

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

ITEM No. 203

IA/322(AHM)2023 in CP (IB) No. 453 of 2019

Order under Section 33 r.w 34 IBC, 2016

IN THE MATTER OF:

Dhaval C. Khamar RP for
Rudrasiva Infracon Private Limited

.....Applicant

Vs

Suspended Management of M/s. Rudrasiva
Infracon Pvt Ltd.

.....Respondent

Order delivered on: 19/06/2023

Coram:

Shammi Khan, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

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

-sd-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

IA/322(AHM)2022 in CP (IB) No. 453 of 2019

[Application under Section 33(1) 33(2) & 34 of the Insolvency and Bankruptcy Code, 2016]

In the Matter of:

Dhaval C. Khamar,

Resolution Professional of
M/s.Rudrasiva Infracon Pvt. Ltd.
Having its office at:
1012,Shilp-Zaveri,
Shyamal Crossroads, Satellite,
Ahmedabad- 380 015.

....Applicant

Versus

1. Mr.Aasheesh Kummaar Goyel

Suspended management of
M/s. RudrasivaInfraconPvt. Ltd.
Having Address at,
B 303, Wind Chimes, Bhadaj Circle,
Science City Road, Ahmedabad,
Gujarat, 380 060.

2. Mr.Pinakin Soni,

Suspended Management of
M/s. RudrasivaInfraconPvt. Ltd.

Having address at,
Parekh Pole, Nr. Jain Derasar,
Unjha, Mehasana,
Gujarat, 384 170.

....Respondents

In the Matter of:

CP (IB) No. 453 of 2019

Panda Water Tech Pvt Ltd.

....Operational Creditor

Versus

RudrasivaInfraconPvt Ltd.

....Corporate Debtor

Order Reserved on: 08.05.2023
Order Pronounced on: 19.06.2023

Coram: Hon'ble Shammi Khan, Member (Judicial)
Hon'ble Kaushalendra Kumar Singh, Member (Technical)

Appearance:

For the Applicant: Mr. Tirth Nayak, Advocate

ORDER

1. The instant application is filed on 28.02.2023 by Mr. Dhaval C. Khamar the Resolution Professional of the Corporate Debtor - M/s. Rudrasiva Infracon Private Limited under sections 33 & 34 of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") for liquidation of the Corporate Debtor- M/s. Rudrasiva Infracon Private Limited.
2. Learned Counsel for the Applicant appeared and made the averments which are summarised as under:

- i. This Adjudicating Authority vide its order dated 31.05.2022 admitted the Corporate Debtor in the Corporate Insolvency Resolution Process (“CIRP”) in an application filed by the Operational Creditor – M/s. Panda Water Tech Pvt. Ltd., under section 9 of the IBC, 2016. Mr.Dhaval C. Khamar (the Applicant herein) was appointed as Interim Resolution Professional (“IRP”).
- ii. The IRP made a public announcement on 11.06.2022 in Form-A where the registered office and principal place of business of the Corporate Debtor was located. The last date of submission of claims was 23.06.2022. Thereafter, the IRP collated the claims and constituted the Committee of Creditors (“CoC”) comprising two Operational Creditors, namely, Panda Water Tech Pvt. Ltd., having a voting share of 90.2%, and Office Commissioner of State Tax, having a voting share of 9.8%. The first meeting of the CoC was held on 06.07.2022 wherein the IRP was confirmed to act as RP. The second meeting of the CoC was held on 20.08.2022 wherein the RP informed the members of the CoC that on 16.08.2022 one claim was received from the Financial Creditor i.e., State Bank of India. Thereafter, the IRP reconstituted the CoC as per Regulation 17 of CIRP Regulations with the State Bank of India – the sole member of the CoC.
- iii. The RP published Form G inviting the Expression of Interest (for short “EoI”) on 23.08.2022 and thereafter, on 22.10.2022 with the last date of submission being 21.11.2022.
- iv. The 5th CoC meeting was held on 17.12.2022 wherein the RP informed the CoC that two prospective resolution applicants had shown interest to submit the plan and there were chances of resolution of insolvency of the Corporate Debtor but the proceedings may not get completed within the remaining CIRP

period. In the said meeting, the CoC by 100% votes resolved and authorized the RP to file an application to adjudicating authority for extension of CIRP period by further 90 days from 27.11.2022. Accordingly, this Adjudicating Authority vide its order dated 17.01.2023 passed in IA/23(AHM)2023 extended the CIRP period by 90 days.

v. The 7th CoC meeting was held on 17.02.2023, wherein CoC members decided that as despite issue of Form-G twice no Resolution Plans were received hence they do not want to allow any extra time to the PRAs. CoC was also of the opinion that they were not in favour of issue of Form-G again. Accordingly, the CoC by its 100% voting rights, passed the resolution to liquidate the Corporate Debtor and authorized the RP to file an application before this Adjudicating Authority for liquidation of the Corporate Debtor. The estimated liquidation cost is Rs. 10,93,000/-. In the said meeting, it was also resolved that if the actual liquidation cost exceeds the liquidation proceeds, the CoC members will be required to contribute the additional liquidation cost as well.

3. We have heard the learned counsel for the Applicant and perused the material available on record. It is noted that the Corporate Debtor was admitted into CIRP by the Adjudicating Authority vide order dated 31.05.2022. Mr.Dhaval C. Khamarwas appointed as an IRP. The IRP published the Form-A and constituted the CoC comprising two Operational Creditors, namely, Panda Water Tech Pvt. Ltd., and Office Commissioner of State Tax. In the first meeting of the CoC, the IRP was confirmed to act as RP. Since the State Bank of India filed its claim on 16.08.2022 and the same was admitted by the RP on 17.08.2022, the CoC was reconstituted comprising the sole member i.e., State Bank of India.The RP published the Form G twice but no

plan was received. In the meantime, the extension of 90 days was also granted by this Adjudicating Authority vide order dated 17.01.2023 passed in IA/23(AHM)2023. Since no plan was received, the CoC in its 7th meeting dated 17.02.2023 passed a resolution to liquidate the Corporate Debtor and resolved to appoint the RP to act as the liquidator.

As per the valuation reports submitted by the two valuers, the fair value of the financial assets of the Corporate Debtor is Rs. 63,75,000/- and the liquidation value is Rs 60,75,000/-. Further the estimated liquidation cost, as resolved by the CoC, is Rs. 10,93,000/-. It is noted that the CoC has also resolved that if the actual liquidation cost exceeds the liquidation proceeds, the additional cost will be contributed by the CoC members.

4. Considering the above, we are of the view that the present application deserves to be allowed and hence by invoking the provisions of section 33 of the Insolvency & Bankruptcy Code, 2016, we allow the present application with the following directions:

- i. IA 322 of 2023 is allowed and the Corporate Debtor M/s. Rudrasiva Infracon Pvt. Ltd. is ordered to be liquidated in terms of the provisions of the IBC, 2016.
- ii. The order for liquidation of the corporate debtor shall be operative with immediate effect and the moratorium declared vide order dated 31.05.2022 in CP(IB) No. 453 of 2019 henceforth ceases to exist.
- iii. As per Section 34(1) of the IBC, 2016, the Applicant/Resolution Professional, Mr.Dhaval C. Khamar (Registration No. IBBI/IPA-001/IP-P-02574/2021-2022/13944) is hereby appointed as a Liquidator of the Company – Rudrasiva

Infracon Pvt Ltd. The Liquidator so appointed shall complete the liquidation process as per the provisions of the Insolvency and Bankruptcy Code, 2016 r.w. Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

iv. Public Notice shall be issued in the same newspaper (in which Public Announcement in Form A dated 11.06.2022 was made), stating that the Corporate Debtor is in liquidation.

v. 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.

vi. The personnel(s) 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, further, the Liquidator shall also provide all co-operation to the various Government agency(s)/ authority(s) in ongoing investigations/inquiry or inquiries initiated hereafter.

vii. That once liquidation process initiated subject to Section 52 of the Code, no suit or legal proceedings shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute the suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority as mentioned in Sub-section 5 Section 33 of the IBC, 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. It is directed to the Liquidator to first explore the sale of the corporate debtor as going concern as envisaged under Regulation 39C of the IBBI (Insolvency Resolution Process for the Corporate Persons) Regulations, 2016.

x. The registry is directed to upload this order on the official website within two working days from the date of this order. The authenticated copy of this order be sent by the Registry to the Financial Creditor, Corporate Debtor, Registrar of Company, Resolution Professional and Liquidator by Speed-post within one week from the date of this order.

5. Accordingly, IA/322(AHM)2023 is allowed and disposed of.

-sd-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)