

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

ITEM No. 303 - IA(Liq.)/22(AHM)2024
in
C.P.(IB)/119(AHM)2022

Order under Section 33 IBC

IN THE MATTER OF:

Sachin Naveen Sinha RP of Spel Granito Pvt. Ltd

.....Applicant

Order delivered on: 12/09/2024

Coram:

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

PRESENT:

For the Applicant :
For the Respondent :

ORDER
(Hybrid Mode)

The case is fixed for 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 COURT-I, AHMEDABAD**

IA(liq)/22/AHM/2024 in CP (IB)/119/2022

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

In the matter of **M/s Spel Granito Pvt. Ltd.**

Sachin Naveen Sinha

Resolution Professional

of M/s Spel Granito Pvt. Ltd.

Having registered Address at:

Flat No. N-203, Parshwanath Metro

City, Nr. H.B. Kapdia School,

Ahmedabad- 382424

.... Applicant

Order Pronounced on 12.09.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

For Applicant

: Mr. Sumit Parekh, Advocate

ORDER

1. The IA(liq)/22/AHM/2024 has been filed by the Applicant Resolution Professional under Section 33 r.w. Section 34 of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows; -

- a. *Your Lordship may be pleased to admit and allow the present application;*
- b. *Your Lordship may be pleased to condone the delay of 125 days [15.02.2024 to 14.06.2024 & 22.08.2024 to 26.08.2024] for conducting the CIRP Process;*
- c. *Your Lordship may be pleased to pass an order under section 33 of the Code for initiation of liquidation process against the corporate debtor i.e. M/s. Spel Granito Private Limited.*
- d. *Your Lordship may be pleased to pass an order under section 34 of the Code appointing the Applicant herein as the liquidator of the corporate debtor i.e. M/s. Spel Granito Private Limited.*
- e. *Your Lordship may be pleased to grant any other relief or relief as may deem fit in the lights of the facts and circumstances of the case;*

2. Facts of the Case are as follows:

- i. It is submitted that the Operational Creditor i.e. Krishna Colour Chem filed an application under section 9 of the Code seeking initiation of the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor Le. M/s Spel Granito Private Limited. Further, this Hon'ble Adjudicating Authority vide its order dated 19.05.2023 (Certified Copy received on 27.05.2023)

was pleased to admit the petition and further appointed Mr. Premraj Ramratan Laddha as the Interim Resolution Professional ("IRP") of the Corporate Debtor.

- ii. It is stated that as contemplated under Section 15 of the Code read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the IRP made public announcement in prescribed 'Form-A' on 27.05.2023 and invited claims from all the creditors. The said announcement was published in the newspapers i.e. Times of India in English Language and Jay Hind -in Gujarati Language wherein the last date for submission of claims was 11.06.2023.
- iii. It is submitted that pursuant to the public Announcement dated 27.05.2023, the IRP has inter alia received claims from the creditors of the Corporate Debtor and constituted the Committee of Creditors ("CoC"). The IRP has also filed the report certifying the constitution of CoC as per Regulation 17 (1) of IBBI (Insolvency Process of Corporate Persons) Regulations, 2016 on 11.06.2023 before this Tribunal. It is further

submitted that the applicant had received claims even after the constitution of CoCand has further filed report certifying re-constitution of Committee of Creditor on 10.10.2023.

- iv. It is stated that the erstwhile IRP had convened the **First meeting of members of Committee of Creditors** ("CoC") was held on 20.06.2023, wherein it was resolved the reduce the notice period for inviting the CoC Meeting from 5 days to 2 days, further resolved to appoint Registered Valuers for the Class of Land and Building, Ratified the CIRP Cost however the CoC Members had defer the agenda item for the appointment as Resolution Professional.
- v. It is stated that the erstwhile IRP had convened the **Second Meeting of the CoC** on 17.07.2023 wherein members of the CoC had resolved to Publish Expression of Interest in prescribed Form G also resolved to replace and appointed the applicant as Resolution Professional of the Corporate Debtor.
- vi. It is stated that the Publication of Invitation of Expression of Interest (herein refer as Eol) in prescribed

'Form G' made in the newspaper namely Financial Express in English as well as the in vernacular Language on 18.07.2023 wherein the last date of submission of Eol was 02.08.2023.

- vii. It is stated that the erstwhile IRP had Convened the **Third Meeting of the CoC** on 18.08.2023 wherein the CoC Members had resolved to extended the last date of Expression of interest from 02.08.2023 to 05.09.2023 also ratified the CIRP Cost and defer the agenda item for the Request for the Resolution Plan and Evaluation Metrix.
- viii. It is stated that the Erstwhile IRP had convened the **Fourth Meeting of the CoC** on 18.09.2023 wherein apprise the CoC Members that pursuant to Publication of Form G dated 18.07.2023 however the applicant/ IRP had received Four Eol from the Prospective Resolution Applicant(s), the details of the Prospective Resolution Applicants are as under: -

Sr. No.	Particulars
1.	Aspect Global Ventures Pvt. Ltd. (Formerly Known as Next Avenue Ventures Pvt. Ltd.)
2.	Galactico Corporate Services Limited

3.	Sunrise Industries
4.	Rearco Private Limited* *EMD is not paid hence COC Member has consider ineligible and not included in the final list

further the CoC members had approved the Resolution for Request for the Resolution Plan and Evaluation Metrix and ratified the CIRP Cost.

- ix. It is stated that this as approved resolution in the Second Meeting of the CoC, the CoC Member had filed and application and this Tribunal vide its Order dated 10.10.2023 wherein passed an Order for the Replace and appointed the applicant as Resolution Professional of the Corporate Debtor.
- x. It is stated that the applicant being appointed as Resolution Professional of the Corporate Debtor, the applicant had Convened the **Fifth Meeting of the CoC** on 30.10.2023 wherein the CoC Member had resolved to ratified the CIRP Cost and Extend the CIRP period for further 90days which was expired on 15.11.2023, A copy of the Minutes of the Fifth CoC Meeting dated 30.10.2023 along with Resolutions are annexed here and marked as ANNEXURE I to the present application.

- xi. It is submitted that this Tribunal vide its order dated 11.12.2023 passed in L.A. No. 1362 of 2023 in CP (IB) No. 119 of 2022 was pleased to extend the CIRP period for another 90 days from 15.11.2023.
- xii. It is stated that the applicant had convened the **Sixth Meeting of the CoC** on 30.12.2023 wherein apprise about the Extension of CIRP Period, further the PRA's has requested the RP to extend the timeline for the submission of Resolution Plan by 31.01.2024 the same was apprised to the members and the CoC Members had agreed to extend the time limit for the Submission of Resolution Plan and also ratified the CIRP Cost.
- xiii. It is stated that the applicant had convened the **Seventh Meeting of the CoC** on 27.02.2024 wherein apprise that CIRP Period of the CD was already expired on 15.02.2024, further one of the PRA is ready and willing to submit Resolution Plan which was not in the Final List, hence the applicant requested to members for re-publication of Form G, however the CoC in view that Form G was Publish twice however no Resolution Plan were received, further CoC Member requested RP

to obtain offer from PRA, if no offer is received then necessary application i.e. for the initiation of Liquidation Process against the Corporate Debtor.

- xiv. It is stated that the applicant had convened the **Eighth and Last Meeting of the CoC** on 26.04.2024 wherein the CoC Members has unanimously resolved to initiate the Liquidation Process against the Corporate Debtor under Section 33 of the IB Code and further resolved the appoint the applicant as the Liquidator of the Corporate Debtor as per Section 34 of the IB Code, however the CoC Member has also Confirmed resolved to initiate the Liquidation Process through E-mail dated 21.05.2024.
- xv. It is stated that the applicant has submitted its Written Consent along with Form-B Authorization for Assignment to act as a Liquidator of the corporate debtor.
- xvi. It is stated that the Form-H compliance certificate in accordance with Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution

Process for Corporate Persons) Regulations, 2016 is annexed at "ANNEXURE-O" to the present application.

xvii. It is further stated that the RP had filed a Liquidation application (bearing IA (Liq) No. 14 of 2024 in CP IB No. 119 of 2022) E-filed on 14.06.2024, the said matter was listed on 12.08.2024 (Order uploaded on 22.08.2024), due to inadvertent mistake in the said application, the applicant had Requested to withdraw the said application with liberty to file a fresh one with better particulars, the said request was allowed by this Tribunal.

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 [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. The Timeline of the proceedings as under:

Date	stage
19.05.2023	Admittance order
19.05.2023	Appointment of IRP
15.02.2023	Public Announcement
13.06.2023	Constitution of CoC
20.06.2023	1 st CoC Meeting
17.07.2023	2 nd CoC Meeting
18.07.2023	Issuance of Invitation for EOI
18.08.2023	3 rd CoC Meeting
18.09.2023	4 th CoC Meeting

10.10.2023	Appointment of Resolution Professional
30.10.2023	5 th CoC Meeting
15.11.2023	Expiry of 180 days of CIRP
11.12.2023	Order extending the period of CIRP
30.12.2023	6 th CoC Meeting
15.02.2024	Date of Expiry of extended period of CIRP
27.02.2024	7 th CoC Meeting
26.04.2024	8 th CoC Meeting
14.06.2024	Liquidation application was filed
12.08.2024	Application was withdrawn
03.09.2024	Present Application for liquidation is filed.

6. We have heard the learned counsel for the applicant and perused the documents attached with the application.
7. The observations of this Tribunal are as under:
 - i. It is seen from the pleadings that the Corporate Debtor was admitted under CIRP on 19.05.2023.
 - ii. The 180 days of the CIRP expired on 15.11.2023.
 - iii. The extended period of the CIRP ended on 15.02.2024.
 - iv. Thereafter no application was filed by the applicant for further extension of the CIRP period nonetheless an application for Liquidation was filed by the applicant on 14.06.2024 which was later withdrawn by the applicant.

- v. The present Application was filed on 03.09.2024 which is after 201 days from the date of the expiry of the further extended period of CIRP which ended on 15.02.2024.
- vi. The Applicant did not seek any extension for the CIRP after the expiry of extended period and continued with the CIRP conducting the meetings held on 27.02.2024 and 26.04.2024.
- vii. It is seen that there is violation of provisions of IBC by the Applicant by not seeking the leave of the court w.r.t extension of CIRP and conducted the meetings of CoC. The relevant section is reproduced as under:

- a) The Applicant has violated the provision laid down under section 12 of the IBC. Section 12 of IBC is reproduced as under:

"Section 12. Time-limit for completion of insolvency resolution process. –

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a

resolution passed at a meeting of the committee of creditors by a vote of ¹[sixty-six] per cent. of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once:

[Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.]”

The Applicant did not file the application seeking extension of the CIRP nor take any approval from the CoC for the same.

- viii. It is seen from Form H that there are some assets left with the Corporate Debtor. The Liquidation and Fair Value of the Corporate Debtor are **6,83,03,000/-** and **9,75,02,500/-** respectively.

ix. It is seen that the time for CIRP has expired and the Resolution of CoC for liquidation is attached and was approved with 100% majority.

8. In terms of the above, we hereby order for liquidation of the Corporate Debtor.

9. IBBI vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in the exercise of its powers conferred under section 34 (4) (b) of the Code, had recommended that an IP other than the RP/IRP may be appointed as liquidator in all the cases where liquidator (*read liquidation*) order is passed henceforth. In terms of the above circular of IBBI, we hereby appoint

Mr. Arvind Gaudana (9879566756)

(arvindg_cs@yahoo.com) an IP having registration No. IBBI/IPA-002/IP-N00283/2017-2018/10841, as per the panel suggested by IBBI for this Bench for the period of July, 1 to December 31, 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. Spel Granito 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. Accordingly, we allow IA(liq)/22(AHM)2024.

- 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. Arvind Gaudana** an IP having registration No. **IBBI/IPA-002/IP-N00283/2017-2018/10841**, is hereby appointed as a Liquidator of the Corporate Debtor I.e. M/s Spel Granito 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, **Indian Institute of Insolvency Professionals of ICAI, IPA of RP**, 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 for records and action, if any.



10. Accordingly, **IA(liq)/22(AHM)2024** in CP(IB) No. 119 of 2022 is disposed off.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)
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-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)