

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

ITEM No.201- IA/(Liq.)/5(AHM)2024
in
C.P.(IB)/107(AHM)2023

Proceedings under Section 7 IBC

IN THE MATTER OF:

Rajradhe Finance Ltd
V/s
Kavan Cotton Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 29/04/2024

Coram:

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

PRESENT:

For the Applicant : Mr. Vishwaas Shah, Adv. a.w Mr. Vinod kumar Shah PCS
For the Respondent :

ORDER

1. In compliance of last order dated 09.04.2024, the applicant/RP has filed compliance affidavit on 24.04.2024 vide inward diary no. D3462 along with the copy of the email sent by the suspended management to RP dated 09.10.2023 as annexure B at page 4. The email id of the suspended management is recorded as rameshsavaliya55@yahoo.com which matches with annexure-G, page 66. Notice of the fourth meeting of CoC which was sent by the RP to the suspended management through same very email id on 08.02.2024 which proves that notice was duly served to the suspended management and it was very much in their knowledge about the fourth CoC meeting.
2. This is an application filed by the Applicant/RP under Section 33(2) and Section 34 of the IBC, 2016 seeking liquidation of the Corporate Debtor- M/s. Kavan Cotton Pvt. Ltd., 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 of liquidation of Corporate Debtor in accordance with Section 33(2) of Insolvency and*

Bankruptcy Code, 2016 and also pass an order under Section 34 of the Insolvency and Bankruptcy Code, 2016 for appointment of Mr. Hitesh Agrawal as Liquidator:

c). To grant any other relief as may deem fit in the interest of justice:

3. It is stated that CIRP in the matter was ordered on 11.09.2023 in CP(IB)107/2023. Public announcement was made subsequent to which CoC was formed. CoC of the Corporate Debtor is comprising of one Financial Creditor which is Raj Radhe Finance Limited.
4. First meeting of CoC was held on 09.10.2023 wherein the representative of Sales Tax of Gujarat were also present. The applicant was appointed as Resolution Professional. The committee ratified the action of the applicant in connection with the appointment of the valuers etc.
5. The committee agreed to issue Form-G, evaluation matrix and RFRP were also approved.
6. Second meeting of CoC was held on 04.11.2023 CoC took note of public announcement in Form G published on 16.10.2023 in (Financial Express newspaper of Gujarat edition in English and Gujarati) . However, no expression of interest was received till the last date i.e 31.10.2023.
7. Third meeting of CoC was held on 30.11.2023. The CoC was of the view that the Corporate Debtor should be dissolved directly under Section 54 of the IBC,2016. However, the RP in his wisdom has advice CoC not to do the same and to prefer an application for alternate prayers or liquidation of the Corporate Debtor under Section 33 sub-Section 4 of the IBC.
8. The fourth meeting of CoC was held on 12.02.2024 whereas the RP apprised the committee that based upon the data received from suspended management there appears to be few assets etc. and recovery of the same is possible. After due deliberation, CoC decided to go for liquidation of the Corporate Debtor under Section 33 sub-Section 24 IBC, 2016.

9. Necessary resolution in connection with the liquidation and related matter were passed with 100% majority. A copy of the notice and minutes of the 4th CoC meeting along with voting results are attached at Annexure G.
10. The 4th CoC meeting was scheduled on 12.02.2024 whereat certain further resolutions regarding appoint of the liquidator etc. were approved by the CoC. CoC has suggested one Mr. Hitesh Agarwal to act as Liquidator. The Form-H attached as annexure I. In view of the above the Applicant/RP is seeking the liquidation of the corporate debtor.
11. We have heard the counsel for the applicant and also have perused the documents placed before us. No resolution plan was received in CIRP. The CoC has already passed a resolution seeking liquidation of the Corporate Debtor with 100% majority and the same is placed before us for consideration.
12. 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**.
13. In terms of the above, we hereby order for liquidation of the Corporate Debtor.
14. We hereby appoint **Mr. Hitesh Agarwal, having Registration No. IBBI/IPA-001/IP-P-01183/2019-2020/12639, email id caagrawalhitesh@gmail.com** as the Liquidator of the Corporate Debtor to carry the liquidation process subject to the following terms of the directions:-
 - a. The Corporate Debtor – **Kavan Cotton 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.
 - 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, **Mr. Hitesh Agarwal, having Registration No. IBBI/IPA-001/IP-P-01183/2019-2020/12639**, is hereby appointed as a Liquidator of the Corporate Debtor i.e., **Kavan Cotton 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.
- 15.** Accordingly **IA/(Liq.)/5(AHM)2024** in **CP(IB)/107(AHM)2023** is hereby disposed of.

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**SAMEER KAKAR
MEMBER (TECHNICAL)**

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**SHAMMI KHAN
MEMBER (JUDICIAL)**