

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT-V**

**I.A. 588 OF 2022
IN
CP (IB) – 1098/IB/MB/2020**

Under Section 33 (2) of the Insolvency &
Bankruptcy Code, 2016

Filed by
Mr. Jignesh Ajit Ganatra
Interim Resolution Professional for:
Artedz Fabs Limited

...Applicant

In the matter of
M/s. Kanoria Chembond Private Limited
...Financial Creditor

Versus

Artedz Fabs Limited
...Corporate Debtor

Order delivered on: 06.10.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance:

For the Applicant: Mr. Jignesh Ajit Ganatra, Interim
Resolution Professional

ORDER

1. The above application I.A. No. 588/2022 is filed by Interim Resolution Professional, Mr. Jignesh Ajit Ganatra (hereinafter referred to as the "**Applicant**") seeking liquidation of Artedz Fabs Limited (hereinafter referred to as the "**Corporate Debtor**") under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:

- a. *To grant Liquidation of Artedz Fabs Limited.*
- b. *To grant Appointment of Mr. S Gopalakrishnan as Liquidator (COC Members Resolution for his appointment as Liquidator and Consent form by S. Gopalakrishnan attached as Annexure)*

2. The brief facts of the application are as follows:

- A. The Applicant mentions that this Tribunal vide its order dated 18.02.2021 in Company Petition No. 1098/IBC/MB/2020 admitted the petition under Section 7 of the Code, filed by M/s Kanoria Chembond Private Limited (hereinafter referred to as the “**Financial Creditor**”) and Corporate Insolvency Resolution Process (“**CIRP**”) was initiated against the Artedz Fabs Limited (hereinafter referred as “**Corporate Debtor**”). The Applicant was appointed as the Interim Resolution Professional of the Corporate Debtor by this Tribunal.
- B. The Applicant submits that a Form-A Public Announcement, was published on 23.02.2021, in two newspapers Business Line (English Newspaper) and Pratahakaal (Marathi Newspaper).
- C. The Applicant submits that on 12.03.2021, the 1st meeting of the Committee of Creditors (hereinafter referred to as the “**COC**”) held further a report to effect confirming constitution of COC was filed with this Tribunal on 16.03.2021.
- D. The Applicant submits that Form-G, Inviting Expression of Interest from Prospective Resolution Applicants was published on 30.04.2021, by way of Public Announcement in two newspapers namely Business Line (English newspaper)

and Pratahakaal (Marathi newspaper). In Response to the Form-G two Resolution Applicant viz. Fortune Kottex LLP and Mr. Chetan Jain, Mr. Pravin Jain and Mrs. Manju Jain submitted Resolution Plan. The Applicant further submits that, the earnest money deposit of Rupees Fifty Lakhs only as mandated by request for resolution plan is deposited by only one Resolution Applicant i.e. Mr. Chetan Jain, Mr. Pravin Jain and Mrs. Manju Jain.

E. The Members of the COC in its 9th meeting dated 08.11.2021, rejected the Resolution Plan submitted by Mr. Chetan Jain, Mr. Pravin Jain and Mrs. Manju Jain with **81.94%** voting share and expressed their intent to Liquidate the Corporate Debtor.

3. Applicant submits that in the 10th COC meeting dated 15.11.2021, the COC with **80.98%** voting decided to opt for Liquidation as a going concern. The relevant extract of the resolution which is mentioned in Item 4 are reproduced herein below:-

“4. Resolution Passed

i. TO LIQUIDATE THE CORPORATE DEBTOR

RESOLVED THAT pursuant Section 33, sub section (2) of Insolvency and Bankruptcy Code, 2016 and other applicable provisions, if any, of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 the Committee of Creditors hereby decides that Artedz Fabs Limited, (“Corporate Debtor”) under Corporate Insolvency Resolution Process be liquidated.

RESOLVED FURTHER THAT the Committee of Creditors hereby directs Mr. Jignesh Ajit Ganatra, Interim Resolution

Professional to intimate the Adjudicating Authority the decision of the Committee of Creditors to liquidate the Corporate Debtor.

ii. TO APPOINT LIQUIDATOR

RESOLVED THAT in continuation to the resolution passed for liquidation of Artedz Fabs Ltd. And in pursuance with section 34 of the Insolvency and Bankruptcy Code, 2016, S. Gopalakrishnan (Reg No. IBBI/IPA-002/IP-N00151/2017-2018/10398) be and is hereby appointed to act as the Liquidator of the Corporate Debtor, in the event where order for liquidation is passed by the Adjudicating Authority under section 33 of the Insolvency and Bankruptcy Code, 2016.

RESOLVED FURTHER THAT the Committee of Creditors hereby authorize Mr. Jignesh Ajit Ganatra, Interim Resolution Professional to do all acts, deeds and matters as may be necessary to give effect to this resolution.

iii. TO APPROVE THE FEES OF LIQUIDATOR

RESOLVED THAT in continuation to the resolution passed for the liquidation of Artedz Fabs Ltd. and in pursuance to Section 34 of the Insolvency and Bankruptcy Code, 2016 and in accordance with the Regulation 39D of the Insolvency and Bankruptcy Board of India(Insolvency Resolution Process for Corporate Persons), Regulations 2016, read with Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016 (“Liquidation Process Regulation”) where an order for liquidation is passed by the Adjudicating authority under section 33 of the Insolvency and Bankruptcy Code, 2016, the Committee of Creditors, hereby fix the fees of liquidator will be as per Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016 (“Liquidation Process Regulation”).

iv. TO LIQUIDATE ARTEDZ FABS LTD. AS GOING CONCERN
RESOLVED THAT the Committee of Creditors shall endeavour to liquidate Artedz Fabs Ltd. as a going concern entity on a best efforts basis.”

4. After hearing the submissions made by the Applicant and upon perusing the material available on record, it is observed that since the CIRP period has expired, the present Application i.e. I.A. 588 of 2022, was filed by the IRP for liquidation of Corporate Debtor. The IRP submits that, the Learned Counsel for the COC had already filed an application bearing I.A. No. 1581 of 2021, for replacement of the present IRP “Mr. Jignesh Ajit Ganatra” to RP “Mr. S. Gopalakrishnan”. However, the Interlocutory Application for the replacement of IRP to proposed RP was not taken up by the Bench from time to time. Therefore, having no other alternative, the IRP filed the present application i.e. I.A. 588 of 2022, as a deemed RP.

5. It is further observed from the minutes of the 10th COC meeting dated 15.11.2021, that the COC with **80.98%** voting decided to liquidate the Corporate Debtor as a going concern and if the COC members do not find any suitors to purchase the Corporate Debtor as a going concern then the COC members may decide to sell the Corporate Debtor on piece-meal basis. The COC has appointed Mr. S. Gopalakrishnan as Liquidator to carry on the process of Liquidation of the Corporate Debtor. Mr. S. Gopalakrishnan has agreed to act as Liquidator to carry on the process of Liquidation and given his consent to act as Liquidator. This bench, therefore allows the above Interlocutory Application Number 588 of 2022 and passed the following:

ORDER

1. The above I.A. No. 588/2022 is allowed and the Corporate Debtor **Artedz Fabs Limited** is ordered to be liquidated as a going concern and if the COC members do not find any suitors to purchase the Corporate Debtor as a going concern then the COC members may decide to sell the Corporate Debtor on piecemeal basis.
 - a. Mr. S. Gopalakrishnan, having Registration No. IBBI/IPA-002/IP-N00151/2017-2018/10398, having office at: 1507, B wing, One BKC, Bandra Kurla Complex, Bandra (East), Mumbai- 400 051, is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
 - b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4 of the IBBI (Liquidation Process Regulations), 2016.
 - c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
 - d. The Liquidator appointed under section 34(1) of the Code. All powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.
 - e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction

to the Liquidator to send this order to the ROC under which this Company has been registered.

- f. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. That on having liquidation process initiated, 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.
- h. 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 continued during the liquidation process by the Liquidator.

2. With the above directions, this application i.e. I.A. No. 588 of 2022 is hereby allowed and disposed of.

Sd/-

Anuradha Sanjay Bhatia
MEMBER (TECHNICAL)

Sd/-

H.V. Subba Rao
MEMBER (JUDICIAL)