly, IA No.119 of 2022 in CP (IB) 169/7/NCLT/AHM/2019 stands disposed of. No order as to costs.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

DR. MADAN B GOSAVI
MEMBER (JUDICIAL)

Sudha