

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



ITEM No.302

IA/769(AHM)2021 in CP(IB) 59 of 2019

Proceedings under Section 33 r.w 34 IBC,2016

IN THE MATTER OF:

Ramchandra Dallaram Choudhary RP of Doshion Pvt Ltd

.....Applicant

.....Respondent

Order delivered on: 03/10/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

ORDER

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

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH -I, AHMEDABAD**

IA/769(AHM)2021 in CP(IB) No. 59 of 2019

[filed under Section 33 & 34 of the Insolvency and Bankruptcy Code, 2016]

*In the matter of **Doshion Private Limited***

Mr. Ramchandra Dallaram Choudhary CA,

Resolution Professional of
Doshion Private Limited
Having address at:
9B, Vardan Tower,
Nr. Vimal House, Lakhudi Circle,
Navrangpura, Ahmedabad- 380014

....Applicant

In the matter of :-

IDBI Bank Limited
Having office at : IDBI Complex,
Nr.Lal Bungalow, Off C.G. Road,
Ahmedabad, Gujarat- 380006

.....Financial Creditor

Versus

Doshion Private Limited
Having office at : A-806,
Sankalp Iconic Tower, Iscon
Ambli Road, Ahmedabad,
Gujarat- 380054

..... Corporate Debtor

Order pronounced on: 03.10.2023

Coram:

SHAMMI KHAN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)



Appearance:

For the Applicant : Mr. Sumit Parikh Adv. a/w.
Mr. Vikram Choudhary Adv. &
Mr. Jigar Shah, CA

For Suspended Management : Mr. Arpit Singhvi Adv.

ORDER
(Per: Bench)

01. This application has been filed by the Applicant/RP under Section 33 read with 34 of the Insolvency and Bankruptcy Code, 2016 with the following prayers :-

(a) Your lordship may be pleased to allow the present application;

(b) Your lordship may be pleased to pass an order under Section 33 of the Code for liquidation of corporate debtor;


(c) Your lordship may be pleased to pass an order under Section 34(1) of the Code appointing the Applicant as the Liquidator;

(d) Your lordship may be pleased to grant any other relief or relief(s) as may deem fit in the interest of justice;

02. It is stated that on an application by financial creditor IDBI Bank Ltd. filed under Section 7 of the Code. This tribunal vide order dated 31.08.2021 passed in CP (IB) No.57/7/NCLT/AHM/2019 ordered for commencement of the CIRP proceedings and appointed the applicant herein as the IRP.



03. The applicant made the public announcement in two newspapers namely “Times of India-Ahmedabad Edition”, Sandesh-Ahmedabad Edition on 12.09.2021. The claims were received pursuant to the publication of Form A and the applicant constituted Committee of Creditors (CoC) and a report to that effect was filed on 04.10.2021.
04. The first CoC meeting was convened on 08.10.2021 wherein, the CoC unanimously resolved to appoint IRP as Resolution Professional (RP) of the corporate debtor through e-voting on 02.11.2021.
05. It is submitted that the first meeting of the CoC, the CoC unanimously resolved to go for the liquidation of the corporate debtor since there are no manufacturing or business activities which is being carried out by the corporate debtor, without following the resolution process inviting the Expression of Interest (EOI). It is stated liquidation sought is as per the provisions contained in Chapter-III of the Insolvency & Bankruptcy Code, 2016 and regulations applicable thereto.
06. It is stated that the member of the CoC were of the opinion that there are no chance of getting any Expression of Interest (EOI) or possibility of revival of the corporate debtor as the corporate debtor is in non-functioning state since 2016. The copy of the CoC minutes are appended along with the e-voting results as Annexure-C of the application.
07. It is submitted that the CoC resolved to appoint applicant herein as the liquidator of the corporate debtor. It is stated that the members of the CoC resolved to sell the estates of the corporate



debtor as going concerned as per Regulation 39C of the CIRP Regulations. Pursuant to Regulation 39B, the CoC has estimated the liquidation cost and has resolved to meet the liquidation cost and the fees to liquidate at the rate 75% of the amount as prescribed in table under Regulation 4 of IBBI (Liquidation Process) Regulations, 2016.

08. Form H was filed on the e-portal on 18.09.2023 which reveals that the 180th day of CIRP period of corporate debtor was on 26.02.2022 and that in all 10 CoC meetings have been held so far.
09. The CoC of the corporate debtor apprised Seven Financial creditors (5 Banks, 1 ARC, 1 NBFC). The aggregate value of claims received is to the extent of Rs.1287.96 Crores.
10. Order dated 09.03.2022 records that Ld. counsel Mr. Arpit Singhvi appeared on behalf of the Suspended Management and stated that appeal against the admission order is pending before the Hon'ble NCLAT. The said appeal no. Company Appeal (AT) (Ins.) No. 296 of 2022 was dismissed by Hon'ble NCLAT vide order dated 07.11.2022 and the order of this tribunal dated 31.08.2021 was affirmed.
11. The suspended management has filed another affidavit across the bar during the hearing held on 21.09.2023 attached therewith (a) rejection of OTS by IDBI Bank dated 15.05.2021. (b) Offer for OTS of dues dated 21.06.2021 addressed to IDBI Bank by the corporate debtor. It is stated as per the affidavit that these are the only OTS propositions made by the corporate debtor. It is also stated in the affidavit that the applicant is ready to submit the resolution plan subject to receipt of information memorandum to



be provided by the RP along with other requisite documents of the corporate debtor which are necessary for the applicant for conducting necessary due diligence for submitting the resolution plan by the applicant.

12. At this stage, we reproduce Section 33(1) and 33(2) of the Insolvency & Bankruptcy Code 2016.

Initiation of Liquidation.

33(1) Where the Adjudicating Authority,-

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30' or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,

It shall-

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [approved by not less than sixty-six percent of the voting share] to liquidate the corporate debtor, the Adjudicating

Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) of sub-section (1).

(emphasis supplied)

13. The CoC of the corporate debtor with 100% majority has already resolved to liquidate the corporate debtor in meeting held on held on 08.10.2021, the resolution of the CoC is extracted below:-

“The members of the CoC through e-voting dated 02.11.2021 approved the resolution No.004 for Initiation of Liquidation Process under Section 33 of the Insolvency and Bankruptcy Code 2016 and appointment of Liquidator with 100% voting in favour of the said resolution.”

14. The appeal made by the suspended directors before the Hon’ble NCLAT has already been dismissed stated in Para 10 above however, none appearing before us as brought out the status of the Civil Appeal filed by the suspended directors before the Hon’ble Supreme Court, however, all parties have confirmed that there is no stay in the matter.
15. **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-justiciable**. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.
16. As the CoC has already resolved that 100% majority to liquidate corporate debtor and as the CIRP Period is already over on 26.02.2022 and there is no CIRP period left, we are constrained to order for liquidation of the corporate debtor. The 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 **Sumedha Management Solutions Private Limited** having Registration No. IBBI/IPE-0020/IPA-1/2022-23/50023 as the liquidator of the corporate debtor to carry the liquidation process subject to the following terms of the directions:-

- a) The Corporate Debtor **M/s. Doshion Private Limited** shall be ordered for 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. Accordingly, we allow IA/769 (AHM)2021.
- b) The Moratorium declared under section 14 of the Code shall cease to have effect from the date of the order of liquidation.
- c) As per section 34(4)(b) of the Code, **Sumedha Management Solutions Private Limited**, is hereby appointed as a Liquidator of the Corporate Debtor i.e., **M/s. Doshion Private Limited**. The Liquidator so appointed shall complete the liquidation process as per the provisions of the Code r.w. the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.



- d) 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 powers henceforth vest with the Liquidator.
- e) 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.
- f) 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.
- g) 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.
- h) 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.



- i) 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.
- j) This Adjudicating Authority directs 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 so that the workman/employees could also be informed of this liquidation order through their association.
- k) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor 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.
- l) The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.



- m) The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the Corporate Debtor, IBBI, 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.
18. Accordingly, **IA/769(AHM)2021** in CP(IB) No. 59 of 2019 is disposed off.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

Mehul