IN THE NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD COURT - 2

ITEM No.301

IA(IBC)(LIQ.)/1(AHM)2024

in

CP(IB)/106(AHM)2022

Order under Section 33(2) & 34 IBC

IN THE MATTER OF:

Manish Santosh Buchasia (RP of Ecophos GNFC Private

.....Applicant

Limited)

.....Respondent

Order delivered on: 09/08/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

Sd/- Sd/-

DR. V. G. VENKATA CHALAPATHY MEMBER (TECHNICAL)

CHITRA HANKARE MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL AT AHMEDABAD BENCH (COURT- II)

IA (IBC) (Liq.) No./01/AHM/2024 IN CP (IB) No./106/AHM/2022

[Application for Liquidation of Corporate Debtor by Resolution Professional (RP) under Section 33(2) and 34 of the Insolvency and Bankruptcy Code, 2016]

IN THE MATTER OF:

Simon India Limited

...Operational Creditor

Versus

Ecophos GNFC India Private Limited

...Corporate Debtor

MEMO OF PARTIES

Mr. Manish Santosh Buchasia

Reg. No. IBBI/IPA-002/IP-N00487/2017-2018/11449

Having office at:

306, 3rd Floor, "GALA MART" Nr SOBO CENTRE,

Above SBI/UNION Bank, South Bopal,

Ahmedabad – 380 058, Gujarat

Resolution Professional,

Ecophos GNFC India Private Limited

...Applicant

Order pronounced on 09.08.2024

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G. VENKATA CHALAPATHY HON'BLE MEMBER (TECHNICAL)

Appearance:

For the Applicant : Mr. Manish Buchasia, Adv. a.w.

Mr. Kunal P. Vaishanav, Adv.

ORDER

1. This application is filed for liquidation of the Corporate Debtor under Sections 33 and 34 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as the "Code") and for the appointment of a liquidator.

2. The Applicant/RP submitted that Ecophos GNFC India Private Limited i.e. the Corporate Debtor has been undergoing Corporate Insolvency Resolution Process ("CIRP") since, 06.07.2023 in view of the application filed by M/s. Simon India Limited. The applicant issued a public announcement and verified the claims received from creditors. Committee of Sole operational Creditor was formed as single claim was received

from one Operational Creditor. Thereafter, the Income Tax
Office filed their revised claim which was admitted and CoC
was re-constituted.

- 3. It is further submitted that three CoC meetings were held.

 During the process, applicant came to know that they have no major assets in the Company and the existence of Company as a going concern is not established. The business of the Company is stand-still. There is no employee in the Company only the bank balance is available. Therefore, CoC decided to liquidate the Corporate Debtor. They have also agreed to continue Applicant/RP as a liquidator.
- 4. The applicant further submitted that maximum time-period of 180 days will soon expire. Hence, it is necessary to liquidate the Corporate Debtor and prayed for the same. By way of additional affidavit, applicant submitted that in the 4th CoC meeting, the CoC has ratified that if the existing Resolution Professional is not appointed as a Liquidator as per IBBI circular then Mr. Suhash Dinkar Bhattbhatt be appointed as a Liquidator.

- 5. As per Minutes of 3rd meeting dated 07.12.2023, the voting share of Operational Creditor Simon India Limited is 6.16 per cent with Rs.9,66,53,996/- as amount admitted, while that of Income Tax Department is 93.84% with Rs.1,47,13,48,033/- as amount admitted. There was presence of 100% members in the meeting. The Income Tax Returns received from the Income Tax Department were filed till the date of the meeting. In this meeting CoC with 100% voting resolved to liquidate the Corporate Debtor.
- 6. On perusing Form-H, it appears that the valuation is not done and therefore the fair value is not mentioned. As also liquidation value is not provided due to the non-availability of financial statements and other required data. No avoidance transactions were found and the estimated liquidation cost is mentioned as Rs. 25 lakhs while the estimated liquid assets available are Rs. 32 lakhs.
- 7. Heard Ld. Counsel for the applicant and perused the material available on record. No objection is filed by anyone to the application.

- 8. 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.
- As the existence of Company is not further possible as there are no assets, and it is observed that there is no possibility of business of the Company. The CoC in its commercial wisdom has decided to liquidate the Corporate Debtor by 100% voting which is in accordance with Section 33(2) of the IBC, 2016. It is also observed that the COC had approved in its 2nd COC meeting held on 7th Dec 2023 for appointment of a transaction audit which seems to have not been completed or filed by the Resolution Professional. The Resolution Professional has not done the valuation as there are no balance sheet and other required data. The outstanding due of the claimants is mainly of the Income Tax Department. From the documents submitted, it can be seen that the Directors of the company are

all Foreigners and there is one share holder which is Gujarat Narmada Valley Fertilisers & Chemicals Limited (Shareholder Promoter). No objections have been raised against liquidation. The present application seeking liquidation of the Corporate Debtor i.e. Ecophos GNFC India Private Limited, in the manner laid down in Chapter III of Part II of the Code can be allowed.

- 10. The CoC has passed the resolution to appoint the present RP/Applicant Mr. Manish Santosh Buchasia, as liquidator or Mr. Suhash Dinkar Bhattbhatt be appointed as a Liquidator. However, as per IBBI 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, the IBBI had recommended that an IP other than the RP/IRP may be appointed as liquidator in all the cases where liquidation order is passed.
- 11. In view of above, we hereby order for liquidation of the Corporate Debtor. Further, in terms of the above circular of IBBI, we hereby appoint Mr. Anil Kumar Satyanarayan Agarwal, having registration IBBI/IPA-001/IP-P00957/2017-

2018/11578 and email id is <u>caanilagarwal1995@gmail.com</u>, as per the panel suggested by IBBI for this Bench for the period of July 1, 2024 to December 31, 2024, as the Liquidator of the Corporate Debtor to carry the liquidation process.

12. Hence we pass following order:

- a. The Corporate Debtor i.e. Ecophos GNFC India Private Limited is ordered to be liquidated 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. Anil Kumar Satyanarayan Agarwal, having registration IBBI/IPA-001/IP-P00957/2017-2018/11578, is hereby appointed as a Liquidator of the Corporate Debtor i.e. Ecophos GNFC India Private Limited. The Liquidator so appointed shall file written consent in Form A and 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. The liquidator to issue a public announcement stating that the corporate debtor is in liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e. The liquidator is to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- f. The liquidator to follow up and continue to investigate the financial affairs of the corporate debtor to determine any undervalued and preferential transactions, etc. 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.
- g. This order is deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor as

per Section 33(7) of the Insolvency and Bankruptcy Code, 2016.

- h. 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.
- i. The Liquidator is to submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- j. 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 subsection (5) of section 33 of the Code.

- k. It is further directed that the Personnel of the Corporate Debtor extend all assistance and cooperation to the Liquidator as may be required in liquidating the affairs of the Company in discharging his function as specified under Section 35 of Insolvency & Bankruptcy Code, 2016.
- 1. 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 the same shall be paid to the Liquidator from the proceed of the liquidation estate under section 53 of the Code.
- m.The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.
- n. 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.

o. Accordingly, the present application IA(IBC)(Liq.)
 No./01/AHM/2024 in CP(IB)No./106/AHM/2022 is allowed and disposed off.

Sd/- Sd/-

DR. V. G. VENKATA CHALAPATHY MEMBER (TECHNICAL)

CHITRA HANKARE
MEMBER (JUDICIAL)

GP-LRA