

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
 “CHANDIGARH BENCH, CHANDIGARH”  
 (EXERCISING THE POWERS OF ADJUDICATING AUTHORITY  
 UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016)**

**CA NO. 360/2018  
 IN  
 CP (IB) NO.72/Chd/Hry/2017  
 Under Section 33 of the  
 Insolvency & Bankruptcy  
 Code, 2016**

**In the matter of:**

Bank of India.	....Financial Creditor.
Vs.	
Vegan Colloids Limited.	....Corporate Debtor.
And	

**In the Matter Of:**

Anil Kohli  
 Resolution Professional  
 For Vegan Colloids Limited

...Applicant

**Order delivered on: 10.10.2018**

**Coram:       HON'BLE MR. JUSTICE R.P. NAGRATH, MEMBER (JUDICIAL)  
                   HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Resolution Professional:	1) Mr. Abhishek Anand, Advocate
	2) Mr. Anil Kohli, Resolution Professional

**Per: R.P. Nagrath, Member (Judicial):**

**ORDER**

CP(IB) No. 72/Chd/Hry//2017 was filed by Bank of India the Financial Creditor against the Corporate Debtor under section 7 of the Insolvency and Bankruptcy Code, 2016 (for short hereinafter referred to as the

'Code') for initiating the insolvency resolution process against the Corporate Debtor. The petition was admitted on 24.11.2017, declaring moratorium in terms of Section 14 of the Code and by another order dated, 04.12.2017 Mr. Anil Kohli, registered Insolvency Professional, was appointed as Interim Resolution Professional with necessary directions. The Interim Resolution Professional constituted a Committee of Creditors, comprising of two financial creditors, Bank of India with 55.93% voting share and Punjab National Bank with 44.07% voting share. The Committee of Creditors confirmed the Interim Resolution Professional as Resolution Professional in first meeting of the Committee of Creditors, held on 03.01.2018.

2. CA No. 360/2018 has been filed by the Resolution Professional for passing an order for liquidation under Section 33(2) of the Code. This application is based on the decision of the Committee of Creditors taken in the meeting held on 14.08.2018 Annexure A-16. On agenda item No. 3 it was resolved that proceedings be taken up for liquidation of the Corporate Debtor in the absence of any viable resolution plan having been received.

3. We have heard learned counsel for the applicant and perused the records. Admittedly the period of 180 days permitted under sub-section (1) of Section 12 of the Code for completion of the insolvency resolution process ended on 23.05.2018 and that period was extended for another 90 days vide order dated 31.05.2018. The total permitted period for completion of the insolvency resolution process thus ended on 21.08.2018.

4. It is submitted by the Resolution Professional that one proprietorship concern, namely M/s. True Value Traders (Prop.- Mr Amit

Bansal) submitted a resolution plan for the Corporate Debtor dated 28.07.2018. That the resolution applicant, which had earlier deposited ₹ 25 lacs as part of earnest money deposit (“EMD”), has now submitted the resolution plan along with further sum of ₹ 25 lacs as balance of EMD. A confirmation from Bank of India was also received and a total amount of EMD deposited stood at ₹ 50 lacs.

5. It is further submitted by the Resolution Professional that the 6<sup>th</sup> meeting of the Committee of Creditors was convened on 31.07.2018, wherein the Resolution Professional informed the CoC that a resolution plan has been received as detailed above. The members of the CoC discussed the resolution plan received in detail and observed that the resolution plan can be considered but observed that the period of 180 days for payment of balance consideration amount post the approval of the resolution plan by NCLT is on higher side. It was suggested that the same be not more than 60 days. The CoC further requested the applicant to obtain the financials etc. of the Resolution Applicant and ask the Resolution Applicant to consider an increase in consideration amount. The Resolution Professional sought clarifications from the resolution applicant. However, the resolution applicant refused to enhance the amount offered but assured to make the payment in 120 days post approval of the resolution plan by this Adjudicating Authority. Further, the CoC directed the Resolution Professional to minutize that the personal/corporate guarantees will remain as they are and will be dealt with separately by the lenders, who will have rights to recover their balance dues through enforcement of the guarantees. The members of the CoC requested that the resolution plan may

be put up for voting in the next meeting of CoC, which may be scheduled on 14.08.2018, by which time they proposed to obtain internal approvals from their respective competent authorities.

6. In the seventh meeting of the Committee of Creditors which was convened on 14.08.2018, the applicant/Resolution Professional had put up the Resolution Plan along with the affidavit submitted by the Resolution Applicant about its eligibility to submit the resolution plan under Section 29 A of the Code before the members of the CoC for their consideration/approval. CoC discussed that due diligence for ensuring compliance with Section 29A, particularly related party status of the Resolution Applicant with the Corporate Debtor, could not be completed since the Resolution Applicant has not made available all the required details/documents. In terms of the due diligence done by one of the financial creditor namely Bank of India, the property on basis of which the Resolution Applicant had shown its net-worth belongs to Kuber Warehouse Pvt Ltd and Mr. Amit Bansal i.e. proprietor of True Value Traders is holding shares in that Company and therefore the immovable property does not belong to him. It was also observed that sources of funds to implement the Resolution Plan have also not been confirmed by the Resolution Applicant. After much deliberation, the CoC decided that although the Resolution Applicant has deposited the pre-requisite EMD amount of ₹ 50.00 Lakhs, its credibility could not be ascertained to the satisfaction of member banks in absence of additional information/documents asked from the Resolution Applicant. Therefore, the members of the CoC in their wisdom/prudence did not consider the resolution plan favourable as submitted by Mr. Amit Bansal,

prop. of M/s. True Value Traders. The copy of minutes of CoC are at Annexure A-16.

7. It was also stated that no other viable resolution plan for the Corporate Debtor was received and in view of the period for completion of insolvency resolution process coming to an end on 21.08.2018, the members of the CoC resolved to liquidate the corporate debtor and authorized the Resolution Professional to file the application under Section 33 (2) of the Code. The copy of the minutes of the 7<sup>th</sup> CoC meeting are at Annexure A-16.

8. The liquidation value of the assets of the Corporate Debtor based on average of two valuation reports obtained from two registered valuers is ₹ 892.85 lacs. The total Financial Debts due to Financial Creditors as on Corporate Insolvency Commencement date (24.11.2017) is as under:

S.No.	Name of Financial Creditor	Amount claimed and admitted (In ₹ Crore)	Voting %
1	Bank of India	211,767,423	55.93
2	Punjab National Bank	166,881,616	44.07
	Total	378,649,039	100%

9. We have heard the learned counsel for the Resolution Professional and the Resolution Professional, who is present in person and perused the records.

10. Considering the provisions of the Code after expiry of 180 days or 270 days, in case extension of 90 days is granted, the only recourse is to initiate the liquidation process as provided in Chapter III of the Code. Section 33(1) & (2) reads as under:-

“33. (1) where the Adjudicating Authority, —

*(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30;*

*or*

*(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,*

*it shall—*

- (i) pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in this Chapter;*
- (ii) issue a public announcement stating that the Corporate Debtor is in liquidation; and*
- (iii) require such order to be sent to the authority with which the Corporate Debtor is registered.*

*(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 percent of the voting share to liquidate the Corporate Debtor, the Adjudicating Authority shall pass a liquidation order, as referred to in sub clause (i), (ii), and (iii) of Clause (b) of sub-section (1).*

11. The learned counsel for the Resolution Professional also referred to Section 34(1) of the Code which provides that the resolution professional appointed shall act as a Liquidator unless replaced by the Adjudicating Authority under sub-section (4).

Sub-section (1) of Section 34 of the Code read as under:-

*“Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under[Chapter II, shall subject to submission of a written consent by the resolution professional to the Adjudicating Authority in specified form] shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4)].*

12. Learned counsel for the resolution professional has handed over the written consent furnished by the Resolution Professional, Mr. Anil Kohli in Form AA as provided under Regulation 3 (1A) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which has been inserted by way of amendment in the Regulations Section 34 (1) of the Code w.e.f. 06.06.2018. The written consent is taken on record.

13. In view of the above, we order the liquidation of the corporate debtor Vegan Colloids Limited and appoint Mr. Anil Kohli, Resolution Professional as the Liquidator for the purposes of liquidation of the corporate debtor in terms of Section 33 (2) of the Code. His appointment will be with effect from the date of receipt of copy of this order.

14. The learned counsel for the applicant submits that Resolution Professional now appointed as Liquidator has to file other applications before this Tribunal as per the decisions of the meeting of corporate debtors. The above contention is noted.

15. It is further observed that all the directions/requirements and provisions of Chapter III of the Code and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as Liquidation Process Regulations, 2016) shall be strictly complied with. Some of the directions are noted as under:-

- (i) That as per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted against the corporate debtor;

Provided that a suit or other legal proceedings may be instituted by the liquidator on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority;

- (ii) That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- (iii) That this order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the liquidator;
- (iv) That all the 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 in the liquidator; and
- (v) That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of



references to the liquidator for references to the Interim Resolution Professional.

16. The Liquidator shall publish public announcement in accordance with Regulation 12 of the Liquidation Process Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

17. It is further directed that the announcement shall be published in accordance with Regulation 12(3) as under:-

- “(a) In one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;*
- (b) on the website, if any, of the corporate debtor; and*
- (c) on the website, if any, designated by the Board for this purpose.”*

18. In accordance with Regulation 13 of the Liquidation Process Regulations, 2016, the ‘Liquidator’ shall file his preliminary report within 75 days and to file regular progress reports as per Rule 15 of the Liquidation Process Regulations 2016 every fortnightly thereafter.

19. It is clarified that the Financial Creditors are not debarred from having recourse to enforce the personal guarantees and to take proper steps in this regard.

Copy of this order be supplied to the learned counsel for the

Liquidator as well as to the Registrar of Companies, Punjab and Chandigarh

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immediately. Registry is also directed to send copy of this order to the Liquidator at e-mail address. Consequently, CA No.360 of 2018 stands disposed of.

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

Sd/-  
(Justice R.P. Nagrath)  
Member (Judicial)

October 10, 2018.  
Ashwani