

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA No.01/2024 IN CP (IB) No.92/ALD/2022

In the matter of:

(An application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016).

IN THE MATTER OF:

RAJEEV RANJAN SINGH

RESOLUTION PROFESSIONAL OF

AZAM RUBBER PRODUCTS PRIVATE LIMITED

Flat No. 14049, 16 Avenue, Gaur City-2,

Greater Noida West, Gautam Buddha Nagar, Block-G,

Uttar Pradesh-201310

...APPLICANT

IN THE MATTER BETWEEN:

MR. OM PRAKASH

PROPRIETOR OF KHANDELWAL PACKING CORPORATION

....OPERATIONAL CREDITOR

VERSUS

M/S AZAM RUBBER PRODUCTS PRIVATE LIMITED

....CORPORATE DEBTOR

Order pronounced on: 04th July, 2024

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Srijan Mehrotra, Adv. : For the Applicant/RP

ORDER

1. The present application has been filed by the Resolution Professional (RP) of the Corporate Debtor for seeking the following reliefs: -

- a. Allow the instant application;*
- b. Pass an order for liquidation of the Corporate Debtor i.e., M/s Azam Rubber Products Private Limited as resolved by the Committee of creditors in its 14th meeting held on 09.02.2024;*
- c. Appoint Mr. Rajeev Ranjan Singh having Registration No. as the liquidator of the Corporate Debtor i.e., M/s Azam Rubber Products Private Limited;*
- d. Pass appropriate orders, that fee of the liquidator shall be in accordance with Regulation 4(2) of the Liquidation Process Regulations, 2016;*
- e. Pass an order that the order of liquidation is a notice of discharge to the employees, officials, workmen, etc, and*
- f. Allow the applicant to continue rendering his professional services as Resolution Professional "Functus Officio" till such time a final order of*

liquidation is passed by this Hon'ble Tribunal, or

g. Pass further order(s)/ direction(s) and any other relief(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.

- 2.** Briefly stated facts of the case are that in pursuance of an application filed under Section 9 of the Code read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short "the Regulations, 2016"), the application was admitted vide an order dated 13.04.2023 passed by this Tribunal and Sh. Rajeev Ranjan Singh was appointed as Interim Resolution Professional (IRP) to conduct the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor. Subsequently, the IRP was confirmed to be appointed as RP in the first meeting of COC held on 15.05.2023.
- 3.** In pursuance of the admission order, and the decision of COC, the public announcement inviting 'expression of interest for resolution plan' (EOI) was made in FORM-G on 12.06.2023 in leading newspapers with 27.06.2023 being the last date for receipt of expression of interest. The RP received only one claim in response to the publications and

accordingly, a Committee of Creditors (CoC) was constituted on 16.08.2023 wherein the COC member voted in favor of inviting 'expression of Interest for Resolution Plan' through re-publishing 'Form-G'. Based on re-published 'Form-G', 9 nos. of Expression of Interest were received from Prospective Resolution Applicants (PRAs).

4. The Applicant submitted that the RP at the instance of COC had moved an application being IA No.481/2023, seeking extension of 90 days beyond 180 days, which was duly allowed by this Tribunal vide Order dated 11.10.2023. Thereafter, in the 7th COC meeting held on 04.11.2023, two Prospective Resolution Applicants had submitted their resolution plans which on further discussion and negotiation in the 8th COC meeting was asked to submit the revised resolution plan. Further, only one resolution plan was put for voting since the other Prospective Resolution Applicant failed to align the resolution plan in compliance with the issued RFRP by the applicant/RP. However, the extended period of 90 days expired on 08.01.2024 and another application bearing IA No. 58/2024, seeking extension of 60 days beyond 270 days, was further moved

by the RP, in terms of decision taken in 10th COC meeting, which was duly allowed by this Tribunal vide Order dated 19.01.2024.

5. On the completion of the e- voting for the resolution plan placed in the 9th COC meeting, the COC member voted against the submitted resolution plan due to the lack of feasibility and viability of the plan. Further, in the 11th COC meeting held on 18.01.2024, the sole COC member provided an opportunity to submit the resolution plan to all the Prospective Resolution Applicants. The Applicant/RP received resolution plans from two prospective resolution applicants. Thereafter, in the 12th COC meeting held on 29.01.2024, the COC discussed the observations on the submitted resolution plans with the Prospective Resolution Applicants and provided time to revise the resolution plan till 05.02.2024. It is submitted that, on 07.02.2024, one of the PRA proceeded to have its EOI withdrawn and requested for refund of their security deposits.

6. The Applicant submitted that as per Item No. 5 at the 14th meeting of the Committee of Creditors held on 09.02.2023, the resolutions were placed before the COC for moving

forward with the sole resolution plan submitted jointly by the PRAs or to proceed further with the liquidation of the Corporate Debtor. The COC rejected the resolution plan and voted in favor of liquidation of the Corporate Debtor with 100% voting share, as being the next course of action since in terms of Section 12 of the Code, CIRP cannot prolong for indefinite period and the maximum prescribed period of 330 days was going to expire on 8th March, 2023. The relevant part of the agenda item no. 5(b) passed thereon is as under: -

“Item No. B-5(b)

To approve liquidation of the Corporate Debtor.

The chairman apprised that one resolution plans have been received and are being placed to the COC along with the details of the Plan being non-responsive or non-compliant. the COC has the right to not vote for any Plan and to vote for liquidation of the CD, if it finds that the Resolution Plans presented is either not compliant or are not technically feasible and economically viable. The draft resolution for voting for liquidation of the CD is placed before the COC.

Thereafter, the following resolution was placed before CoC members for approval through E-voting.

Resolution No B-5(b)

"RESOLVED THAT Pursuant to Section 33(2) of Insolvency and Bankruptcy Code 2016 the Committee of Creditors, hereby recommends for the liquidation of Corporate Debtor,

-RESOLVED FURTHER THAT the Resolution Professional is authorized to file a necessary application before the Adjudicating Authority conveying the decision of the Committee of Creditors to liquidate the Corporate Debtor"

The result of the E-Voting is as under:

Resolution Item B-5(a): To vote on the Resolution Plan received from Mr. Obaidullah along with Mr. Mohammed Azam Khan

To approve the Resolution Plan received from the resolution applicant Mr. Obaidullah along with Mr. Mohammed Azam Khan.

OR

Resolution Item 5(b): To approve liquidation of the Corporate Debtor

Sr. No.	Name of Member	Percentage	E-voting		
			Approve the	Approve Liquidation	Abstain

			resolution plan		
1.	Punjab National Bank	100.00%	-	100.00%	-
	Total	100.00%	00.00%	100.00%	00.00%

In Case COC does not approve the Resolution Plan, Committee of Creditors, hereby approve the liquidation of Corporate Debtor.

Result: Based on the aforesaid results. I report that this Resolution as contained in the Item No.5(a) & 5(b) has considered with 100.00% Positive voting for item No. 5(b), and 100.00% Negative Voting for item No.5(a) and 00.00% abstain from voting hence it has passed for Item No.5(b).”

Therefore, CoC approved for Liquidation of Azam Rubber Products Private Limited.

- 7.** The Applicant/RP, in the 15th COC meeting, proposed to act as the liquidator for the Corporate Debtor. The resolution for the appointment of the RP as a liquidator by the COC member was voted in favor with 100% voting share. Pursuant to this resolution passed by COC for the liquidation of the Corporate Debtor, the Applicant/RP sought

approval from the CoC for exploring the sale of the Corporate Debtor as a going concern under Regulation 32(e) or sale of the business of the Corporate Debtor as a going concern under Regulation 32(f) of the Liquidation Regulations. The resolution for the liquidation of the Corporate Debtor as a going concern was placed for voting through ballot paper and was approved by the sole COC member with 100% voting in favor.

- 8.** We have heard the Ld. Counsel for the Applicant and perused the material available on record
- 9.** It is observed that CoC members on 02.03.2024 e-voted and concluded that the resolution plan submitted by the resolution applicant was rejected and liquidation of the Corporate Debtor was approved by the CoC members with 100% voting in favour of the liquidation and also approved appointment of applicant as Liquidator. Further, CoC has also approved for sale of Corporate Debtor as going concern under clause (e) of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 read with Regulation 39C of IBBI

(Insolvency Resolution Process of Corporate Persons) Regulations, 2016 or sale of business of the Corporate Debtor as a going concern under clause (f).

- 10.** 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-justiciable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor. Moreover, the Hon'ble Supreme Court of India, in the recent ruling of **Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors**, held as under: -

“21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts.”

- 11.** The CoC with requisite voting as given under section 33(2) of IBC, 2016 have approved Liquidation of Corporate Debtor

in view of not getting any viable and acceptable resolution plan, despite repeatedly considering revised resolution plan as was required to be modified on a number of occasions.

12. In light of the above facts and circumstances, this decision of liquidation of the Corporate Debtor has been taken by the COC with 100% voting share in the 14th COC Meeting held on 12.12.2024, particularly in view of the fact that no viable resolution plans have been received and the mandatory period of 330 days has also come to an end on 08.03.2023. Therefore, the present application deserves to be allowed for the initiation of the liquidation process. And further, the Liquidator shall first sell the Corporate Debtor as a going concern in terms of Regulation 32A read with Regulation 32(e) and (f) of the IBBI (Liquidation Process) Regulations, 2016 and carry out the liquidation process strictly in terms of the provisions of the Code.

13. Further, Shri Rajeev Ranjan Singh has been considered for appointment as Liquidator in this case after considering his consent as discussed in Para 10. The Law Research Associate of this Tribunal, Ms. Kriti Kaushal, has checked the credentials of Mr. Rajeev Ranjan Singh, and found that

there are no disciplinary proceedings pending against the proposed Resolution Professional and also there is nothing adverse against him. Upon verification from the website of IBBI, it is found that IP holds valid authorization till 31.10.2024. After considering these details, we appoint Mr. Rajeev Ranjan Singh, Registration No. IBBI/IPA-002/IP-N00707/2018-2019/12418 as Liquidator. It is also directed that the fees of the Liquidator shall be in accordance with Regulation 4(2) of Liquidation Process Regulations, 2016, and this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor.

- 14.** Accordingly, the present I.A. No. 01 of 2024 is allowed and stands disposed of.

-Sd-

**(Ashish Verma)
Member (Technical)**

Date: 04th July, 2024

-Sd-

**(Praveen Gupta)
Member (Judicial)**