

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD

ITEM No. 1

TP 199 of 2019 [CP(IB) 424 of 2019]

Order under Section 9 IBC

IN THE MATTER OF:

Ramdev Infra

.....Applicant

V/s

CMM Infraprojects Ltd

.....Respondent

Order delivered on ..24/08/2021

Coram:

Dr. Deepti Mukesh, Hon'ble Member(J)

Mr. Virendra Kumar Gupta, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Since, the connected matter is coming on 27.09.2021, hence, this matter stands adjourned for further consideration on 27.09.2021.


VIRENDRA KUMAR GUPTA
MEMBER (TECHNICAL)

Sweta

-SD-
DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD

ITEM No. 2

TP 158 of 2019 [CP(IB) 653 of 2019]

Order under Section 9 IBC

IN THE MATTER OF:

Velji Doshabhai & Sons Pvt Ltd
V/s
Taneja Iron & Steel Co Ltd

.....Applicant

.....Respondent

Order delivered on ..24/08/2021

Coram:

Dr. Deepti Mukesh, Hon'ble Member(J)
Mr. Virendra Kumar Gupta, Hon'ble Member(T)

PRESENT:

For the Applicant : Learned Counsel, Ms. Aarti Sonawane
For the Respondent :

ORDER

Learned Counsel for the Applicant states that the Corporate Debtor has approached for settlement.

Pleadings are complete and the same are on record.

Corporate Debtor has proceeded Ex-parte on April, 2021.

Considering the submissions made by the learned counsel for the Applicant, matter stands adjourned.

List for hearing on 22.09.2021.


VIRENDRA KUMAR GUPTA
MEMBER (TECHNICAL)

Sweta

-SD-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD

ITEM No. 3

TP 29 of 2019 [CP(IB) 683 of 2019]

Order under Section 9 IBC

IN THE MATTER OF:

JJ Plastalloy Pvt Ltd

V/s

Meenesh Irrigation India Pvt Ltd

.....Applicant

.....Respondent

Order delivered on ..24/08/2021

Coram:

Dr. Deepti Mukesh, Hon'ble Member(J)

Mr. Virendra Kumar Gupta, Hon'ble Member(T)

PRESENT:

For the Applicant : Learned Counsel, Mr. Dev Shah

For the Respondent :

ORDER

Learned Counsel for the Applicant states that the Corporate Debtor has proceeded Ex-parte. The copies of application and pleadings of Applicant have not come on E-portal. Learned Counsel for the Applicant undertakes appropriate steps to bring it on record.

Last chance is given to the Applicant to bring the documents on record through E-filing.

List for hearing on 23.09.2021.


VIRENDRA KUMAR GUPTA
MEMBER (TECHNICAL)

Sweta

-SD-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD

ITEM No. 4
(MP) CP(IB) 26 of 2020

Order under Section 9 IBC

IN THE MATTER OF:

Prasad R Patagonkar

V/s

Greater Kailash Hospitals Pvt Ltd

.....Applicant

.....Respondent

Order delivered on ..24/08/2021

Coram:

Dr. Deepti Mukesh, Hon'ble Member(J)

Mr. Virendra Kumar Gupta, Hon'ble Member(T)

PRESENT:

For the Applicant

: Learned Counsel, Mr. Aniket A Naik

For the Respondent

: Learned Counsel, Mr. Nilesh Uderani

ORDER

Pleadings are complete.

Documents of Corporate Debtor have not come on E-portal. Last chance is given to the Corporate Debtor to bring it on record.

List for hearing on 28.09.2021.


VIRENDRA KUMAR GUPTA
MEMBER (TECHNICAL)

Sweta

-SD-
DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD

ITEM No. 5
(MP) CP(IB) 86 of 2020

Order under Section 9 IBC

IN THE MATTER OF:

Plaza Maintenance & Services Ltd
V/s
Travancore Foods India Pvt Ltd

.....Applicant

.....Respondent

Order delivered on ..24/08/2021

Coram:

Dr. Deepti Mukesh, Hon'ble Member(J)
Mr. Virendra Kumar Gupta, Hon'ble Member(T)

PRESENT:

For the Applicant : Learned Counsel, Mr. K. K. Muralitharan
For the Respondent : Learned Counsel, Mr. Sushil K Golchha

ORDER

Learned Counsel for the Applicant states that the Corporate Debtor has approached the Applicant for settlement. Be that as it may, pleadings of the Applicant have not come on E-portal but the documents of Corporate Debtor are reflecting on E-portal.

Last chance is given to the Applicant to bring the documents on record through E-filing.

List for hearing on 29.09.2021.


VIRENDRA KUMAR GUPTA
MEMBER (TECHNICAL)

Sweta

-SD-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD

ITEM No. 6
IA/56(MP)2021
IA/57(MP)2021

in
TP 221 of 2019 [CP(IB) 356 of 2018]

Order under Section 7 IBC

IN THE MATTER OF:

Bank of Maharashtra
V/s
Shrimati Jewellery House Pvt Ltd

.....Applicant

.....Respondent

Order delivered on ..24/08/2021

Coram:

Dr. Deepti Mukesh, Hon'ble Member(J)
Mr. Virendra Kumar Gupta, Hon'ble Member(T)

PRESENT:

For the Applicant : Ms. Natasha Shah, Advocate
For the Respondent :

ORDER

RP Mr. Amresh Shukla appeared.

IA No. 56(MP) 2021

This application is filed for non-compliance of the order dated 22.10.2020 and 15.01.2021 by the Ex-Directors.

Issue notice on all four Ex-Directors non applicant/respondents. If the non-applicant does not appear on the next date of hearing then the contempt application will be heard.

List for hearing on 22.09.2021.

IA No. 57(MP) 2021

This application is filed by the RP under Section 33 of the Code seeking liquidation of the Corporate Debtor.


Learned Counsel Ms. Natasha Shah states that prior to the initiation of order of CIRP the Special Leave Petition is pending before the Hon'ble Supreme Court, where

interim orders have been passed with respect the assets of the Corporate Debtor, which are still in operation, hence, this application needs to be deferred in view of the pendency of the SLP before the Hon'ble Supreme Court.

List the matter on 29.11.2021.


VIRENDRA KUMAR GUPTA
MEMBER (TECHNICAL)

vc


DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD

ITEM No. 7
(MP) IA 87 of 2020
IA/10(IND) 2021
in
TP 239 of 2019 [CP(IB) 370 of 2018]

Order under Section 7 IBC

IN THE MATTER OF:

AU Small Finance Bank Ltd
V/s
SRK Devbuild Pvt Ltd

.....Applicant

.....Respondent

Order delivered on ..24/08/2021

Coram:

Dr. Deepti Mukesh, Hon'ble Member(J)
Mr. Virendra Kumar Gupta, Hon'ble Member(T)

PRESENT:

For the Applicant : Mr. L.M. Patel, Advocate for IA No. 87 of 2020
PCS Mr. Pratik Tripathi for IA 10 of 2021
For the Respondent :

ORDER

(MP) IA 87 of 2020

This application is filed by the Liquidator-originally filed by the RP under Section 43 of the Code and other provisions.

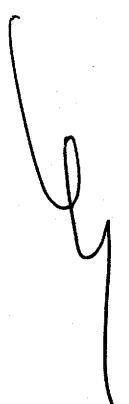
The pleadings are complete. Both sides were given time to upload their pleadings on e-portal. Today, no one appeared for the Respondent neither pleadings are uploaded on e-portal.

List the matter for hearing on 22.09.2021. If no one appeared on the next date of hearing on behalf of the respondent then they will be heard as Ex-parte.

List the matter on 22.09.2021

IA/10(IND) 2021

This application is filed by one of the operational creditor under Section 47 of the Code for undervalued transaction of the property of the Corporate Debtor.




The pleadings are complete. While hearing the matter some queries were raised by this Bench. The arguments of the applicant also made various submissions. It is seen that no proper details have been filed by the RP with respect to the amount received against the transaction, the present status of the property, whether any steps have been taken by the RP for recovery of the balance amount or possession of the property in case transaction is not complete and valuation aspects as raised by the applicant. Learned Counsel for the RP undertakes to file detailed additional affidavit answering all the queries. Let RP remain present on the next date of hearing.

List the matter on 16.09.2021.



VIRENDRA KUMAR GUPTA
MEMBER (TECHNICAL)

vc


DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD

ITEM No. 8
Appeal/9(MP)2021

Order under Section 252(1)

IN THE MATTER OF:

Rudreshwar P Bargal
(Bargal Resorts & Develpoers Pvt Ltd)
V/s
ROC Gwalior MP

.....Applicant

.....Respondent

Order delivered on ..24/08/2021

Coram:

Dr. Deepti Mukesh, Hon'ble Member(J)
Mr. Virendra Kumar Gupta, Hon'ble Member(T)

PRESENT:

For the Applicant : PCA Mr. Charumitra Danglwala
For the Respondent :

ORDER

Learned PCA appeared for the Appellant seeks and is granted time to file additional documents in support of appeal being the financial statement of three years prior to striking off, Income Tax returns receipts, any proof of immovable properties and any other documents.

List the matter on 01.10.2021.


VIRENDRA KUMAR GUPTA
MEMBER (TECHNICAL)

vc

-SD-
DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD

ITEM No. 9

IA 385 of 2017 with TP 170 of 2019 [CP 225 of 2017]

Order under Section For Interim Relief

IN THE MATTER OF:

Abdul Nasir & Anr

V/s

Nafees Bakery Pvt Ltd

.....Applicant

.....Respondent

Order delivered on ..24/08/2021

Coram:

Dr. Deepti Mukesh, Hon'ble Member(J)

Mr. Virendra Kumar Gupta, Hon'ble Member(T)

PRESENT:

For the Applicant : Mr. Monaal Davawala, Advocate

For the Respondent :

ORDER

IA 385 of 2017

Learned Counsel for the Applicant /Petitioner states that the pleadings are complete by way of physical filing. On 01.07.2021 both sides were directed to upload their pleadings/documents on e-portal.

Today Learned Counsel for the applicant/petitioner seeks some more time to complete e-filing. None appeared for the Respondent neither documents are uploaded on e-portal. It is seen from the record that since January 2021 no one has appeared for the Respondent. Hence, Respondent to be proceeded Ex-parte.

The Learned Counsel for the Applicant/petitioner is given last chance to upload the documents on e-portal.

List the matter for hearing on 02.11.2021.


VIRENDRA KUMAR GUPTA
MEMBER (TECHNICAL)

vc

-SD-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD

ITEM No. 142

IA/1(MP) 2021 in TP 73(MP)2019 [CP(IB) 20 of 2018]

Order under Section 33(1),33(2),34(1) IBC

IN THE MATTER OF:

Amresh Shukla RP Vindhya Cereals Pvt Ltd
V/s
Punjab National Bank & Ors

.....Applicant

.....Respondent

Order delivered on ..24/08/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

**IN THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH at AHMEDABAD
COURT 2**

IA/1(MP) 2021 in TP 73(MP) 2019 [CP (IB) 20 of 2018]

In the matter of :

M/s. Punjab National Bank,
Having Registered Office at:
7, Bhikhaji Cama Palace,
Africa Avenue,
New Delhi – 110607.

Having its Branch Office at:
New Market,
Bhopal – 462003,
Madhya Pradesh.

..... Petitioner

Vs.

M/s. Vindhya Cereals Pvt. Ltd.
Having Registered office at:
E-5/68, Area Colony,
Bhopal, MP-462016.

..... Respondent/Corporate Debtor

Date of Hearing: 27.07.2021

Date of Pronouncement: 17.08.2021

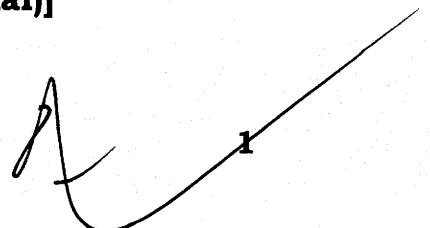
Coram: MADAN B. GOSAVI, MEMBER (Judicial)

Appearance: None appeared for the parties.

ORDER

[Under Reference 60(3) of NCLT Rules, 2016]

[Per: Madan B. Gosavi, Member (Judicial)]



1. On 18.03.2021, the Adjudicating Authority, Bench Indore at Ahmedabad passed order of Liquidation of the Corporate Debtor, M/s. Vindhya Cerals Pvt. Ltd. under Section 33 of the Insolvency and Bankruptcy Code, 2016.
2. Although, both the members of the Bench agreed to the final conclusion of passing order of liquidation of the Corporate Debtor, they have differed on point of Law, i.e. "whether, the CoC can put a rider while recommending liquidation of the Corporate Debtor that not to sell the company as a going concern?"
3. The Learned Member (Judicial) in Para 8 of the order has noted that:
"it is very strange to see how CoC can put a rider upon (not) to sale the company as going concern as it is against the provisions of the Law."
4. Deferring with above findings, the Learned Member (Technical) noted in his separate reason that:
"From the heading of this regulation itself, it is evident that it is an assessment of CoC as regard to the sale of the Corporate Debtor as a going concern and if CoC finds its proper to do so then only it will recommend to the liquidator to do so at first instance during liquidation process. The genesis of Regulation 32A of IBBI (Liquidation Process) Regulations, 2016 is Regulation 39C of the aforesaid CIRP Regulations. Further it is now well established that the commercial wisdom of CoC is supreme and unless there is a grave violation of principles of natural justice or other judicial principles, this Adjudicating

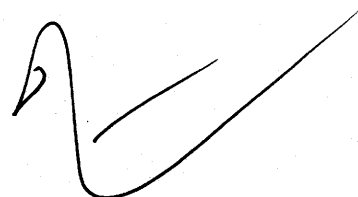
Authority cannot question the same. Hence, for this reason also, having regard to the provisions as stated herein before, in my view, the decision of the CoC in the present case not to liquidate the Corporate Debtor as a going concern in the Law."

5. Above difference of opinion about legal provisions in Regulation 32(A) of the IBBI (CIRP of the Corporate Person) Regulation, 2016 and 39(C) of the IBBI (Liquidation Process) Regulation, 2016.
6. Difference of opinion occasioned because the CoC in the cast had passed the resolution while recommending liquidation of the Corporate Debtor in following words:
"The agenda item was evaluated, deliberated and discussed by the Committee of Creditors and after that it is recommended by the CoC that the liquidator should not to (go) sale the Corporate Debtor as a going concern or sale the business(s) of the Corporate Debtor as a going concern."
7. It appears from the perusal of the reasons of both the Learned Members, the Learned Member (Judicial) was of the view that the CoC cannot pass resolution directing the Liquidator not to sell the Corporate Debtor as a going concern while recommending the order of Liquidation; whereas, according to the Learned Member (Technical), the CoC in their commercial wisdom and in view of Regulation 32(A) of IBBI (CIRP) Regulations and 39(C) of IBBI (Liquidation process) Regulation, can pass such resolution.



8. Because of above divergent views of the Learned Members in reading the provisions noted above, Honourable Acting President referred this matter to me under Section 419(5) of the Companies Act, 2013 read with Rule 60(3) of NCLT Rules, 2016.
9. When the matter was taken by me for hearing none of the parties appeared. However, the Learned Counsel Ms. Natasha Shah then appearing on behalf of the Applicant had apprised me the facts.
10. I have gone through the reasons recorded by both the Learned Members supporting their respective views. I have gone through Provisions of Regulation 32(A) and Regulation 39(C) minutely.
11. Section 33 of the Insolvency and Bankruptcy Code requires that the Adjudicating Authority should pass order of liquidation of the Corporate Debtor in two eventualities:
 - (i) During CIRP period (including extended period)
The Adjudicating Authority does not receive any Resolution Plan as per Section 30(6) of the I.B. Code or;
 - (ii) The Adjudicating Authority rejects the Resolution Plan so received.

Once the Adjudicating Authority passes the order of Liquidation of the Corporate Debtor, it is the scheme of I.B. Code that the status of CoC as in control of the CIRP of the Corporate Debtor comes to an end.



12. In-spite of above substantive provisions of Law, certain Regulations are made in IBBI (CIRP of the Corporate Person) Regulations, 2016; whereby, Regulation 39(C) states that:
"While approving the Resolution Plan or deciding to liquidate the Corporate Debtor under Section 33, the committee may recommend that the Liquidator may first explore sales of the Corporate Debtor as a going concern under clause 'E' of Regulation 32 of IBBI (Liquidation Process) Regulation, 2016 or sell the business of the Corporate Debtor under Clause 'F' thereof."
13. In-fact, the substantive provisions under Section 33 of the I.B. Code does not require the Adjudicating Authority to consider any recommendation from the CoC while passing order of Liquidation of the Corporate Debtor unless such order is to be passed within first CIRP period of 180 days. But Regulation 39(C) of IBBI (CIRP of the Corporate Person) Regulation states that the RP to check the recommendations of the CoC as to how the assets of the Corporate Debtor to be sold during the process of liquidation and submit these recommendations for consideration to the Adjudicating Authority. It appears that by amended Regulation 39(C) and (D), the scope of substantive provision under Section 33 sought to be widened.
14. Be that as it may, Regulation 32 IBBI (Liquidation Process) Regulation, 2016 requires that the Liquidator to explore the sale of Corporate Debtor as a going concern under Clause or sell the business of the Corporate Debtor as per the Clause 'F' subject to Regulation 39(c) of IBBI (CIRP of Corporate Person) Regulation, 2016. Regulation 32(A) further states that the

Liquidator should first endeavor to sale the Corporate Debtor under Clause 'e' or 'f' of Regulation 32. If these two provisions are to be read together inevitable inference is that the Liquidator has first to try to sell the Corporate Debtor as a going concern under Clause 'e' or business of the Corporate Debtor under Clause 'f' of Regulation 32. In such situation, the CoC, being dissolved upon by passing the order of Liquidation of the Corporate Debtor cannot pass the resolution directing the Liquidator to not to sell the Corporate Debtor as a going concern without allowing him to explore possibilities of its sale as a going concern.

15. In-case, at hand, both Learned Members did not state the facts so as to whether the Corporate Debtor was a going concern during the CIRP? And if not, whether there was a possibility for the Liquidator to sell it as going concern? In absence of such facts, in my considered opinion, views expressed by the Technical Member that it is the commercial wisdom of CoC to decide whether to sell the Corporate Debtor as a going concern or not is not a correct view.
16. In-fact, it is the duty of the Liquidator to sell the Corporate Debtor as a going concern **as first option**. It is with tune of the object of the Insolvency and Bankruptcy Code, 2016.
17. The CoC, in this case, ought not to have passed resolution directing the liquidator not to sell the Corporate Debtor as a going concern. In my considered opinion, in-fact, the CoC has no role to play in a liquidation process. The resolution as passed by the CoC in this case appears to be against the

provision of law. Hence, I am not agree with the interpretation of Law as recorded by learned Member (Technical) upon reading regulation 39(C) of IBBI (CIRP of the Corporate Persons) Regulation, 2016 r.w Regulation 30, 32(A) to 32(D) of the IBBI (Liquidation process) Regulation, 2016. On the other hand, the view expressed by the Learned Member (Judicial) that the CoC can not pass such resolution in their commercial wisdom is correct interpretation of the Law.

18. In this, I endorse the view of Learned Member (Judicial) who has held that:

“it is very strange to see how CoC can put a rider upon no to sell the company as a going concern as it is against the provision of the Law.”

19. With these, I return the reference to Hon'ble Acting President.


(Madan Gosavi)
Member (Judicial)

AT