

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
SPECIAL BENCH
COURT - 2

ITEM No301
IA/886(AHM)2023
In
CP(IB)/148(AHM)2022

Order under Section 33(1) (b) (i) to (iii) r/w 33(3) IBC

IN THE MATTER OF:

KEYUR J. SHAH RESOLUTION PROFESSIONAL OF
CORPORATE DEBTOR RAMDEV PVC PRODUCTS PRIVATE
LIMITED

.....Applicant

.....Respondent

Order delivered on 31/08/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

PRESENT:

For the Applicant : Mr. Randheer Rajpurohit Adv.
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT NO.II)

IA No. 886 / NCLT / AHM / 2023

IN

CP(IB) No. 148 / NCLT / AHM / 2022

(Application Under Section 33(1)(b) & 34(1) of the IB Code, 2016)

AND

IA No. 714 / NCLT / AHM / 2022

IN

CP(IB) No. 148 / NCLT / AHM / 2022

(Application Under Section 19(2) & (3) of IBC, 2016)

IN THE MATTER BETWEEN

Keyur J Shah

....

Applicant

IN THE MATTER OF

Rajkot Nagrik Sahakari Bank Ltd.

... Applicant / Financial Creditor

VERSUS

Ramdev PVC Product Pvt. Ltd.

... Respondent/Corporate Debtor

Order pronounced on : 31/08/2023

Coram:

**SHAMMI KHAN,
HON'BLE MEMBER (JUDICIAL)**

**DR. VELAMUR G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

Keyur J Shah

RP of Corporate Debtor
M/s Ramdev PVC Products Pvt. Ltd.
Having registered office at
1007, Sun Avenue One,
Nr. Shreyas Foundation,
Manekbaug Society, Ambawadi,
Ahmedabad, Gujarat - 380015

... Applicant

Present:

For the Applicant : Mr. Randhir Rajpurohit, Adv.
For the Respondent :

ORDER

1. The present application is filed by Mr. Keyur J. Shah - the Resolution Professional/Applicant of the Corporate Debtor under section 33(1)(b) read with section 34(1) of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") for passing an order of liquidation of the Corporate Debtor- M/s Ramdev PVC Products Pvt. Ltd. and to appoint RP as liquidator.

2. The facts as narrated in the application and explained by the Ld. Counsel for the Applicant/RP are summarized hereunder :

- (i) It is submitted that M/s Rajkot Nagrik Sahakari Bank Limited (the original petitioner has filed an application being CP(IB) 148 of 2022 under Section 7 of the IBC, 2016 against M/s. Ramdev PVC Products Pvt. Ltd. (the Corporate Debtor) on the ground of alleged outstanding debts.
- (ii) It is submitted that this Hon'ble Tribunal, after hearing the parties admitted the aforesaid petition vide order dated 07.07.2023. By the said order, IP Mr. Keyur Shah was appointed as Interim Resolution Professional (hereinafter referred to as IRP) in the aforesaid matter.
- (iii) It is submitted that upon receiving the order of the Hon'ble NCLT, Ahmedabad Bench on 10.02.2023, the IRP had initiated taking all the necessary actions accordingly a public announcement in Form A dated 10.02.2023 was made on 11.02.2023 in accordance provisions of IBC, 2016 in the Time of India (Surat) & Gujarati Guardian (Surat Split), the region where the registered office of the Corporate Debtor is situated.
- (iv) It is further submitted that the last date of submission of claims was 24th February 2023, as stated in the public announcement, and pursuant to the said Form

A, the IRP has received the claims from the creditors of the Corporate Debtor.

- (v) It is further submitted that the verification of the claims was duly done by the IRP on receipt of claims. List of Creditor was made as on 01st March, 2023. The Report on Constitution of Committee of Creditors were duly submitted by the IRP on IBBI portal on 02nd March, 2023.
- (vi) It is submitted that thereafter, the first meeting of the Committee of Creditors was held on 09/03/2023 which was chaired by IRP Keyur J. Shah and representatives of the COC members were present in the said meeting through Video Conferencing. That quorum was complete and necessary resolutions were passed in the said meeting. Further, the Appointment of IRP as RP was duly approved by the COC members.
- (vii) The applicant submits that the Second Meeting of the Committee of Creditors of the Corporate Debtor was held and convened on 07th April, 2023, wherein the COC members approved appointment of Registered Valuer and eligibility criteria for Prospective Resolution Applicants ("PRA"), Evaluation Matrix, Request for Resolution Plan ("RFRP") and any other factors or parameters for invitation of EOI or approval of resolution plan.

- (viii) It is further submitted that the 'Form G' for invitation of EOI for Resolution Plan in the present matter was published on 08th April, 2023 in the Times of India (English Edition) & Gujarat Gaurdian (Gujarati Edition), the region where the registered office of the Corporate Debtor is situated by the Applicant / RP.
- (ix) It is submitted that the applicant further submits that in the Third Meeting of the Committee of Creditors held and convened on 03rd May, 2023, the COC members approved the extension of the due date for submission of Expression of Interest.
- (x) It is further submitted that the second/fresh 'Form G' for invitation of EOI for Resolution Plan in the present matter was published on 05th May, 2023 in the Times of India (English Edition) & Dhakar (Gujarati Edition), the region where the registered office of the Corporate Debtor is situated by the Applicant / RP.
- (xi) The applicant submitted that Based on the Expression of Interest received from various Interested Applicants, the Resolution Professional had issued a Provisional List of Resolution Applicants pursuant to Regulation 36A of IBBI (The CIRP process) on 30th May 2023.
- (xii) It is submitted that thereafter Pursuant to Regulation 36B of IBBI (The CIRP Process) Regulation, 2016 the

Resolution Professional had issued Request for Resolution Plan along with Evaluation Matrix and Information Memorandum via mail dated 04th June, 2023. Subsequently, final list was issued to Two (2) Prospective Resolution Applicant on 14th June, 2023 as per Regulation 36B of IBBI (The CIRP Process) Regulation, 2016.

- (xiii) It is submitted that the Resolution Professional had received the request from Ms. Ritushi Kabra, Prospective Resolution Applicant to waive off Rs.20 Lakhs as Binding Submission Bond Guarantee (BSBG) for submission of the Resolution Plan via mail dated 21st June, 2023.
- (xiv) It is further submitted that the Resolution professional had rejected the said request to withdraw or set off the earlier Earnest Money Deposit (EMD) amount with the Bank Guarantee / Earnest Money Deposit (BSBG) provided as part of the Binding Resolution Plan, considering the significance of adhering to the conditions outlined in the RFRP via mail dated 26th June, 2023.
- (xv) It is submitted that as no Resolution Plan from any of the Prospective Resolution Applicants were received by the Resolution Professional before the last date of submission of the Resolution Plan i.e., 04th July,

2023. Considering to the terms as stated in the Expression of Interest, the Resolution Professional duly refunded the EMD amount of both the Prospective Resolution Applicant as deposited by them into the CIRP account of the Corporate Debtor on 18th May 2023.

- (xvi) That the applicant further submits that in the fourth Meeting of the Committee of Creditors held and convened on 28th July, 2023 wherein the discussion for further course of action was opened in front of the COC members. It is further submitted that in the said Fourth meeting of the Committee of Creditors held on 28th July, 2023, in absence of any Resolution Plan, in the commercial wisdom, the COC approved for initiating the Liquidation period of the Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code, 2016.
- (xvii) It is submitted that the applicant further submits that by 100.00 % of the voting the CoC has passed the resolution to instruct the resolution professional to file necessary application with the Adjudicating Authority for initiation of liquidation proceedings under section 33 of the IB Code, 2016.
- (xviii) The applicant further submits that in the event the Adjudicating Authority NCLT passes an order u/s

33(1)(b)(i), (ii) and (11) of IBC, 2016, it may consider appointing him as the liquidator in accordance with Section 34(1) of IBC, 2016. The applicant submits that he is eligible to be appointed as a liquidator in terms of Regulation 3 of The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 offers himself for appointment.

3. There has been no objection by the Corporate Debtor who was present in the fourth meeting held on 28.07.2023 wherein CoC took the decision that in the absence of any resolution plan, in the commercial wisdom of the CoC approving initiation of liquidation of the Corporate Debtor u/s 33 of the IBC, 2016. It also observed from the submissions that the Corporate Debtor was present in all the meetings of the CoC convened by the RP on various dates. Hence, no notices are served.
4. Heard the learned counsel for the applicant in IA 886 of 2023. The provisions of Section 33(2) of the Code are reproduced below:-

“(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 ¹²[approved by not less than sixty-six per cent 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) and (iii) of clause (b) of sub-section (1).

¹²[*Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.*].”

5. The 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-justificable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.
6. Considering the documents and submission made, since the COC in its commercial wisdom has decided to take the Corporate Debtor in liquidation, we are of the opinion that the decision of the COC should not be interfered with. The present application seeking liquidation of the Corporate Debtor M/s Ramdev PVC Products Pvt. Ltd, in the manner laid down in Chapter III of Part II of the Code, is deserved to be allowed.
7. One of the prayers in the I.A. at para 18(v)(d) is to appoint present RP/Applicant Mr. Keyur J. Shah, as liquidator in terms of Section 34(1) of the Code. However, 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.

8. In terms of the above, we hereby order for liquidation of the Corporate Debtor. Further, in terms of the above circular of IBBI, we hereby appoint Mr. Naveen Brijmohan Bazari, having registration **No.IBBI/IPA001/IPP1312/2018-2019/12007**, as per the panel suggested by IBBI for this Bench for the period of July, 1 2023 to December 31, 2023, as the Liquidator of the Corporate Debtor to carry the liquidation process subject to the following terms of the directions:-

- a) The Corporate Debtor **Ramdev PVC Product Pvt. Ltd** is ordered to be liquidated 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. Naveen Brijmohan Bazari, having registration **No.IBBI/IPA001/IPP1312/2018-2019/12007**, is hereby appointed as a Liquidator of the Corporate Debtor i.e. **Ramdev PVC Product Pvt. Ltd**. The Liquidator so appointed shall file the Form A , written

consent and complete the liquidation process as per the provisions of the Code r.w. the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The RP will abide by the order of the regulation and hand over the records to the incumbent liquidator.

- d) The liquidator to issue a public announcement stating that the corporate debtor is in liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e) The liquidator to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- f) The liquidator to follow up and continue to investigate the financial affairs of the corporate debtor to determine any undervalued and preferential transactions, etc. 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.
- g) This order is deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016.
- (h) The Liquidator to submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation

13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

- (i) 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.
- (j) It is further directed that the Personnel of the Corporate Debtor to extend all assistance and co-operation to the Liquidator as may be required in liquidating the affairs of the Company in discharging his function as specified under Section 35 of Insolvency & Bankruptcy Code, 2016.
- (k) 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.
- (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.

(n) In terms of the above, **IA/886(AHM)2023** is allowed and disposed off.

IA 714 of 2022

9. The Applicant/RP has vide Interim Application No.714 of 2022 in CP(IB) 148 of 2022 u/s 19(2) & (3) of IBC, 2016 seeking direction against the suspended management of the Corporate Debtor. Notices have been served and it has been ordered on 12.07.2023 clarified by this Adjudicating Authority that the suspended management is duty bound under the law to assist the IRP / RP in the CIRP of the Corporate Debtor.
10. We have ordered for liquidation of the Corporate Debtor. As a new person has been appointed as the liquidator of the Corporate Debtor, we deem it fit to dispose of the present application with liberty to the new liquidator to file a fresh application if the cause survives. In view of the above, this **I.A. No.714 of 2022** is hereby disposed off.

-Sd-
DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)