

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

IA No. 29/2024
In
In CP(IB)/1294(MB)/2022

Under Section 33 of Insolvency & Bankruptcy Code, 2016

Mr. Sanjay Shrivastava,

IBBI/IPA-001/IP-P-01528/2018-2019/12425

*205 B Suraksha Apartment, Hindustan Colony, Amravati
Road, Nagpur, Maharashtra, 440033*

*Resolution Professional/
...Applicant*

In the matter of

C.P.(IB) No. 1294/MB/2022

Gujarat Copper Alloys Limited

Operational Creditor

Vs.

Creaative Powertech Private Limited

Corporate Debtor

Order delivered on: 16.05.2024.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Applicant/RP

: Mr. Manoj Mishra, Ld. Counsel

ORDER

- 1) It is an application filed u/s 33(2) of the Insolvency and Bankruptcy Code, 2016 (“the Code”) by Mr. Sanjay Shrivastava, Resolution Professional (RP) of M/s. Creaative Powertech Private Limited (“the Corporate Debtor”) seeking liquidation order.
- 2) That M/s. Gujarat Copper Alloys Limited had preferred the captioned CP (IB) No. 1294/MB-IV/2022 u/s 9 for the initiation of the Corporate Insolvency Resolution Process against M/s. Creaative Powertech Private Limited. This tribunal vide Order dated 12.04.2023 admitted the Corporate Debtor into CIRP, by virtue of which Mr. Sanjay Shrivastava appointed as IRP.
- 3) That the Applicant had caused to issue the Form A on 20.04.2023, inviting claims from the Creditors. On the basis of the claims recived and admitted in accordance with the code, the applicant constituted Committee of Creditors.
- 4) In its 1st meeting convened on 17.05.2023, the CoC approved the appointment of the applicant as Resolution Professional (‘RP’) of the Corporate Debtor.
- 5) The applicant published Form G inviting Expression of Interest from the Prospective Resolution applicants on 16.06.2023 in ‘Times of India’ (Nashik Edition- English), ‘Financial Express’(Mumbai Edition-English) and its translation thereof in ‘ Lokmat’(Nashik and Mumbai Edition-Marathi) inviting EoIs till 01.07.2023.

- 6) In response to the Form G, three EoIs were received. However, since SPSS Infrastructure Private Limited expressed its disinterest and backed out via email on 18.07.2023, there were only two PRAs i.e., (1) Gemini Instratech Limited and Rational Engineers Limited and (2) Nakshatra Corporate Advisors Limited and Mis. Dinesh Traders. Therefore, both the PRAs were requested to submit their resolution plans on or before 22.08.2023. Out of the two PRAs, one PRA, namely, Gemini Instratech Limited (Lead Member) vide letter dated 16.08.2023 requested for extension of time. From the two PRAs, only Gemini Instratech Limited (Lead Member) submitted its Resolution plan on 20.09.2023 and via email on 22.09.2023.
- 7) It is submitted that the COC held various rounds of negotiations and deliberations with the PRA Gemini Instratech Limited. In 5th COC meeting, the COC requested for improvement in the offer by the PRA, since it was on the lower side. Therefore, the PRA agreed to submit the revised resolution plan by 31.12.2023. Subsequently, the improved resolution plan received from the PRA Gemini Instratech Limited was presented in the 6th COC meeting on 04.01.2024 and discussed at length.
- 8) That finally, in the 7th COC meeting on 08.02.2024, the alternative agendas for accepting the resolution plan, publishing the EOI for the second time or approving liquidation of the Corporate Debtor were placed for e-voting before the COC. It is submitted that the CoC in its "commercial wisdom" rejected the Resolution Plan submitted by Gemini Instratech Limited with 74.01 % majority and further, rejected the Resolution for Publication of the EoI for the 2nd time with 73.70% majority, in view of the resolution plan being on the lower side and not meeting the expectations of the CoC.

- 9) Furthermore, the CoC vide e-voting accorded its approval to liquidation of the Corporate Debtor as a going concern and sale of the assets of the Corporate Debtor as per regulation 32(a) to 32(d) of the Liquidation Process Regulations with 75.48% majority voting.

The relevant extracts of the resolution passed in 7th CoC meeting held on 08.02.2024 is as follows:

Item No. 3

To liquidate the Corporate Debtor as a Going Concern.

Resolution No. 3

"RESOLVED THAT in case the CoC votes for liquidation of the Corporate Debtor under Reg 32, then pursuant to the provisions of section 33 of Code read with Regulation 32 (e) or (f), and such other rules and regulations as may be applicable, the consent of the CoC members is hereby accorded for the appointed liquidator to explore the possible liquidation of Creaative Powertech Private Limited as a going concern under Regulation 39C...."

Item No. 4

To liquidate the Corporate Debtor under Regulation 32 (a) to (d).

Resolution No. 4

"RESOLVED THAT in case the CoC votes for liquidation of the Corporate Debtor under Reg 32, then pursuant to the provisions of section 33 of Code read with Regulation 32 (a) or (d), and such other rules and regulations as may be applicable, the consent of the CoC members is hereby accorded for the appointed liquidator to liquidate the Corporate Debtor i.e. Creaative Powertech Private Limited under Regulation 32 (a) to (d) of the Liquidation Regulations."

- 10) Further, in the 8th CoC Meeting, the CoC approved appointment of Mr. Arun Kapoor as the proposed Liquidator of the Corporate Debtor.
- 11) Considering the facts and circumstances as submitted by the Applicant in the Application and by the Counsel appearing for the Applicant, this Bench is of the considered view that the Corporate Debtor be liquidated.
- 12) Accordingly, this Bench orders that –
 - a) The Corporate Debtor viz. Creative Powertech Private Limited (CIN: [CIN: U51505MH2008PTC182777]) is ‘under liquidation’ w.e.f. the date of this order.
 - b) Mr. Arun Kapoor, an Insolvency Professional, having IBBI Registration Number : IBBI/IPA-003/IP-N00030/2017-2018/10230, e-mail: arun.kapoor58@yahoo.in , is hereby appointed as the ‘Liquidator’ to conduct liquidation process of National Auto Wheels Private Limited as provided under Section 34(1) of the Code.
 - c) The Liquidator would be entitled to the fees as mutually agreed between the Liquidator and the CoC or as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016 to conduct the liquidation proceedings.
 - d) The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process)

Regulations, 2016. The Liquidator to send this order to the RoC under which this Company has been registered.

- e) The Liquidator appointed under section 34(1) of the Code, will have all powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the Liquidator.
- f) The personnel of the Corporate Applicant are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g) On having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceedings on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
- h) The Liquidator shall take necessary legal action to recover the Trade Receivables and other Credits such as Loans and Advances from the parties which are reflected in the latest Balance Sheet of the Corporate Debtor, if any. This direction is hereby given in concurrence of the jurisdiction prescribed u/s. 33(5) of the Code.
- i) This liquidation order u/s 33(7) shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Applicant except to the extent of the business of the Corporate Applicant continued during the liquidation process by the Liquidator.

- j) Moratorium declared vide Order dated 12.04.2023 in CP No.1294/MB-IV/2022, henceforth ceased to exist.
- k) The Liquidator shall submit the progress report of liquidation periodically.
- 13) The **IA-29/2024 in CP No. 1294/2022** filed by the RP for Liquidation of the Corporate Debtor stands *allowed* accordingly in aforesaid terms.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
16.05.2024.

Sd/-

KISHOREVEMULAPALLI
MEMBER (JUDICIAL)