

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

102. IA(I.B.C)/907(MB)2021

In

C.P. (IB)/2829(MB)2019

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **16.11.2021**

NAME OF THE PARTIES: MS MAYANK ARORA AND CO

Vs.

AVANI IMPEX PRIVATE LIMITED

SECTION Sec 33(1) (b) (i) to (iii) r/w Sec 33(3) OF INSOLVENCY AND
BANKRUPTCY CODE, 2016

ORDER

IA(I.B.C)/907(MB)2021

Mr. Yahya Batawawala, counsel for the IRP is present through virtual hearing. The above Application is filed for liquidation of the Corporate Debtor Company. Heard the counsel appearing for the IRP and the above Application is allowed. Detailed order would follow:

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Sd/-
H.V. SUBBA RAO
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

I.A. 907 OF 2021

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

Filed by

**Mr. Pawan Kumar Ramdhan Agarwal
42, Gopal Bhavan, 199, S.G. Marg,
Marine Lines (E), Mumbai-400002**

Resolution Professional of:

Avani Impex Private Limited.

...Applicant

In the matter of

C.P. No. 2829 of 2019

Mayank Arora &Co.

**Registered office at: Office No. 268, 2nd
Floor, Udyog Bhavan, Sonwala Road,
Goregaon (East), Mumbai- 400063**

...Operational Creditor

Versus

Avani Impex Private Limited

**419B, 4th Floor, Plot No. 21,
Panchratna, Mama Parmanad Marg,
Opera House, Girgaon, Mumbai- 400004**

Order delivered on: 16.11.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance:

For the Resolution Professional: Mr. Yahya Batawawala,
Advocate

1. This is an application filed by Resolution Professional, Mr. Pawan Kumar Ramdhan Agarwal seeking liquidation of Avani Impex Private Limited. (hereinafter referred to as Corporate Debtor) under Section 33 of Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”), praying the following reliefs:
 - a. *To pass an order under Section 33 of the Insolvency and Bankruptcy Code, 2016 to initiate the Liquidation Process against Corporate Debtor;*
 - b. *To pass such other Order or Orders as this Hon’ble Tribunal shall deem fit and expedient.*
2. The counsel for the Applicant submitted that this Tribunal vide an order dated 31.01.2020 admitted the captioned petition under Section 9 of the code titled as M/s Mayank Arora and Co., Operational Creditor Vs. Avani Impex Private Limited, Corporate Debtor in Company Petition (IB) 2829 of 2019 appointing the Applicant as an Interim Resolution Professional.
3. Counsel for the applicant further mentioned that pursuant to the order dated 31.01.2020, the first meeting of the CoC was held on 29.02.2020. The Applicant informed that he received one claim from Operational Creditor. The applicant had sent a written communication to the Company for submission of the Books of Accounts and other records of the Company. In the said CoC meeting proposed to continue the appointment of the Applicant/IRP i.e. Mr. Pawan Kumar Ramdhan Agarwal, as the Resolution Professional (RP) of the Corporate Debtor.
4. The Applicant states that the 2nd Meeting of COC was held on 23rd June, 2020. In the 2nd CoC meeting, invitation of Expression of Interest (‘EOI’) from the prospective Resolution Applicants was

decided to be called pursuant to provisions of sub-regulation (1) of Regulation 36A of the IBBI Regulations, 2016. The applicant further submits that he had called for Expression of Interest in Form G on 26.06.2020 in Free Press Journal (English) and Navshakti Mumbai (Marathi).

5. The applicant further submits that the CoC had approved the appointment of Mr. Dharmesh Trivedi, Chartered Accountant, having office at 99-101, Govind Niwas, 3rd Floor, R No. 10, K Sharma Marg, Lohar Chawl, Mumbai- 400002, as Registered Valuer of the Corporate Debtor at a total remuneration of Rs. 25000/-+GST and Mr. Modilal Pamecha, Chartered Accountant having office at C-802, Padmarag Behind Darshan, J B Nagar, Andheri East Mumbai 400059 as Registered Valuer of the Corporate Debtor at a total remuneration of Rs. 25000/- + GST. Accordingly, the Applicant issued Engagement Letter dated 24.06.2020 to the Registered Valuers.
6. The Applicant submits that the 3rd CoC meeting was held on 04.08.2020. In the said meeting the CoC rejected the EOI received from only applicant Mr. Sanjay Punglia as the applicant did not meet the net worth criteria.
7. The Applicant states that the 4th CoC meeting was held on 19.11.2020. In the said meeting, the Members of CoC stated that since there is no possibility of revival of the Corporate Debtor and no resolution plan has been received, the only option is to liquidate the company. After discussion it was unanimously decided and recommended to liquidate the corporate debtor after obtaining approval of the adjudicating authority. Accordingly, the following resolution was passed with 100% voting in favour of the same:

“Resolved that the Corporate Debtor to be liquidated and an application be made to the Adjudicating Authorities to consider passing of appropriate order requiring the Corporate Debtor to be liquidated in the manner as laid down in Insolvency and bankruptcy Code, 2016 and Rules framed there under. Resolution professional be and is authorized to do the needful in this matter and also make an application for extension of the time/condonation of delay if required, further the CoC approves the name of Resolution Professional to act as liquidator if the same is allowed by the Tribunal.”

8. We have heard the Applicant and perused all the documents submitted by him. It is observed from the minutes of the 4th COC meeting dated 19.11.2020 that the COC has, with 100% majority, decided to liquidate the Corporate Debtor and relying on the settled principle of law regarding the Commercial Wisdom of the COC, we hereby allow this Misc. Application no. 907 of 2021 by passing the following:

ORDER

- a. I.A. 907/2021 is allowed and liquidation order is passed against the Corporate Debtor M/s Avani Impex Private Limited.
- b. **Mr. Pawan Kumar Ramdhan Agarwal**, having Registration No. IBBI/IPA-001/IP-P00414/2017-18/10737 and having office at: 42, Gopal Bhavan, 199, S.G. Marg, Marine Lines (E), Mumbai-400002 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in

Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.

- d. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e. The Liquidator appointed under section 34(1) of the Code. Will have all powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.
- f. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- g. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- h. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- i. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or

other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.

- j. This liquidation order shall be deemed to be a 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.

With the above directions, this application i.e. I.A. 907/2021 is hereby allowed and disposed of.

Sd/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)