

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.303

IA/1239(AHM)2023 in CP(IB)/4(AHM)2022

Proceedings under Section 30(6) & 31 IBC r.w 39(4) IBBI, 2016

IN THE MATTER OF:

RAJENDRA JAIN RP OF KIMAYA INDUSTRIES PRIVATEApplicant
LIMITED

Order delivered on: 17/09/2025

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 is open court vide separate sheet.

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

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CHITRA HANKARE
MEMBER (JUDICIAL)

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

IA No./1239(AHM)/2023

IN

CP (IB) No./4(AHM)/2022

[Under Section 30(6) of the Insolvency & Bankruptcy Code, 2016]

Mr. Rajendra Jain
Resolution Professional of
Kimaya Industries Private Limited
Having Correspondence address at:
9B, Vardan Tower,
Near Lakudi Circle Navrangpura,
Ahmedabad, Gujarat, 380015

...Applicant

IN THE MATTER OF:

Kotharishah Texturisers Pvt. Ltd.

...Operational Creditor

Versus

Kimaya Industries Private Limited

...Corporate Debtor

Order pronounced on 17.09.2025

Coram:

MRS. CHITRA HANKARE

HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G. VENKATA CHALAPATHY

HON'BLE MEMBER (TECHNICAL)

Appearance:

For the Applicant

: Mr. Sumit Parikh, Adv

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JUDGMENT

1. This application has been filed under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 ("IBC, 2016/the Code") by the Resolution Professional of the corporate debtor inter alia seeking following prayer:

- a) Your lordship may be pleased to approve the Resolution Plan dated 16.08.2023 of Resolution Applicant Mr. Rakesh Omprakash Bhandari as agreed upon by the requisite majority of the CoC by 100% votes as per the provisions of the Code;*
- b) 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. The brief backdrop of the case is that the Operational Creditor had filed an insolvency application under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor which was admitted vide Order dated 03.02.2023 and whereby the applicant was appointed as IRP. The public announcement inviting the claims from creditors of the Corporate Debtor was made in Form-A on 07.02.2023 wherein the last date for submission of claims was 20.02.2023.

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3. It is stated that after receiving the claims, the IRP collated the claims and constituted the Committee of Creditors ("CoC") on 27.02.2023. The CoC comprised of sole Financial Creditor i.e. Khodiyar Krupa Fabrics. It is seen that an IA was filed against the composition of COC, stating that the COC member is not a financial creditor.
4. The 1st CoC meeting was held on 04.03.2023, wherein it was discussed to continue the applicant as the Resolution Professional. Accordingly, after requisite voting, the applicant was appointed as the Resolution Professional. The 2nd CoC meeting was held on 31.03.2023, wherein the members of CoC inter alia resolved to initiate the process of Expression of Interest ("EoI") by publishing Form-G; further the CoC also approved minimum eligibility criteria and evaluation matrix and draft Request for Resolution Plan.
5. During the 3rd CoC meeting dated 16.06.2023, the RP apprised the members of CoC that he has published Form G i.e. Expression of Interest on 01.04.2023. The applicant had not received any EoI from the Prospective Resolution Applicant till last date of EoI i.e. 16.04.2023. As another opportunity, Form

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G dated 13.06.2023 was re-published on 14.06.2023 wherein the last date for submission of Expression of Interest was 29.06.2023.

6. Application for extension was made which was allowed by this Tribunal. During the 5th CoC meeting dated 31.08.2023, the RP apprised the members of CoC that pursuant to re-publication of Form G, he has received three (3) EoI from the Prospective Resolution Applicants ("PRAs") namely M/s. Nakshatra Corporate Advisors Limited, M/s. Rakesh Om Prakash Bhandari and M/s. Sunil Kumar Kabara. However, no resolution plan was received from the Prospective Resolution Applicant(s) till the last date of submission of resolution plan. Thereafter, one of the Prospective Resolution Applicant i.e. Rakesh Omprakash Bhandari vide an E-mail dated 03.08.2023 requested for an Extension of one-week time for submission of Resolution Plan, later the applicant had apprised the same in the CoC meeting and CoC Member had condoned the delay in submission of Resolution Plan. The applicant had then received a resolution plan from the same PRA i.e. Rakesh Omprakash Bhandari on 16.08.2023 and it was presented before the CoC along with the compliance report

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(as prepared by the applicant) for discussion on its feasibility and viability. The sole member of CoC approved the resolution of plan by 100% votes in the 5th CoC meeting dated 31.08.2023.

7. The details of the claims received from the creditors and admitted, as stated in the Information Memorandum are mentioned below:

Sl.	Type of Creditor	Name of Creditor/ Claimant	Amount Claimed (Rs.)	Amount Admitted (Rs.)	Remarks
1	Unsecured financial creditors (other than financial creditors belonging to any class of creditors)	Khodiyar Krupa Fabrics, Surat	1,61,74,483	1,61,74,483	
2	Operational creditors (other than Workmen and Employees and Government Dues)	Kotharishah Texturisers Pvt. Ltd., Surat	1,63,57,009	1,62,69,471	application U/s 9 of IBC filed by the creditor
3	Operational Creditors (Govt Authorities)	State Tax Officer (3), Unit 63, Surat	15,03,152	15,03,152	GVAT claim for FY 2016-17
			3,40,34,644	3,39,47,106	

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8. The amount provided for stakeholders under the plan is as under:

Application of Funds	Amount
Liabilities to be resolved/settled	
a. Insolvency Resolution Process Cost	7,50,000
b. Financial Creditors (Secured)	0
c. Financial Creditors (Unsecured)	1,50,000
d. Workmen/Employees	0
e. Statutory dues(Govt. Authorities)	0
f. Operational Creditors (other than employees, workmen & Govt. authorities)	0
g. Other Creditors	0
h. Equity Share Capital	0
i. Contingent Liabilities*	0
Total Cost of Resolution Plan	9,00,000
Add: Working Capital (proposed)	1,00,000
Total	10,00,000

9. The applicant stated that the Resolution Plan of Successful Resolution Applicant is in compliance of Section 30(2) of the Code and Regulation 35(A), 37, 38 & 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations. The applicant further submitted undertaking qua Section 29A among others. The applicant has also verified the eligibility of the resolution applicant in terms of Section 29A. The applicant has already received EMD along with the EOI.

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10. As per the Resolution Plan, the Resolution Applicant proposed to fund the plan from its own, family members and borrowing from financial institution. The applicant has also made a declaration regarding the feasibility and the viability of the plan. The Resolution Applicant has made a statement in relation to how the Resolution Plan has dealt with interests of all stakeholders, including financial and operational creditors of the Company. Further, the cause of default has also been addressed. The applicant has produced Form H on record. As per the recitals, the fair value is Rs. 56,82,090/- and liquidation value is Rs. 55,68,116/-.

11. Heard Ld. Counsel for the applicant and perused the record.

12. It is noted that there are pending applications filed under Section 43 & 66 which are yet to be adjudicated and as per the plan they will be taken ahead by the Resolution Applicant. It is observed that the resolution plan approved by the COC is for Rs.10,00,000/- which was also allowed on the bid of the sole applicant after giving extension period up to 31.08.2023. Further, there has been a prior sale of property which is reflected in the statement of encumbrance on property dated

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28.02.2023. During the deliberations in COC meeting, the huge variation between fair value and liquidation value of assets and the resolution plan bid amount is not discussed. The RP in the assets has not mentioned the huge unrealizable value. The Plan does not mention the value of the assets to be realised out of Debtors which as per last audited balance sheet for 31.03.2022 amounts to Rs.10,78,87,000/- and tangible assets of Rs.5,99,34,000/-.

13. There is only one mention that there are PUFEE transactions to be realised. However, the agenda of the meeting does not discuss the variation between resolution plan which is far less than the fair value and liquidation value of assets. Though the Resolution Plan has been approved by the sole unsecured financial creditor having 100% vote, it is not in compliance with section 30(2) of the Code, insofar as the dues of the state tax department under GVAT are not considered. Further, in terms of the judgement of the Hon'ble Supreme Court in Rainbow Papers Limited, any plan should contain a provision regarding payment of dues under GVAT Act, otherwise it would be treated as contravention of law. Operational creditors have been left with no consideration at all in the resolution plan. The net

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worth of the SRA is also not mentioned in the application. The SRA, who is an individual, has proposed to fund the plan from its own, family members and borrowing from financial institution. Therefore, the feasibility and viability of the plan appears to be doubtful. Apart from this, challenge has been made by an operational creditor to the constitution of COC. Be that as it may, after considering all the facts involved in this case, we are of the view that this application cannot be admitted as it is in direct contravention with section 30(2) of the Code. Accordingly, we are passing necessary orders for liquidation of corporate debtor.

14. Hence, we pass the following order:

ORDER

- I. IA No./1239(AHM)/2023 in CP(IB) No./4(AHM)/2022 is rejected and disposed of.
- II. The Liquidation of Corporate Debtor- M/s Kimaya Industries Private Limited, is effective from the date of this order and the Moratorium declared *vide* order dated 03.02.2023, henceforth ceases to exist from the date of the order of liquidation.

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- III. We hereby appoint Mr. Gautam Deswal having IBBI registration no. IBBI/IPA-001/IP-P-02111/2020-2021/13395 and email id- deswal01@hotmail.com as per the panel suggested by IBBI for this Bench as the Liquidator of the Corporate Debtor to carry the liquidation process. The Liquidator so appointed shall complete the Liquidation process as per the provisions of the Insolvency and Bankruptcy Code, 2016 r.w. Insolvency and Bankruptcy Board of India (Liquidation process) Regulation, 2016.
- IV. 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
- V. 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.
- VI. 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

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shall be paid to the Liquidator from the proceed of the liquidation estate under section 53 of the Code.

- VII. 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.
- VIII. 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.
- IX. The CoC is directed to contribute to the liquidation cost if any short fall occurs from the liquidation value of the Corporate Debtor.
- X. 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

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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 workmen/employees could also be informed of this liquidation order through their association.

- XI. 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.
- XII. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.
- XIII. 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

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e-mail within one week from the date of this order, after completion of all the formalities.

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

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CHITRA HANKARE
MEMBER (JUDICIAL)