IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 537/JPR/2022
IA (IBC) No. 273/JPR/2022
In IB No. – 656 (ND)/2018
TA No. 68/2018

UNDER SECTIONS 33 & 34 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

IN THE MATTER OF:
M/s Natroyal Industries Private Limited
...Operational Creditor/Applicant

VERSUS

M/s Siddhi Vinayak Polymer Private Limited
...Corporate Debtor/Respondent

MEMO OF PARTIES

M/s Natroyal Industries Pvt. Ltd.
60 CD, 'Shlok' Government Industrial Estate,
Charkop, Kandivali West, Mumbai,
Maharashtra – 302015

... Operational Creditor/Applicant

VERSUS

M/s Siddhi Vinayak Polymer Private Limited
G–1/72, Road No. 14P, VKI Area (Extrn.),
Badarana, Jaipur, Rajasthan – 302013

... Corporate Debtor/Respondent

Sd/- Sd/-

AND IN THE MATTER OF
IA (IBC) No. 537/JPR/2022

Brij Kishore Sharma, RP
(M/s Siddhi Vinayak Polymer Pvt. Ltd.)
G–1/72, Road No. 14P, VKI Area (Extrn.),
Badarana, Jaipur, Rajasthan – 302013

... Applicant

VERSUS

Mr. Rajendra Saraf
Suspended Director of Siddhi Vinayak Polymer Pvt. Ltd.
B-122, Mangal Marg, Bapu Nagar,
Jaipur, Rajasthan – 302015

Mr. Rakesh Kumar Shrivastava
Suspended Director of Siddhi Vinayak Polymer Pvt. Ltd.
1/126, SFS, Agarwal Farm, Mansarovar,
Jaipur, Rajasthan – 302003

... Respondents

AND IN THE MATTER OF
IA (IBC) No. 273/JPR/2022

Brij Kishore Sharma, RP
(M/s Siddhi Vinayak Polymer Pvt. Ltd.)
G–1/72, Road No. 14P, VKI Area (Extrn.),
Badarana, Jaipur, Rajasthan – 302013

... Applicant

For the Applicant	:	Brij Kishore Sharma, PCS
For SIDBI	:	Ram Kumar

Order Pronounced On: 31.10.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Interim Application ('IA') bearing IA No. 537/JPR/2022 is filed by the Resolution Professional ('Applicant/ RP') for M/s Siddhi Vinayak Polymer

Sd/- Sd/-

Private Limited ('Corporate Debtor') under Section 33 and Section 34 of the Insolvency and Bankruptcy Code, 2016 (the 'IBC / Code') for passing an order of Liquidation.

2. The Adjudicating Authority *vide* Order dated 25.10.2018 had admitted the Application filed by M/s Natroyal Industries Private Limited under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of Corporate Debtor and as a consequence thereof appointed Mr. Sanjay Kumar Aggarwal as Interim Resolution Professional ('IRP').

3. In compliance with provisions of the Code, the IRP issued a public announcement, under Form – A in Naya India, Jaipur Edition and The Economic Times, Jaipur Edition on 06.11.2018 for inviting claims from the creditors of the Corporate Debtor. Consequently, the IRP constituted the Committee of Creditors ('COC') under Regulation 17 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 ('CIRP Regulations') and the same was taken on record *vide* Order dated 29.11.2018. Pursuant to the Public Announcement as per Section 15 of the Code, the IRP received the claims from one financial creditor, Small Industries Development Bank of India ('SIDBI') and one operational creditor, M/s Natroyal Industries Private Limited.

4. The first meeting of the CoC was held on 30.11.2018, wherein the CoC deliberated on the agenda of appointing 'IRP' as the Resolution Professional of

Sd- Sd-the Corporate Debtor. The CoC exercising its right under Section 22(3) of the Code unanimously appointed Mr. Brij Kishore Sharma as the Resolution Professional ('RP') and the same was confirmed by this Adjudicating Authority *vide* Order dated 03.01.2019. A copy of the minutes of the first CoC meeting is annexed as Annexure – 1 of the IA. In the Second CoC Meeting held on 01.01.2019, the CoC decided that the expenses incurred during the CIRP would be reimbursed by the CoC after scrutiny of necessary bills. Further, the CoC in their third meeting approved the extension of CIRP, which was granted by this Adjudicating Authority subject to just exceptions *vide* Order dated 26.04.2019.

5. Meanwhile, during proceedings, despite various opportunities, *suspended* directors of the Corporate Debtor were not extending their corporation in providing crucial pieces of information for the timely completion of CIRP. Therefore, the Adjudicating Authority issued bailable warrants. In accordance with the directions, the *suspended* directors gave an undertaking for cooperation.

6. As per the Third Progress Report filed by the RP *vide* Diary No. 623/2019 dated 11.04.2019, it is also seen that the RP had appointed the registered valuers to determine the fair and liquidation values under Regulation 35 of the CIRP Regulations, 2016. However, the registered valuers have not initiated the work due to the non-availability of financial records and non-access to the assets of the Corporate Debtor. Further, the premises of the registered office of the

Sd/-

Sd/-

Corporate Debtor were sold out by the owner two years back and the Corporate Debtor has not shifted the registered office to another place.

7. In addition, the Corporate Debtor was running an industrial unit situated at F-98-99, Jhotwara Extn. Area, Sarana Dungar, Jaipur. This industrial unit has been sold to M/s Prisha Foot Printers along with the Plant & Machinery, Stock in trade and other movable assets and is currently used for production purposes. The representative of M/s Prisha Footprints, Mr. Vikas Poddar provided no documentary evidence of such sale to the RP. Further, the owner of the premises of the aforesaid industrial units is the spouse of Mr. Rajendra Kumar Saraf.

8. As per the Compliance Report filed by RP *vide* Diary No. 1612/2019 dated 21.08.2019 following the Order dated 21.08.2019, the Corporate Debtor does not have assets except one Plant & Machinery being hypothecated to and financed by the SIDBI. However, the aforesaid Plant & Machinery are in a dismantled state lying at the premises of M/s Prisha Footprints and could not be identified by the RP as he was not accompanied by Mr. Rajendra Saraf, one of the *suspended* directors.

9. Thus, the RP could not discharge his duties properly as the Plant & Machinery belonging to the Corporate Debtor were lying on the premises which were sold by the *suspended* directors to the *bonafide* purchaser, while books of account not submitted due to accosting lacunas. Hence, under such circumstances, an exclusion for a period of 278 days from the CIRP was also

granted given the non-corporation of the *suspended* Board of Directors of the Corporate Debtor *vide* Order dated 06.12.2019.

10. In the Fifth CoC Meeting, it was decided to exclude the period from the CIRP as the application under Section 19(2) is pending and the erstwhile directors were not providing the documents and information for preparation of the Information Memorandum, Expression of Interest, taking possession of the assets of the Corporate Debtor lying at the premises of the M/s Prisha Footprints.

11. Consequently, the CoC considering the entire backdrop of the case as well as non-completion of the CIRP period as prescribed under the Code, unanimously resolved to liquidate the Corporate Debtor. Furthermore, the RP received neither the EOI nor any resolution plan(s) under the Code's prescribed time given the unit of the Corporate Debtor being already closed with no substantial assets. Therefore, in the Sixth CoC meeting dated 14.10.2022, the RP proposed the liquidation of the Corporate Debtor. By a majority vote of not less than 66% voting, the CoC has resolved to liquidate the Corporate Debtor. A copy of the minutes of the sixth meeting of the CoC is annexed as Annexure – 2 of the IA. Moreover, the CoC has appointed the RP to act as the liquidator and has been accepted by the RP. A copy of the written consent of the RP to act as the liquidator is annexed as Annexure – 3 of the IA.

12. However, given the non-action of the RP to prompt actions and disciplinary issues, the RP *vide* Diary No. 2036/2023 dated 18.08.2023 appraised that the Insolvency and Bankruptcy Board of India ('IBBI') *vide* its

Sd/-

Sd/-

Order dated 08.06.2023 has suspended the registration of Mr. Brij Kishore Sharma, the proposed Liquidator in the present matter, for a period of one year. Accordingly, the CoC in its Seventh Meeting dated 14.08.2023 appointed Ms. Garima Diggiwal as the liquidator.

13. We have carefully heard and considered the arguments of the learned counsel for the RP and perused the records. Taking into consideration the above facts concerning the affairs of the Corporate Debtor, the provisions of Section 33 of IBC, 2016 are as follows:

"33. Initiation of liquidation. —

(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, if 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 creditor approved by not less than sixty-six per cent 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 (l)".

6. The Hon'ble National Company Law Appellate Tribunal ('NCLAT'), in

Sd/-

Sd/-

Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 308 of 2020 observed as under:

> *"Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of the corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review".*

However, whether the relevant Application is filed within stipulated timelines as per the applicable procedure is to be seen.

7. **The prescribed period for filing Application -** In the present case, the Application under Section 7 of the Code was admitted on 25.10.2018. However, given the global pandemic and non-cooperation by the *erstwhile* directors of the Corporate Debtor, the timelines could not be complied with by the RP. Therefore, RP filed it filed an IA bearing IA No. 127/JPR/2019 seeking an extension of the period in respect of the CIRP for 90 days. Further, an IA bearing IA No. 403/JPR/2019 seeking exclusion of the period in respect of the CIRP from 21.12.2021 to 28.02.2022 on account of non-cooperation.

8. However, it was not completed within the 330 days of the timeline prescribed under the Code, even with extension and exclusion allowed. It was instructed to the RP to move an appropriate application seeking liquidation of the Corporate Debtor in view of the CoC's resolution. In addition, the Hon'ble NCLAT in the case of *Dinesh Gupta v. Vikram Bajaj Liquidator, Company Appeal (AT)(Ins) No. 276 of 2021* has upheld the order of liquidation where there was no viable and feasible resolution plan within the expiration of the

Sd/-

permissible period required for completion of the CIRP. Accordingly, the RP filed the present Application on 28.10.2022. Hence, the present application is filed within the prescribed period. In view, the Application under consideration is taken up under Section 33(2) of the Code.

9. **Appointment of Liquidator and fee to be paid** – Section 34(1) of the Code provides that 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 shall, subject to submission of written consent act as the Liquidator for liquidation. The relevant provisions of Section 34(1) of the Code are as follows:

> *"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 written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4)"*

10. The proposed Liquidator, Ms. Garima Diggiwal, is eligible as a Liquidator. It is noted that liquidation proceedings herein, at the instance of the CoC, have given the consensus to liquidate the Corporate Debtor and are automatically initiated due to the prescription of the statute. We do not find any reason to replace the proposed Liquidator. Ms. Garima Diggiwal, Resolution Professional with IBBI Registration No. IBBI/IPA-001/IP-P02018/2020-21/10075, who has filed her written consent dated 09.08.2023 to act as the

Sd/-

Liquidator at Page No. 26 of Diary No. 2036/2023 dated 18.08.2023. Thus, Ms. Garima Diggiwal is appointed as the Liquidator.

11. It is also seen that Regulations 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted *via Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019* along with Regulation 39BA of the CIRP Regulations, 2016 inserted *vide Notification No. IBBI/2022-23/GN/REG093, dated 16.09.2022.* The relevant aspects in this respect are examined hereunder.

12. ***Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)*** — The CoC has not decided on the estimated liquidation cost and decided that the liquidation costs will be taken on an actual basis which will be approved by the stakeholders' committee formed during the liquidation of the Corporate Debtor. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs. Moreover, it is seen that in the reports there is a reference for the appointment of the registered valuers during the CIRP of the Corporate Debtor, however, no documentation has been provided by the RP in this regard. It is directed that Ms. Garima Diggiwal shall appoint two independent valuers for the assets of the Corporate Debtor following the provisions of the law. The Liquidator is directed to place on record the valuation reports along with the status report as provided under the concerned regulations and rules thereof.

Sd/- Sd/-

13. ***Assessment of Compromise or Arrangement (Regulation 39BA of CIRP Regulations, 2016)*** — The CoC while approving the liquidation of the Corporate Debtor was required to examine whether to explore compromise or arrangement as referred to under Regulation 2B (1) of the Liquidation Regulations, 2016 and the RP should submit the CoC's recommendation to the Adjudicating Authority while filing an application under section 33. In this regard, SIDBI, the sole member of the CoC and the Financial Creditor of the Corporate Debtor, opined that in view of the non-operational status of the business of the Corporate Debtor and such other factors, there was no scope for Compromise and Arrangement in the said matter.

14. ***Assessment of sale as a going concern (Regulation 39C of CIRP Regulations, 2016)*** — Under Section 35 of the Code, the Liquidator shall have the power and duty to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified. In furtherance to the same, regulation 32A of the Liquidation Regulations, 2016 lays down the mode of sale by the Liquidator and subsequently Regulation 33 of the Liquidation Regulations, 2016 provides that the Liquidator has powers to sell the corporate debtor by means of private sale with the prior permission of the Adjudicating Authority.

Sd/- Sd/-

15. The COC in its sixth meeting has discussed selling the Corporate Debtor as a going concern, as the first option or selling the business(s) of the Corporate Debtor as a going concern, as the second option, before exploring other options as per Regulations 32 & 32A of IBBI (Liquidation Process) Regulations, 2016 and Regulation 39C of CIRP Regulations, if the Adjudicating Authority passes an order of liquidation. The RP explained that the Corporate Debtor has no means to run the business as the unit has already been closed for the past three years. With a 100% voting share, the CoC discussed that it is not possible to sell as a going concern, and they passed the resolution.

13. ***Fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016) —*** It is seen that the CoC, in consultation with the resolution professional, has resolved the fee payable to the liquidator as per the following resolution:

> *'RESOLVED THAT of a remuneration payable to the liquidator for the liquidation period shall be a minimum of Rs. 25,000/- or 7.5% of the amount realised subject to a maximum of Rs. 75,000/- (plus applicable taxes)'*

Thus, the Liquidator shall be entitled to a fee in such manner as prescribed under Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016 read with the aforementioned resolution passed by the CoC.

14. ***Decision for liquidation (Regulation 40D of CIRP Regulations, 2016) –*** The RP submitted that the status of the Corporate Debtor is non-operational for the preceding three years with the technology employed being obsolete for the

Sd/-

continuation of the operations. Further, there are no tangible or intangible assets of the Corporate Debtor which could maximise the value of the Corporate Debtor as a going concern. Therefore, the sale of assets on a standalone basis will be the best option for an effective and efficient liquidation of the Corporate Debtor as it is not in operation for the last three years.

15. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor, M/s Siddhi Vinayak Polymer Private Limited is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include:

(i) 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 by or 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) The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings concerning such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

(iii) This order of liquidation under Section 33 of the Code shall be deemed as notice of discharge to the officers, employees, and workmen of the Corporate Debtor;

Sd/-

(iv) 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 an effect and shall be vested in the Liquidator;

(v) 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 concerning the liquidation process as they apply with CIR process with the substitution of references to the Resolution Professional for the Liquidator;

(vi) The Liquidator shall publish a public announcement per Regulation 12 of the IBBI (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 stakeholders 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;

(vii) Under Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and regular progress reports according to Regulation 15.

16. ***Pending Applications, if any, and its / their effect*** – The learned counsel for the Applicant has stated that there is one pending application seeking

Sd/-

Sd/-

exclusion of time under Section 60(5) of the Code, bearing IA No. 273/JPR/2022, which may have bearing on the order of liquidation.

17. It is seen that IA No. 273/JPR/2022 is filed by Mr. Brij Kishore Sharma, the Resolution Professional of the Corporate Debtor ('Applicant') under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (the 'IBC'/ 'Code') read with Rule 11 of National Company Law Tribunal Rules, 2016 ('NCLT Rules') for seeking exclusion of 818 days starting from 25.03.2020 to 21.06.2022.

18. The Resolution Professional, in the aforementioned IA, has failed to provide any cogent reasons for the exclusion of period except as excluded by the Hon'ble Supreme Court *via Suo Moto Writ Petition No. 03 of 2022* from 15.03.2020 to 28.02.2022. Nevertheless, taking into account the exclusion provided by the Hon'ble Apex Court the RP has not provided any concrete justification or any substantial evidence for his non-responsive and lackadaisical approach to grant the exclusion as sought in IA (IBC) No. 273/JPR/2022, as observed in the Orders dated 25.03.2022, 06.05.2022, 22.07.2022, and 06.09.2022. There appears to be no pending litigation against the Corporate Debtor which can be attributable to the delay in continuance of the CIRP procedure besides non-cooperation by the *erstwhile* directors for which this Adjudicating Authority has taken appropriate steps.

19. Furthermore, in the present case, there is neither any Resolution Plan that is pending nor any valid ground to file an application seeking exclusion and extension of CIRP beyond 330 days. At this juncture, a timely resolution of

Sd/-

Sd/-

insolvency must be preferred. Moreover, the Code specifies the time-bound process, which will not be extended, to better preserve the 'Economic Value of the Asset'. If an Adjudicating Authority extends the Insolvency Resolution Process beyond the timeline mentioned under the provisions of the Code, the same will be in the negation of the underlying policy behind the code of ensuring timely resolution of Corporate Insolvency.

20. Although, the resolution of 'Corporate Insolvency' to ensure the survival of a company/enterprise as a going concern is one of the key objectives of the IBC however this should not hamper the cost of efficiency. To put it succinctly, a 'Timely Liquidation' is preferred over an endless 'Resolution process'. No doubt, the 'Liquidation value' tends to go down with an efflux of time as many 'Assets' suffer from high economic depreciation value. If one construes in the teeth of the object sought to be achieved by the IB Code and in the light of consequences provided by Section 33 of the Code, therefore, makes it unerringly clear that the periods mentioned under the provisions of the Code to conclude the CIRP is mandatory and cannot be extended beyond specified period. If the time specified by statute is changed, then it will give room for wider complications/implications, in the considered opinion of this Adjudicating Authority. It is significant to point out that the pre-occupation of the Code with 'timely resolution of insolvency' is an important factor.

21. Therefore, this Adjudicating Authority is not accepting the request for exclusion as the Applicant moved an appropriate application seeking the

Sd/-

Sd/-

Liquidation of the Corporate Debtor. Consequently, the instant IA No. 273/JPR/2022 has become infructuous and stands disposed of accordingly.

22. In view of the foregoing, IA No. 537/JPR/2022 is disposed of. A copy of this order is supplied to the Liquidator and the Registrar of Companies forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

Sd/-

DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

Sd/-

RAJEEV MEHROTRA,
TECHNICAL MEMBER