

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

ITEM No.301

IA/764(AHM)2023 in CP(IB) 5 of 2018

Proceedings under Section 33 IBC,2016

IN THE MATTER OF:

Parag Sheth RP of Nagaur Water Supply Company Pvt Ltd**Applicant**

.....**Respondent**

Order delivered on: 16/10/2023

Coram:

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

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

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

IA/764(AHM)2023 in CP(IB) No. 05 of 2018

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

*In the matter of **Nagaur Water Supply Company Pvt. Ltd.***

Mr. Parag Sheth,

Resolution Professional of
M/s. Nagaur Water Supply Company Pvt. Ltd.
Having address at:
404, Sachet 2,
Opp. GLS University,
Maradia Plaza Lane, C G Road,
Ahmedabad, Gujarat- 380 006.

....Applicant

In the matter of :-

Phoenix ARC Pvt. Ltd.

.....Financial Creditor

Versus

Nagaur Water Supply Company Pvt. Ltd.

..... Corporate Debtor

Order pronounced on: 16.10.2023

Coram:

SHAMMI KHAN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For the Applicant

: Mr. Arjun Sheth, Adv. a/w Mr. Rajiv
: Chawla, Adv.

ORDER
(Per: Bench)

1. This is an application filed by the RP in the matter seeking the following prayers:

- a) *Your Lordships may be pleased to pass appropriate order under Section 33 and 34 of the Insolvency and Bankruptcy Code, 2016 for requiring the Corporate Debtor, M/s. Nagaur Water Supply Company Private Limited to be liquidated in the manner as laid down in the Code;*
- b) *Your Lordships may be pleased to pass appropriate order appointing the applicant as the Liquidator of the Corporate Debtor, M/s. Nagaur Water Supply Company Private Limited;*
- c) *Your Lordships may be pleased to grant any other relief(s) as may be deem fit in the interest of justice.*

2. It is stated that on an application under Section 7 of IBC,2016 being CP(IB) 5 of 2018, this Adjudicating Authority, vide order dated 27.05.2020, dismissed the application which

was taken in challenge before the Hon'ble NCLAT. Hon'ble NCLAT, vide order dated 01.04.2021 in Company Appeal(AT)(Ins.) No.690 of 2020 setaside the said order and directed this Adjudicating Authority to admit the application.

3. It is submitted that vide order dated 17.08.2021, this Adjudicating Authority admitted the Corporate Debtor into Corporate Insolvency Resolution Process (CIRP) and appointed the applicant herein as the IRP in the matter. The IRP published the public announcement on 25.08.2021 in Economic Times (English Language) and Divyabhaskar (Gujarati Language) in Ahmedabad editions and in the Times of India (English Language) in Jaipur Edition on 26.08.2021.
4. On receipt of the claims, the applicant constituted the CoC of the Corporate Debtor which comprised of two Financial Creditors i.e. Phinix ARC Private Limited (90.77%) and IDBI Bank Limited (9.23%). The first CoC meeting was held on 22.09.2021 wherein the applicant was appointed as the RP.

5. The order of Hon'ble NCLAT in Company Appeal(AT)(Ins.) No.690 of 2020 was taken in appeal before the Hon'ble Supreme Court in Civil Appeal No.655 of 202. Hon'ble Supreme Court, vide order dated 12.10.2022, dismissed the said Civil Appeal.
6. This Tribunal, vide order in IA 631 of 2021 dated 29.11.2022, excluded certain period from the CIRP period for the reasons stated in that order.
7. It is stated that the RP, in consultation with the CoC, appointed two valuer and Transaction Auditors who had given their report.
8. It is stated that due to the order of Hon'ble Supreme Court, Form G could not be published within the necessary timelines. However, subsequent to the disposal of the appeal vide order dated 12.10.2022, the issue was taken up with the CoC members.
9. It is stated that the assets of the Corporate debtor are lying with Rajasthan State Mines and Minerals Limited for which,

the RP has filed application seeking possession of the same which was pending on the file of this Tribunal. The issue was again raised in the 3rd CoC held on 09.01.2023, subsequent to the discussions in the 3rd CoC meeting, the CoC approved the Resolution seeking extension of CIRP period pursuant to which, the RP had filed IA 162 of 2023 seeking extension of 90 days which came to be ordered vide order dated 22.02.2023, however, publication of Form-G was deferred.

10. It is stated that the 5th CoC meeting was held on 15.04.2023 wherein the RP again requested the publication of Form G, to seek extension of further 60 days or to approve liquidation. However, CoC, in their wisdom, deferred the decision of publication of Form G. The CoC, however, approved the Resolution seeking extension of 60 days pursuant to which, IA 538 of 2023 was filed by the applicant herein before this Adjudicating Authority, which was allowed vide order dated 09.05.2023.
11. The 6th CoC meeting was held on 23.06.2023. The CoC was of the view that publishing Form G would not serve the

purpose at this stage since the possession of the assets of the Corporate Debtor is not with the RP and hence, CoC in its wisdom has approved the following Resolution:

“RESOLVED THAT pursuant to Section 33 of the Insolvency and Bankruptcy Code, 2016 and the regulations made thereunder, the consent of the committee of creditors be and is hereby accorded for Initiation of Liquidation Process against the Corporate Debtor i.e., Nagaur Water Supply Company Private Limited and hereby appoint the existing Resolution Professional i.e., Mr. Parag Sheth having IP Registration No.: IBBI/ IPA-002/ IP-N00142/2017- 18/10381 as the Liquidator of the Corporate Debtor, pursuant to his consent to act as liquidator.”

The said Resolution was approved unanimously pursuant to which, this application has been filed.

12. The CoC has also resolved to appoint the applicant herein as the Liquidator of the Corporate Debtor with requisite majority.
13. Vide order dated 31.07.2023, notice was issued to the Suspended Management for which, the RP has filed affidavit of service under Diary No.3711 dated 22.09.2023. It is seen that the notice was served on 21.09.2023.
14. It is also seen in the Minutes of 6th meeting held on 23.06.2023, which are appended at page No.107 and wherein, the decision by CoC was arrived regarding the Liquidation of the Corporate Debtor, that Mr. Rakshit Doshi, Suspended Management of the Corporate Debtor was present during the meeting. As such, in our view, the Suspended Management had complete notice about the decision of the CoC seeking liquidation of the Corporate Debtor and the present application.
15. Despite notice, the Suspended Management have not filed any IA opposing the present application.

16. It is also seen that CIRP period with respect to the Corporate Debtor is already over and that CoC has, with requisite majority, approved the Liquidation of the Corporate Debtor.
17. Section 33(1) and Section 33(2) of the IBC, 2016 is reproduced below:

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.

33(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)

18. **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 view of the above, as the CoC has already resolved with requisite majority to liquidate the Corporate Debtor, we are forced to order Liquidation of the Corporate Debtor. The Corporate Debtor is hereby ordered for Liquidation.

19. 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 are constraint to appoint Mr. Rajendra Sanghi as the Liquidator of the Corporate Debtor from the Panel of RP/Liquidator available with this Adjudicating Authority.
20. The liquidator of the corporate debtor to carry the liquidation process subject to the following terms of the directions:-
- a) The Corporate Debtor **Nagaur Water Supply Company Pvt. Ltd.** 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/764 (AHM)2023.
 - 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, **Rajesh Sanghi**, having Registration No. IBBI/IPA-001/IP-P-01973/2019-2020/13011, is hereby appointed as a Liquidator of the Corporate Debtor i.e., **Nagaur Water Supply Company Pvt. Ltd.** 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.

21. Accordingly, **IA/764(AHM)2023** in CP(IB) No. 5 of 2018 is disposed off.

-SD-

**SAMEER KAKAR
MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN
MEMBER (JUDICIAL)**

Anuj