

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

ITEM No.146
IA/632(AHM)2021 in CP (IB) 379 of 2019

Order under Section 33 r.w Section 34 of the IBC Code, 2016.

IN THE MATTER OF:

Central Bank of India

.....Applicant

V/s

Octopus Papers Ltd

.....Respondent

Order delivered on ..21/12/2022

Coram:

Dr. Madan B. Gosavi, 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 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.632 of 2021 in
CP (IB) 379 of 2019**

[Application under Section 33 read with Section 34 of the Insolvency and Bankruptcy Code]

In the matter of:

Mr. Premraj Ramratan Laddha
Resolution Professional for
M/s. Octopus Papers Ltd.
304, Abhijit-3
Above Pantaloon
Mithakhali – Law Garden Road
Ellisbridge, Ahmedabad
Gujarat

..... Applicant

Versus

1. Mr. Vishal Bharatkumar Khara
A/1, Avenue Park
Opp. Lions Blood Bank
Gunjan, GIDC, Vapi
Pardi, Valsad
Gujarat.
2. Mrs. Jyoti Vishal Khara
A/1, Avenue Park
Opp. Lions Blood Bank
Gunjan, GIDC, Vapi
Pardi, Valsad
Gujarat.
3. Mr. Uttam Amratlal Jain
A/1, Avenue Park
Opp. Lions Blood Bank
Gunjan, GIDC, Vapi
Pardi, Valsad
Gujarat.

4. Mrs.Hansa Bharatkumar Khara
A/1, Avenue Park
Opp. Lions Blood Bank
Gunjan, GIDC, Vapi
Pardi, Valsad
Gujarat.

..... Respondents

In CP (IB) No. 379 of 2019
(An application under Section 7 of the IB Code)

In the matter of

Central Bank of India

..... Financial Creditor

Versus

M/s. Octopus Papers Limited

..... Corporate Debtor

Order Pronounced on : 21.12.2022

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

Appearance:

For the Applicant

: Mr. Jaimin Dave, Advocate.

For the CoC

: Mr. Sandeep C. Bhatt, Advocate.

For the Suspended Management

: Mr. Harmish K. Shah, Advocate.

ORDER

1. The present application is filed by Mr. Premraj Ramratan Laddha, the Resolution Profession (RP) of M/s. Octopus Papers Ltd. under Section 33 read with Section 34 of the Insolvency and Bankruptcy Code, 2016 (**IB Code**) seeking an order of Liquidation of M/s. Octopus Papers Ltd. (Corporate Debtor) as the Committee of Creditors (**CoC**) has rejected all the Resolution Plans submitted for consideration of CoC

and for the appointment of the present RP as Liquidator of the Corporate Debtor.

2. The averments made by the applicant are summarized as under:-
- i) The Financial Creditor, namely, Central Bank of India 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. Octopus Papers Ltd. which was admitted by this Adjudicating Authority vide order dated 11.12.2020 and the applicant herein Mr. Premraj Ramratan Laddha was appointed as the Interim Resolution Professional (**IRP**) and subsequently he was appointed as the Resolution Professional (**RP**) of the Corporate Debtor.
 - ii) The IRP published Form A for submission of claim(s) by the creditors of the Corporate Debtor on 18.12.2020 one in English and one in vernacular language. In response to the said publication, two claims were received from the creditors (a) Central Bank of India-Secured Creditor (admitted with a voting share of 91.32%) (b) Mr. Shashank Doshi-Unsecured Financial Creditor [admitted with a voting share of 8.68%]. The CoC was constituted and the first meeting was held on 11.01.2021.
 - iii) Another claim was received from the State Tax Department-Operational Creditor, which was not in the prescribed format and complete details were not given therein. Further, the claim from the workman/employee was received after the last date of submission of the claim(s), i.e., on 29.12.2020.

- iv) The applicant had written an email on 16.01.2021 to the State Tax Department and the representative of the employee to remove the defect in the claim form and submit further evidence to substantiate the claim. There was no update in the list of creditors as no response was received from the State Tax Department nor the representative of the employee removed the defect in the claim form.
- v) The IRP had visited the registered office and factory premises of the corporate debtor situated at Vapi on 21.12.2020 and the director of the corporate debtor Mr. Vishal Khara (Suspended Management) had peacefully handed over the custody of the factory premises to IRP. The IRP asked the director of the corporate debtor to provide all the details of assets, accounting books, records, etc of the company. But he informed that the physical and electronic records including accounting records of the corporate debtor were not available due to seizure by the State Tax Department in June 2019. However, he provided part of information / documents / records available with him in soft copy by email. He further informed that loan accounts of the company became NPA in 2018 and operations of the company were closed since July 2019. He further informed that there was no employee /workman and hence it was difficult to provide balance information / records required to prepare information memorandum but he assured in the meeting to provide the same. The IRP informed the CoC that there was no cash flow with the company to meet the CIRP cost. Hence, CoC may consider for an interim finance for smooth CIRP of the Corporate Debtor and the financial

creditor assured to provide financial assistance as and when required.

- vi) In the first CoC meeting dated 11.01.2021, it was resolved to appoint the IRP as RP. The 2nd meeting of the CoC was held on 27.01.2022 wherein it was resolved to appoint valuers for carrying out the valuation of the assets of the Corporate Debtor and auditors for carrying out transaction audits for the Corporate Debtor for the last two years before the commencement of CIRP. In the 3rd meeting of the CoC dated 22.02.2021, it was resolved to initiate the process of calling for Expression of Interest (EoI) from the Prospective Resolution Applicants. The applicant herein had published calling for an EoI in Form G on 23.02.2021 wherein the last date of the submission of the EoI was 10.03.2021. In the 4th CoC meeting dated 26.03.2021, the CoC resolved to extend the last date for submission of EoI to 10.04.2021. Hence, the applicant published Form-G inviting EoI from the prospective Resolution Applicant(s), wherein the last date of the submission of the EoI was 10.04.2021.
- vii) In response to the EoI, two Resolution Plans were received from the prospective Resolution Applicants, namely,
- (a) Wealth Mine Networks Pvt. Ltd. (WMNPL)
 - (b) SJ Infratech Pvt. Ltd. (SJIPL)
- which were placed before the CoC at its 5th meeting held on 26.05.2021. The applicant informed the CoC that one of the resolution applicants, i.e. WMNPL, was a related party of the Unsecured Creditor-Mr. Shashank Doshi. In the said meeting, the CoC resolved to examine both resolution plans.

- viii) Since some other Prospective Resolution Applicants were interested in submitting EoI and resolution plans, the CoC resolved to publish Form-G afresh inviting EoI till 30.06.2021. Further, 180 days of CIRP was expiring on 09.06.2021, the CoC resolved to extend the CIRP period by 90 days beyond 180 days subject to the approval of the Adjudicating Authority. Hence, the RP filed an application, bearing IA No.429 of 2021, under Section 12(2) of the IB Code for an extension of 90 days beyond 180 days of CIRP. This Adjudicating Authority vide order dated 06.07.2021 allowed the said application and extended the period of CIRP further by 90 days.
- ix) In the 7th CoC meeting dated 20.07.2021, the CoC, inter alia, resolved for publication of Form-G for the 4th time and extended the period for submission of EoI till 31.07.2021.
- x) In the 8th CoC meeting dated 28.08.2021, the applicant apprised the CoC that an application being IA No.425 of 2021 for avoidable transactions has been filed before the Adjudicating Authority and further informed the CoC that two more resolution plans have been received. However, one of the resolution applicants, i.e. SJ Infratech Pvt. Ltd. (SJIPL) wanted to withdraw its plan. Hence, the following three prospective Resolution Applicants were invited for submitting their respective plans before the CoC;

Sr. No.	Name of Resolution Applicant(s)	Payment offered to the Stakeholder	Maximum duration of full payment

1	Tushar Shah	Rs.122 Lakhs	90 days
2	Sanjay Sachpara (jointly with his two family members)	Rs.150 Lakhs	90 days
3	Wealth Mine Networks Pvt. Ltd. (WMNPL)	Rs.201 Lakhs	210 days

- xii) The applicant shared the valuation report with the CoC. According to the valuation report(s), the fair value is Rs.379.13 lakh and the liquidation value is Rs.261.11 lakh of the corporate debtor.
- xii) In the 8th CoC meeting dated 28.08.2021, the CoC rejected all the 3 Resolution Plan, submitted by the Resolution Applicants, with 91.32% voting. The CoC resolved to liquidate the Corporate Debtor and further resolved to appoint the RP, the applicant herein, as the liquidator and also resolved to instruct the applicant to file the present application.

3. Heard Learned Counsel for the applicant and perused the material on record. In the present case, three Resolution Plans were received, but the CoC, in its commercial wisdom, rejected all the 3 Resolution Plans at its 8th meeting held on 28.08.2021 with 91.32% votes because none of the plans were viable for revival of the Corporate Debtor. Hence, the CoC in its 8th meeting resolved to liquidate the corporate debtor. The CoC had further resolved that the applicant herein be appointed as the Liquidator of the corporate debtor. Applicant/RP has

accorded his written consent in Form A to act as Liquidator of the Corporate Debtor. On a clarification sought by this Bench on 15.11.2022, as to whether the Corporate Debtor was a going concern, it is submitted by the RP through an affidavit dated 15.12.2022 that the Corporate Debtor was not a going concern at the time of initiation of the Corporate Insolvency Resolution Process. Also, after a clarification sought with regard to payment of liquidation cost, the RP had convened the 9th CoC meeting on 24.11.2022 wherein the following resolution had been passed with 91.31% voting share:-

“RESOLVED THAT in pursuant to provisions of the regulation 2A of IBBI (liquidation process) regulation 2016 read with regulation 39(B) of IBBI (CIRP) regulation 2016, the sole secured financial creditor Central Bank of India be and hereby approve contribution to estimated liquidation cost of Rs.13,74,600/- (Rupees Thirteen Lakhs Seventy Four Thousand Six Hundred) for estimated period of one year”.

“RESOLVE THAT in pursuant to provisions of the regulation 2B and 32(e) of IBBI (liquidation process) regulation 2016 read with regulation 39BA and 39(C) of IBBI (CIRP) regulation 2016, the COC recommend that liquidator may first explore compromise or arrangement or sale of the corporate debtor as going concern if an order for liquidation is passed under section 33”.

At this stage, it is required to be noted that despite the efforts put in by the applicant-RP and CoC for revival of the Corporate Debtor, the same did not materialize and hence looking to the facts and circumstances and the documents available on record as well as the submissions made by the applicant, we pass the following order / directions:-

- a) IA 632 of 2021 in CP (IB) 379 of 2019 filed by the RP seeking order of the Liquidation of M/s. Octopus Papers Limited-Corporate Debtor, (CIN No. U21093GJ2007PLC050283), is allowed. The liquidation of the Corporate Debtor is effective from the date of this order.
- b) The Moratorium declared vide order dated 11.12.2020 in CP(IB)No.379/7/NCLT/AHM/2019, henceforth, ceases to exist.
- c) As per Section 34(1) of the I.B. Code, Mr. Premraj Ramratan Laddha, holding Registration No. IBBI/IPA-001/IP-P00060/2017-18/10138 is 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 may 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.
- 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) The Liquidator will charge fees for conducting the liquidation proceedings 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.
- i) 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 subsection(5) of Section 33 of the IB Code.
- j) 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.
- k) 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.

4. Accordingly, IA No.632 of 2021 in CP (IB)
379/7/NCLT/AHM/2019 stands disposed of.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

DR. MADAN B GOSAVI
MEMBER (JUDICIAL)

Sudha