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

ITEM No.301
IA/09(AHM)2024 in
CP (IB)175 of 2022

Order under 33 & 60(5) of IBC,2016

IN THE MATTER OF:

Nimai Gautam Shah **.....Applicant**
RP of M/s Sintex Plastics Technology Ltd

.....Respondent

Order delivered on: 03/05/2024

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 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/09/AHM/2024 in CP (IB)/175/2022

(Filed under Section 33(2) & 34(1) of the Insolvency and Bankruptcy Code, 2016)

In the matter of ***M/s Sintex Plastics Technology Ltd.***

Mr. Nimai Gautam Shah
Resolution Professional
of M/s Sintex Plastics Technology Ltd.
Having address at:
605-606-607, Silver Oaks,
Nr. Mahalaxmi Char Rasta,
Paldi, Ahmedabad- 380007

..... Applicant/RP

Order Pronounced on 03.05.2024

CORAM:

Mr. SHAMMI KHAN, MEMBER (JUDICIAL)
Mr. SAMEER KAKAR, MEMBER (TECHNICAL)

APPEARANCES:

For Applicant : Mr. Kamil Lokhandwala, Advocate

O R D E R

1. The IA/09/AHM/2024 has been filed by the Applicant Resolution Professional under Section 33 and 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows;

a. *That your Lordship may be pleased to allow this present Application;*

b. *That your Lordships may be pleased to pass an order to Liquidate the Original Corporate Debotr being M/s Sintex Plastics Technology Limited as per the Statutory provisions of the Insolvency and Bankruptcy Code, 2016 and to appoint Mr. bimal Ashok Desai (Regn. No. IBBI/IPA-001/IP-P00748/2017-2018/11281) as Liquidator;*

c. *That your Lordships may be pleased to pass such order and further orders as may deem fit and proper in the interest of Justice.*

2. Facts of the case are as follows:

i. From the averments made by the Applicant, it is evident that Corporate Debtor, M/s Sintex Plastics Technology Ltd was admitted to CIRP vide order dated 21/02/2023 and one Mr. Kshitiz Chhawchharia was appointed as IRP. The erstwhile IRP had issued a Public Announcement under regulation 6 and accordingly formed COC of Corporate Debtor.

ii. In Second COC meeting dated 03/07/2023 the COC resolved to change the IRP with the present Applicant. Accordingly IA no. 784/2023 was filed by the COC

filed. This Bench appointed the present Applicant as RP of the Corporate Debtor vide order dated 24/07/2023.

iii. It is stated that accordingly the RP conducted 3rd COC meeting on 11/08/2023. The COC in the said meeting apart from passing various resolution approving fees of RP, Evaluation matrix, eligibility criteria, etc., had resolved with 100% of Voting to file appropriate application for extension of the CIRP process of the Corporate Debtor for 90 days from the completion of 180 days of the CIRP. Accordingly, IA no. 944/2023 was preferred by RP which was allowed and CIRP period was extended till 20/11/23.

iv. It is further stated that the present Applicant had prepared and published Invitation for expression of Interest in Form G of the Corporate Debtor and had invited Resolution Plans pursuant to CIRP of Corporate Debtor.

v. Thereafter the RP conducted 4th COC meeting dated 25/10/2023. COC in the said meeting resolved to file

IA seeking exclusion of CIRP period of 90 days and with 100% COC voting as the COC was in the process of considering Resolution Plans so received. Upon the said resolution the RP preferred IA no. 1303/2023 therein praying for exclusion of CIRP period which came to be dismissed by this Bench vide order dated 18/12/2023.

vi. Being aggrieved with order dated 18/12/2023 the Applicant as well as well as the Bank, RBL Bank preferred Company Appeal (AT) (INS) No. 82/2024 and 89/2024 respectively. Hon'ble NCLAT vide order dated 30/01/2024 allowed the said Appeals and CIRP period of the CD was extended till 30/03/2024.

vii. It is submitted that the RP conducted 5th COC meeting and voting was kept open till 31/12/2023. In the said meeting the RBL Bank being Sole COC member abstained from voting on either of the 3 Resolution Plans. The Applicant informed the COC regarding pending IA's before this Tribunal seeking

exclusion/extension of the CIRP Period and thereafter rejection of IA no. 1303/2023.

viii. Thereafter the Applicant conducted 6th COC meeting on 22/03/2024 and kept the E-voting open till 26/03/2024. It was informed by Applicant to COC that as per Order of the NCLAT the extended period of CIRP is expiring on 30/03/2024.

ix. In the said meeting in total **Five** Resolutions were placed before the COC to cast their vote upon. **Three** Resolutions were to approve or reject the Resolution Plans so received from Prospective Resolution Applicants, **One** Resolution for passing resolution for Liquidation of the Corporate Debtor as the CIRP was getting over on 30/03/2024 and **One** Resolution for Approving the Fees of the RP at the minimum permitted scale as per Regulation 34B.

x. The COC abstained from voting on either of the Resolutions before it. The COC neither approved nor rejected the Resolution Plans and further abstained

from approving the Resolution for the Liquidation of the Corporate Debtor or approving the Fees of the RP.

xi. The present application for Liquidation of the CD has been preferred as the CIRP of the Corporate Debtor got over on 30/03/2024. As per the provisions the COC even in the extended time period of CIRP has not approved any Resolution Plan. Hence, the Applicant being duty bound is left with no other option but to prefer this present Application.

xii. The Applicant further apprises this bench that the COC consists of only one Financial Creditor i.e. RBL Bank Ltd. As of today apart from this one Financial Creditor, there are no creditors of the Corporate Debtor.

xiii. In 6th COC meeting, it was discussed if the COC would want to suggest the name of Liquidator in case of Liquidation of the Corporate Debtor. Upon which it was informed by COC that it was not finalized yet and name of proposed Liquidator would be proposed shortly. It may be noted that on 27/03/2024, the COC

consented to appoint Mr. Bimal Desai bearing Registration no: IBBI/IPA-001/IP- P00748/2017-2018/11281 as Liquidator. It may be noted that Mr. Bimal Desai has not been the IRP or the RP of the Corporate Debtor.

xiv. It is submitted that the Applicant had earlier filed IA (Liq.) No.6/2024 seeking the same prayers of Liquidation of CD. However, this Bench dismissed the said IA vide order dated 09/04/2024 with liberty to file fresh Application of Liquidation with copy of Form H. In compliance of Order dated 09/04/2024, the Applicant had prepared Form - H under Regulation 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) regulations, 2016, and virtually filed a copy of the same.

xv. It is further submitted by the applicant that the COC did not approve any of the Resolution Plans and the CIRP period of the CD was over on 30/03/2024.

3. It is stated that vide order dated 24.04.2024 Learned counsel for the applicant sought time to amend the cause tile as well as to file revised Form-H which was allowed.

4. It is further stated that in complaisance of order dated 24.04.2024, the Applicant has filed an additional Affidavit on 29.04.2024 vide inward diary No. D3653 a revised Form-H along with a revised memo of parties and also the email correspondence with sole Committee of Creditors members giving consent to appoint the Mr. Bimal Ashok Desai as the Liquidator.

5. The provisions of Section 33(1) of the Code are reproduced below: -

> *"... (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*
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> *(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."

6. This observation of this Tribunal are as under:

a) It is observed that the RBL Bank is the sole CoC member of the Corporate Debtor.

b) The Resolution Professional has put forth the Resolution plans for approval of the CoC during the 5th and 6th meetings conducted on 04.12.2023 and 22.03.2024 respectively.

c) The CoC abstained from voting on either of the Resolution Plans placed before it during the 5th and 6th meetings.

d) The period of the CIRP came to an end on 30.03.2024. The CoC did not approve any Resolution plan even during the extended time period of CIRP.

e) Form AA by proposed Liquidator is appeared at page 54 of the Application.

7. Hence we are left with no option but to liquidate the Corporate Debtor as CIRP period has ended on 30.03.2024

8. In terms of the above, we hereby order for liquidation of the Corporate Debtor subject to the following terms of the directions:-

   a) The Corporate Debtor **M/s. Sintex Plastics Technology 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 as per the recommendation proposed by the CoC, **Mr. Bimal Ashok Desai** an IPA having registration no. IBBI/IPA-001/IP-P-00748/2017-18/11281 is hereby appointed as a Liquidator of the Corporate Debtor i.e. M/s Sintex Plastics Technology 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) 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 can 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.

9. Accordingly, **IA/09(AHM)2024** in CP(IB) No. 175 of 2022 is allowed and disposed of.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

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SHAMMI KHAN
MEMBER (JUDICIAL)

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