

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

ITEM No.302
IA(liq)/13(AHM)2024 in
CP (IB)243 of 2022

Order under section 33(2) & 34 of IBC,2016

IN THE MATTER OF:

Sunil Kumar Agarwal
RP of M/s Savalia Cotton Ginning & Pressing Pvt. Ltd.

.....Applicant

Order delivered on: 15/05/2024

Coram:

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

PRESENT:

For the Applicant : Mr. Pratik Thakkar, Adv
For the Respondent :

ORDER

The case is fixed for the 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(liq)/13/AHM/2024 in CP (IB)/243/2022

*(Filed under Section 33(2) & 34 of the Insolvency and
Bankruptcy Code, 2016).*

In the matter of **M/s. Savalia Cotton Ginning &
Pressing Private Limited**

Sunil Kumar Agarwal

Resolution Professional

of M/s. Savalia Cotton Ginning & Pressing Pvt. Ltd.

G-805, Akruti Orchid Park,

Near Safeda Pul, Saki Naka,

Andheri Kurla Road,

Andheri (East)- Mumbai - 400072

.... Applicant

Order Pronounced on 15.05.2024

CORAM:

Mr. SHAMMI KHAN, MEMBER (JUDICIAL)

Mr. SAMEER KAKAR, MEMBER (TECHNICAL)

APPEARANCES:

For Applicant : Mr. Pratik Thakkar, Adv

ORDER

1. The IA(liq)/13/AHM/2024 has been filed by the Applicant Resolution Professional under Section 33(2) and 34 of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows; -

- a. *Pass an order directing the condonation of delay of 91 days of filing application for Liquidation of the Corporate Debtor.*
- b. *Pass an appropriate order directing liquidation of the corporate debtor in accordance with chapter III of part II of the IBC, 2016.*
- c. *Appoint Mr. Shah Rahul Nareshbhai, IBBI Registration No. IBBI/IPA-001/IP-P-02170/2020-21/13367, as the liquidator of the Corporate Debtor.*
- d. *Pass such order(s) as may deemed fit and proper in the facts and circumstances of the instant case.*

2. Facts of the case:

2.1. From the averments made by the Applicant, it is evident that Corporate Debtor, M/s. Savalia Cotton Ginning & Pressing Pvt. Ltd was admitted to CIRP vide order dated 31.07.2023 and the Applicant herein was appointed as IRP on 31.07.2023.

2.2. The 1st meeting of the CoC was held on 01.09.2023. The applicant further discussed all the actions he had taken as the IRP since the

CIRP of the Corporate Debtor. It is stated that the COC approved the appointment of the applicant/IRP as a Resolution Professional as per section 22(2) of the Code.

2.3. The 2nd meeting of COC was held on 15.10.2023. The applicant in the second meeting of the Committee of Creditors decided to publish Form- G and various other agendas were discussed.

2.4. The applicant submitted that the third CoC meeting was held on 03.11.2023, where the applicant and Committee of Creditors (CoC) deliberated on the need to republish Form – G. The representative of the sole financial creditor expressed that it wasn't necessary since there were no tangible assets belonging to the Corporate Debtor. Instead, they suggested that the RP include the liquidation agenda in the upcoming CoC meeting.

2.5. It is stated that the applicant held the fourth CoC meeting on 25.11.2023. The applicant submits that that the financial records for the periods of 2021-2022, 2022-2023, and 2023-2024 (up to the CIRP commencement date of July 31, 2023) and the financials are completed and stating that based on the prepared accounts, the Balance Sheet for the financial year 2022-2023 indicates the presence of long-term advances, trade receivables, and cash on hand and requested to Suspended Management that some details are still pending that was inquired via email dated 08.08.2023.

2.6. The applicant then held fifth COC meeting on 23.01.2024. RP apprised the COC members that the CRIP of the corporate debtor is ending on 27th January 2024 hence there is a need to expedite the process to meet the deadline and file suitable application with Hon'ble NCLT. The financial creditor representative urged the

Resolution Professional (RP) to incorporate the resolution for the dissolution of the corporate debtor in the upcoming Committee of Creditors (COC) meeting. Upon this RP informed that this is dependent on the Suspended Director providing the Audited Accounts and the absence of any PUFÉ transactions.

2.7. The applicant held sixth COC meeting on 27.01.2024. The Financial Creditor resolved that the applicant may file direct dissolution of Corporate Debtor after going through audited financials or in alternative file application for Liquidation if the RP is in opinion that there are some possible PUFÉ transactions.

2.8. The applicant held seventh COC meeting on 12.03.2024. The applicant submits that the Sole COC member confirms liquidation of the Corporate Debtor. The COC also proposed to appoint Shah Rahul Nareshbhai as the liquidator of Corporate Debtor. The resolution

for the same has been annexed in the minutes of the 7thCoC meeting in Annexure – J.

2.9. The applicant submits that the CIRP of the Corporate Debtor ended on 27.01.2024. The applicant further submits that there were no resolution applicants and the Sole COC member proposed direct dissolution. However, on the opinion of the applicant on the financial statements received at the end of the CIRP for possible PUFÉ transactions and recovery. The COC member has agreed for liquidation of the Corporate Debtor.

2.10. The applicant has filed a liquidation application i.e. IA (Liquidation) No.3 of 2024 the same was dismissed with liberty on the ground that no notice calling the COC in which liquidation was approved by the COC and application was incomplete.

2.11. The applicant submits that in the above circumstances the present application has been filed for seeking Liquidation of the Corporate Debtor under Section-33(2) of the Insolvency and Bankruptcy Code, 2016.

3. 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.]”.

4. 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-justifiable**. In this case, it is seen that CoC with a 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.
5. In terms of the above, we hereby order for liquidation of the Corporate Debtor.
6. We hereby appoint **Mr. Shah Rahul Nareshbhai** an IPA having registration no. IBBI/IPA-001/IP-P-02170/2020-21/13367, as per the resolution of the CoC in the 7thCoC meeting dated 12th March 2024, as the Liquidator of the Corporate Debtor to carry the liquidation process subject to the following terms of the directions: -
 - a) The Corporate Debtor **M/s.Savalia Cotton Ginning & Pressing 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. Shah Rahul Nareshbhai**an IPA having registration no. IBBI/IPA-001/IP-P-02170/2020-2021/13367 is hereby appointed as a Liquidator of the Corporate Debtor I.e. M/s Savalia Cotton Ginning & Pressing 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) 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.

- j) 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.

k) The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.

l) 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.

7. Accordingly, **IA(liq)/13(AHM)2024** in CP(IB) No. 243 of 2022 is disposed off.

Sd/-

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)

HG/LRA