



**DIVISION BENCH**

**ITEM NO.109**

**NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH  
PRAYAGRAJ**

**IA NO.398/2020, IA NO.663/2023 & IA NO.664/2023  
IN CP (IB) No.470/ALD/2019**

**CORAM:**

- 1. SHRI PRAVEEN GUPTA,  
HON'BLE MEMBER (JUDICIAL)**
- 2. SHRI ASHISH VERMA,  
HON'BLE MEMBER (TECHNICAL)**

**Date of Order: 17<sup>th</sup> September, 2024**

**Attendance-Cum-Order Sheet of the Hearing.**

<b>NAME OF THE COMPANY</b>	<b>INDIAN INSTITUTE OF EDUCATORS PVT LTD V/S NEELKANTH SURGICAL INDUSTRIES PVT LTD</b>
<b>UNDER SECTION</b>	<b>7 IBC (IN CIRP)</b>

**COUNSEL APPEARED THROUGH PHYSICAL/ VIRTUAL HEARING:**

Sh. Vipin Kumar Kushwaha, Adv. : *For the Applicant/ RP, Mr. Shravan  
Kumar Vishnoi present in person*

**ORDER**

**IA NO.663/2023**

Ld. Counsel representing the Applicant/ RP along with RP in person is present through VC.

- 1.** In pursuance of an order dated 30.11.2023 passed by this Adjudicating Authority, the RP/ Liquidator has undertaken to move an appropriate application seeking amendment in the prayer clause of IA No.398/2020. Accordingly, the present IA No.663/2023 has been filed with the following prayer :-

**-Sd-**

**-Sd-**



*It is therefore most respectfully prayed that the facts and circumstances as described above, the Hon'ble Tribunal may be pleased to allow this amendment application pursuant to deleting the prayer no. **“(iii) Direct the Committee of Creditors of Corporate Debtor to pay the CIRP cost in full to Resolution Professional”** of the IA No. 398 of 2020 (liquidation Application) relating to payment of CIRP cost, in the interest of justice otherwise the Applicant shall suffer from irreparable loss and injury.*

2. The prayer sought in the present application is only limited to seeking deletion of prayer clause (iii) made in IA No.398/2020 relating to the Committee of Creditors to consider the CIRP cost to be paid to the RP.
3. The present application is therefore allowed and the prayer clause (iii) as inscribed in IA No.398/2020 to the following effect stands deleted :-  
  
*iii) Direct the Committee of Creditors of Corporate Debtor to pay the CIRP cost in full to Resolution Professional.*
4. IA No.663/2023 is allowed in the aforesaid terms and stands disposed off accordingly.

#### **IA NO.664/2023**

1. The prayer in the present application is for seeking directions for payment of the CIRP cost to the RP by the CoC.
2. The notice had already been issued in the present application to the CoC members namely the respondents as impleaded in the present application as per the memo of parties given at page no.1.
3. There is no reply/ response filed by either of the members of the CoC.

**-Sd-**

**-Sd-**



4. Let fresh notice be issued to the respondents, returnable within a period of two weeks.
5. The RP is also directed to circulate the copy of this order to the CoC members.
6. Let the matter be adjourned for further hearing on 23<sup>rd</sup> October, 2024.

**IA NO.398/2020**

1. This application has been filed *interalia* with the following prayers :-
  - i) *Pass an order for Liquidation of the Corporate Debtor under Section 33(2) in terms of sub-clauses (i), (ii) and (iii) of sub-section (1) (b) of Section 33 of the Insolvency and Bankruptcy Code, 2016.*
  - ii) *Not to appoint the Resolution Professional Mr. Shravan Kumar Vishnoi as Liquidator who does not wish to act as Liquidator in this matter.*
  - iii) *Direct the Committee of Creditors of Corporate Debtor to pay the CIRP cost in full to Resolution Professional.*
  - iv) *Pass any other or further order(s) as this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the matter.*
2. In terms of an application filed by the RP *vide* IA No.663/2023, the aforesaid prayer clause (iii) has been ordered to be deleted by our separate order passed today in the said IA No.663/2023.
3. By virtue of the said order, the prayer clause (iii) as reproduced stands deleted, and therefore the present application relates only with respect to prayer clause no.i, ii and iv, which are as under :-
  - i) *Pass an order for Liquidation of the Corporate Debtor under Section 33(2) in terms of sub-clauses (i), (ii) and (iii) of sub-section (1) (b) of Section 33 of the Insolvency and Bankruptcy Code, 2016.*

**-Sd-**

**-Sd-**



- ii) *Not to appoint the Resolution Professional Mr. Shravan Kumar Vishnoi as Liquidator who does not wish to act as Liquidator in this matter.*
- iv) *Pass any other or further order(s) as this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the matter.*

4. The application has been filed for initiating the liquidation process U/s 33 of the Code. The detailed description and the background giving rise to the filing of the present application, has been provided at page no.58, which is part of the proceedings of the CoC taken up in the meeting held on 18.08.2020 in terms of agenda item no.5. The detail of the agenda item as well as the decision of the CoC members given at page no.58-59, are as under :-

***5. To Discuss and Approve the Liquidation Process as per Section 33 of the Insolvency and Bankruptcy Code, 2016.***

*The chairman apprised the members of COC that no expression of Interest was received upto the last date of receipt of expression of Interest i.e. 02nd of August, 2020 on the publication of Form G Invitation for Expression of Interest. The period of CIRP i.e. 180 days was going to over in few days without exclusion of COVID-19 time line. The RP apprised about the provisions of extension of CIRP and the CIRP time line.*

*After discussion, the Resolution Professional apprised the COC about the provisions of Section 33 of The Insolvency and Bankruptcy Code, 2016 for initiation of Liquidation Process against the Corporate Debtor. The COC discussed the matter on the issue and found that no option was left but to file an application for the liquidation of the Corporate Debtor before the Adjudicating Authority. The Resolution Professional apprised about provisions of Section 34 of the IBC, 2016 regarding appointment of Liquidators and apprised that he do not wish to act as Liquidator in the Proposed Liquidation Process but will continue as RP till the application for liquidation is approved by the adjudicating authority.*

*Since meeting of Committee of Creditors was held through video conference mode. Therefore following resolution was put to vote to decide through electronic voting through E-mail:*

***-Sd-***

***-Sd-***



***"RESOLVED THAT the application for liquidation of the corporate debtor be filed before the Hon'ble NCLT, Allahabad Bench, Allahabad under provisions of Section 33 of Insolvency and Bankruptcy Code, 2016.***

***FURTHER RESOLVED THAT Mr. Shravan Kumar Vishnoi, Resolution Professional, be and is hereby authorised to file Liquidation application to the Hon'ble NCLT, Allahabad Bench, Allahabad under provisions of Insolvency and Bankruptcy Code, 2016."***

***E-Mail voting result was as below:***

<b><i>Name of the Bank</i></b>	<b><i>Voting share</i></b>	<b><i>Voting- Approve/Reject/Abstain</i></b>
<i>Indian Institute of Educators Pvt. Ltd</i>	<i>27.89</i>	<i>Approved</i>
<i>Himadri Pvt. Ltd Distributors</i>	<i>29.70</i>	<i>Approved</i>
<i>Andhra Bank</i>	<i>42.41</i>	<i>Approved</i>

***VOTING RESULT:-The Resolution was passed with 100% Vote Share of the members of the CoC.***

5. A perusal of the Resolution passed by the CoC reveals that the CoC which comprises of the three members, has passed the Resolution by 100% vote shares in favour of initiating the liquidation process by moving an appropriate application.
6. While perusing the agenda item no.5/ minutes of the meeting, we also see that during the course of the meeting, the RP has apprised that he does not wish to act as the Liquidator in the proposed liquidation process and will continue as RP till the application for liquidation is approved by the Adjudicating Authority. However, while passing the Resolution by the aforesaid members of the CoC, there is no such Resolution passed by the CoC approving the said inclination of the RP not to act as a Liquidator.

***-Sd-***

***-Sd-***



7. As a matter of fact, the RP had been authorized to file the liquidation application before the Adjudicating Authority. The Ld. RP in such circumstances undertakes that he will continue to act as a Liquidator subject however to the final decision taken by the CoC in either to allow him to continue as Liquidator, or to take a call for appointment of another Liquidator in this case.
8. Needless to say that the CoC members will render full cooperation with the RP and the RP would be acting in accordance with the provisions of the Code as well as in consultation with the Stakeholder Consultation Committee (SCC), which would comprise of the following members :-
  - i. *Indian Institute of Educators Pvt. Ltd.*
  - ii. *Himadri Pvt. Ltd. Distributors*
  - iii. *Andhra Bank*
9. It is also further pointed out by the RP that one PUFEE application has been filed, which is stated to be under scrutiny/ defect.
10. The RP/ Liquidator undertakes to ensure that the said application comes up on record and the Liquidator would follow and pursue the said application, for which the CIRP/ Liquidation cost would also be payable to him in consultation with the SCC, and the proceeds if any thereof would be disbursed in accordance with the provisions of Section 53 of the Code.
11. In view of our foregoing discussions, we pass the following orders :-

**-Sd-**

**-Sd-**



- i. The present IA is allowed for initiation of the liquidation proceedings of the Corporate Debtor in terms of Section 33(2) of the Code.
- ii. The RP, Mr. Shravan Kumar Vishnoi is appointed to act as a Liquidator.
- iii. The Liquidator is directed to forthwith take into his custody all the assets, properties, and actionable claims of the Corporate Debtor and take necessary steps to ensure preservation, protection security and maintenance of those properties as provided under section 35(1)(b) & (d) of IBC 2016.
- iv. The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time.
- v. The Stakeholder Consultation Committee (SCC) would be constituted as per Regulation 31A of IBBI (Liquidation Process) Regulations, 2016 and the list of SCC would be filed before this Tribunal in accordance with the provisions of the Code and Regulations made therein.
- vi. The Liquidator shall first try to sell the Corporate Debtor as a going concern in terms of Regulation 32A read with Regulation 32(e) and (f) of IBBI (Liquidation Process) Regulations, 2016. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

***-Sd-***

***-Sd-***



- vii.** All the powers of the Board of Directors, and of Key Managerial Personnel, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- viii.** The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- ix.** On initiation of the liquidation process but subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.
- x.** In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except to the extent of the business of the Corporate Debtor continues during the liquidation process by the Liquidator as a going concern.
- xi.** In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Kanpur, Uttar Pradesh, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, Uttar Pradesh, Kanpur.
- xii.** As per Regulation 13 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, the liquidator shall submit a preliminary report to the Adjudicating Authority providing various details/information as mentioned in the said regulation.

**-Sd-**

**-Sd-**





12. Accordingly, IA No.398/2020 is allowed in the aforesaid terms and stands disposed off accordingly.
13. Ordered accordingly.

**-Sd-**  
**(Ashish Verma)**  
**Member (Technical)**

**-Sd-**  
**(Praveen Gupta)**  
**Member (Judicial)**

***17<sup>th</sup> September, 2024***

*Kavya Prakash Srivastava*  
*(Stenographer)*