

**BEFORE THE AJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**IA 2 of 2019 in C.P.(I.B) No. 6/NCLT/AHM/2018**

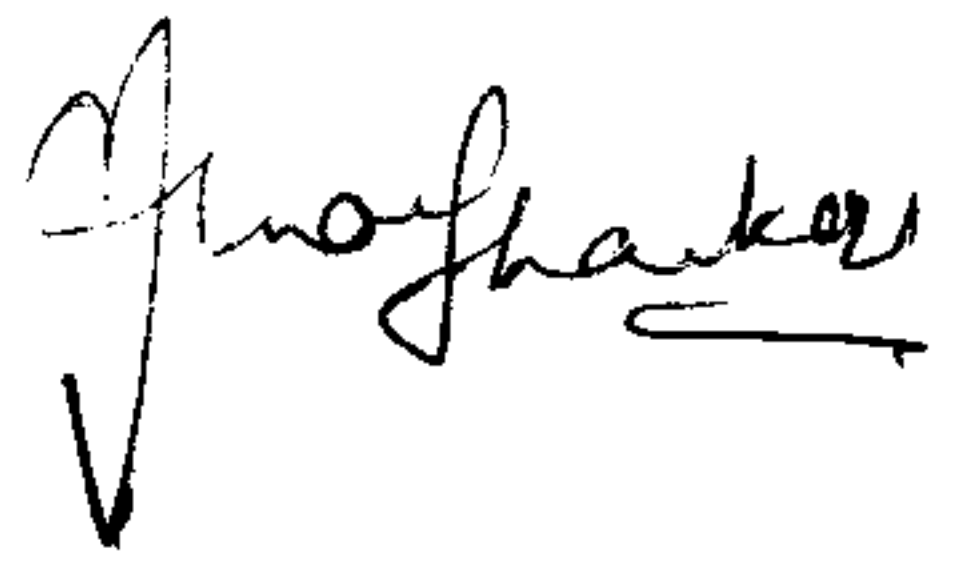
**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL  
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 23.10.2019**

Name of the Company: Vikash G. Jain RP of  
Shree Vinayak Foods & Fabrics Pvt. Ltd.  
V/s.  
COC of Shree Vinayak Foods & Fabrics  
Pvt. Ltd Ors.

Section of the Companies Act : Section 33(1), 33(2), 33(3) of the Insolvency and  
Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.	AMAN SHANKAR	Advocate	COC	
2.				

**ORDER**

The COC is represented through learned counsel.

The order is pronounced in the open court vide separate sheet.

  
**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

Dated this the 23th day of October, 2019

**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD**

**IA No. 02 of 2018  
in  
C.P.(IB) No.06/7/NCLT/AHM/2018**

**In the matter of:**

Vikash G. Jain  
Resolution Professional (RP) of  
Shree Vinayak Foods & Fabrics Private Ltd.

.....Applicant

Versus

Committee of Creditors of  
Shree Vinayak Foods & Fabrics Private Ltd. & Ors.

.....Respondent

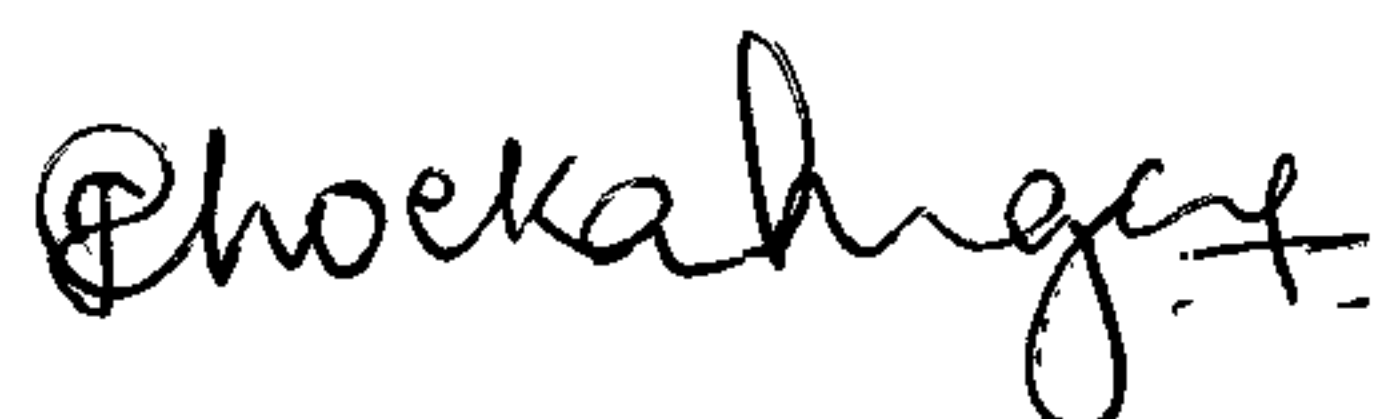
**Order delivered on 23rd October, 2019**

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)  
Hon'ble Mr. Chockalingam Thirunavukkrasu, Member (T)**

**Appearance:** Advocate Mr. Arjun Padjyar for Ms. Natasa Dhruvan Shah, for the RP is present. Advocate Ms. Monali J. Davawala for the Suspended Management is present. Advocate Mr. Aman Shankar for COC is present.

**[Per: Ms. Manorama Kumari, Member (J)]**

1. The instant application is filed under Section 33(1) & 33 (2) of I&B Code, 2016 for liquidation of the Corporate Debtor company with prayer to pass an order under Section 33(1) & 33 (2) of I&B Code, 2016 for liquidation and any other relief.
2. On filing of the instant application, notice was issued to the Committee of Creditors as well as Suspended Management. The Committee of Creditors and Suspended Management appeared and have conceded the application.
3. On perusal of the records, it is found that the CP(IB)06 of 2018 was admitted on 21.02.2018 and the CIRP process started and during the period of CIRP, the RP has performed his duty by making public announcement as contemplated under Section 15 of the I&B Code, 2016 and called for claims from the creditors. On receipt of the claims, the RP prepared the report and filed the same before this Bench.





**In the matter of:**

4. Thereafter, as no viable resolution plan was received, the Committee of Creditors resolved in its meeting dated 18.08.2018 to extend the CIRP period by another 90 days and accordingly, an application was filed before this Adjudicating Authority for extension of further 90 days' time for extension of CIRP and the order in this respect was passed on 11.09.2018 by this Adjudicating Authority.
5. That, in the meeting held on 25.09.2018, it was resolved that an addendum to the earlier Form-G would be executed and last date of receipt of resolution plan be extended till 12.10.2018. The Applicant issued public advertisement on 30.09.2018 in Gujarat Samachar and on 01.10.2018 in Business Standard, stating that the last date of receipt of resolution plans is extended till 12.10.2018.
6. In view of the said extension, the RP received one proposal from M/s. Omkara ARC via mail on 12.10.2018 to once again extend the time for submission of Expression of Interest. On earlier occasion, the said Resolution Applicant has submitted the resolution plan after expiry of last date. Hence, the Committee of Creditors in its 7<sup>th</sup> meeting discussed that the Resolution Applicant is trying to derail the process of resolution and not submitting any plan as per minimum criteria and deadline decided.
7. The Committee of Creditors in its meeting held on 03.11.2018 resolved that an addendum to the earlier Form-G would be executed again to extend the last date for receipt of the resolution plan till 12.11.2018.
8. In view of such extension of time for submission of resolution plan, the RP received two resolution plans i.e., one jointly from Mr. Kunal Salawat and Mr. Kanhaiyalal Salawat on 12.11.2018 and the other from M/s. Omkara on 13.11.2018. The Expression of Interest received from the 2<sup>nd</sup> Resolution Applicant was not considered as it has been received after due date of submission of resolution plan, i.e., on 12.11.2018.
9. The Resolution Applicant was called upon to present the plan before the Committee of Creditors in its 9<sup>th</sup> meeting held on 14.11.2018 and the same was discussed at length and the Committee of Creditors offered to make a

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**In the matter of:**

requisite amendment by giving an addendum to enhance the amount of the plan.

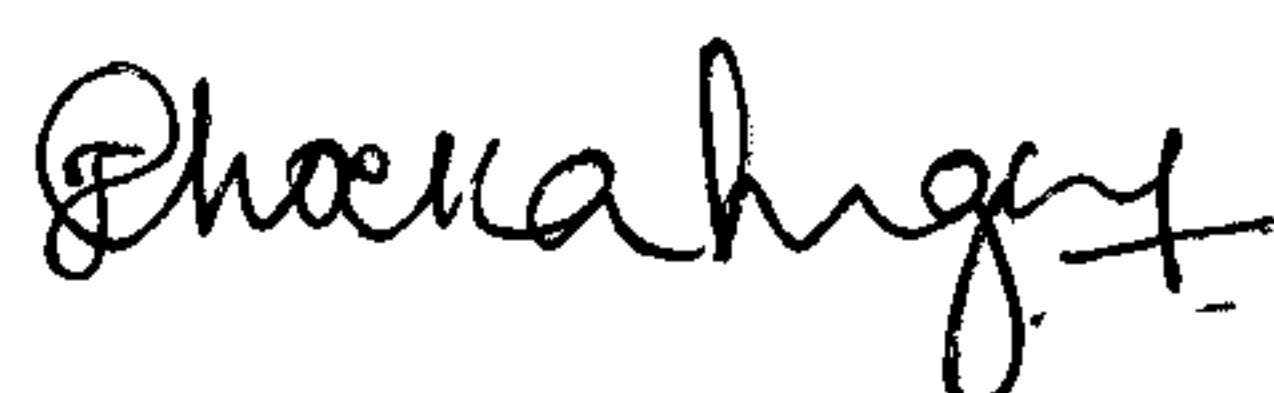
10. The said resolution plan submitted by the Resolution Applicant was placed before the Committee of Creditors, but the same was rejected due to non-approval of the resolution plan by requisite voting share of the Committee of Creditors. In view of the rejection, it is deemed to have the approval of the Committee of Creditors to initiate liquidation process against the Corporate Debtor.
11. Another Committee of Creditors meeting was also called upon to consider the resolution plan given by the Resolution Applicant on 17.11.2018. Since there was no consensus arrived at on the "right to Subrogation" clause which was there in the resolution plan, thereby the resolution plan was also rejected again by Punjab National Bank and it is deemed to have the approval of the Committee of Creditors to initiate the liquidation process in respect of the Corporate Debtor.
12. In view of the non-approval of the resolution plan, finally the COC convened the meeting on 17.11.2018 and resolved to liquidate the Corporate Debtor and also decided to commence the E-voting on liquidation process on 30.7.2018 at 4.00 p.m. which ended on 31.07.2018 at 4.00 p.m. The resolution passed by the Committee of Creditors is as under:

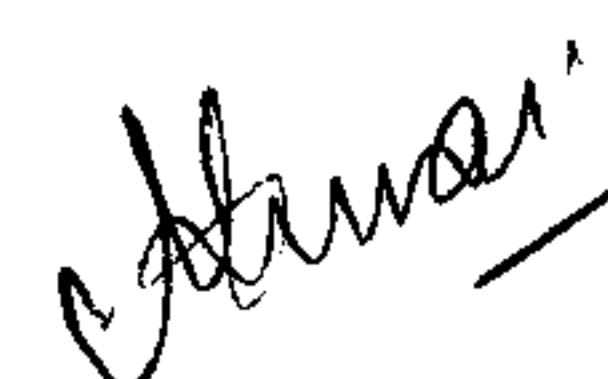
***"Resolution No.1: Approval of Resolution Plan.***

*That no consensus has been derived on one "Right to Subrogation" clause which is there in the Resolution Plan and thereby the same has been rejected and it shall be deemed to have approval by the Committee of Creditors to initiate the liquidation process against the Corporate Debtor.*

***"Resolution No.2: Liquidation and appointment of Liquidator.***

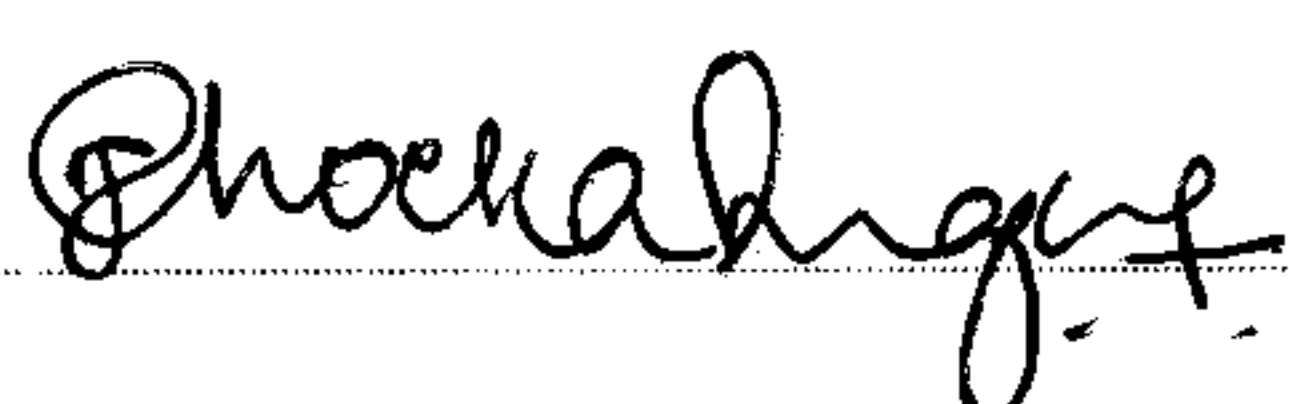
*"That the committee has decided to appoint the existing Resolution Professional, Mr. Vikash G. Jain having the registration number IBBI/IPA-001/IP-P00354/2017-18/10612 as the Liquidator."*

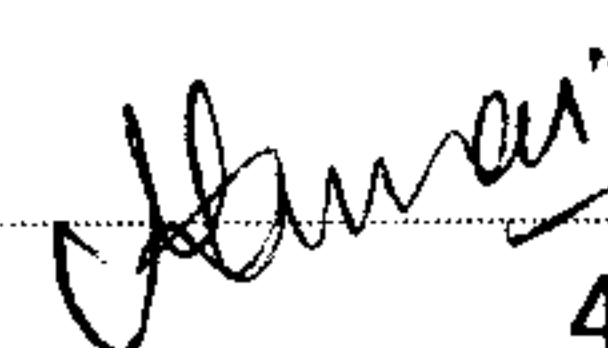




**In the matter of:**

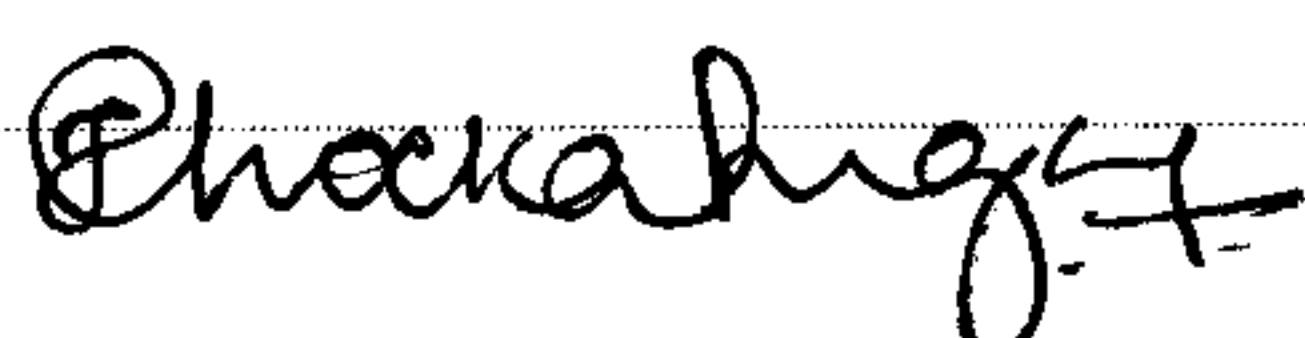
13. It is needless to mention herein that during the pendency of the instant application, one Intervention Application being Inv. (P)02/19 has been preferred by Mr. Kunal Salawat and others, with a prayer to direct the Committee of Creditors to consider and approve the resolution plan submitted by the Resolution Applicant and pending hearing and final adjudication of this application, stay the further proceedings. The said application has already been heard and dismissed as non-maintainable.
14. Moreover, it has already been settled by the Hon'ble Supreme Court in **K. Shashidharan V/s. Indian Overseas Bank**, wherein, the Hon'ble Supreme Court observed that Hon'ble NCLAT has no jurisdiction and authority to analyse or evaluate the commercial wisdom of the Committee of Creditors (COC) to interfere into the justness of the rejection of the resolution plan. The Bench comprising Hon'ble Justice A.M. Khanwilkar and Hon'ble Mr. Justice Ajay Rastogi, further observed, that upon receipt of the rejected resolution plan, the Adjudicating Authority (NCLT) is obliged to initiate liquidation process under Section 33(1) of the I&B Code, 2016.
15. Under the facts and circumstances as narrated above and also in view of the aforesaid judgment of the Hon'ble Supreme Court in **K. Shashidharan V/s. Indian Overseas Bank**, this Adjudicating Authority is inclined to pass an order for liquidation of the Corporate Debtor in exercise of powers conferred in Clause (a) of Sub-Section (1) of Section 33 of I & B Code, 2016 and proceed to pass order as follow:
- (i) This Adjudicating Authority orders the liquidation of the Corporate Debtor viz. M/s. Shree Vinayak Foods & Fabrics Ltd. which shall be conducted in the manner as laid down in Chapter-III of the I & B Code, 2016.
  - (ii) This Adjudicating Authority appoints RP viz., Mr. Vikash G. Jain as Company Liquidator, who shall issue a public announcement stating that the Corporate Debtor is in liquidation.
  - (iii) The moratorium declared under Section 14 of the I&B Code, 2016 shall cease to have effect from the date of the order of liquidation.





**In the matter of:**

- (iv) Subject to Section 52 of the I&B Code, 2016 no suit or other legal proceedings shall be instituted by / or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the liquidator on behalf of the Corporate Debtor, with prior approval of this Adjudicating Authority.
  - (v) This Adjudicating Authority makes it clear that Para No.(iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any Financial Sector / Regulatory.
  - (vi) This order 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.
  - (vii) All the powers of the Board of Directors, Key Managerial Personnel and Partners of the Corporate Debtor, as the case may be, shall cease to have the effect and shall be vested with the Company Liquidator, i.e. Mr. Vikash G. Jain.
  - (viii) The personnel of the Corporate Debtor shall extend all the assistance and cooperation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
  - (ix) The Company Liquidator shall be entitled to charge such fees for the conduct of the liquidation proceedings and in such a proportion to the value of the liquidation estate / assets as specified under Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.
  - (x) Copy of this order shall be sent to the concerned Registrar of Companies, RD, OL and Registered office of the Corporate Debtor by the Company Liquidator viz. Mr. Vikash G. Jain for information and compliances.
16. Notwithstanding above, the Company Liquidator shall try to dispose of the Corporate Debtor company as a going concern and the interests of workers /




**In the matter of:**

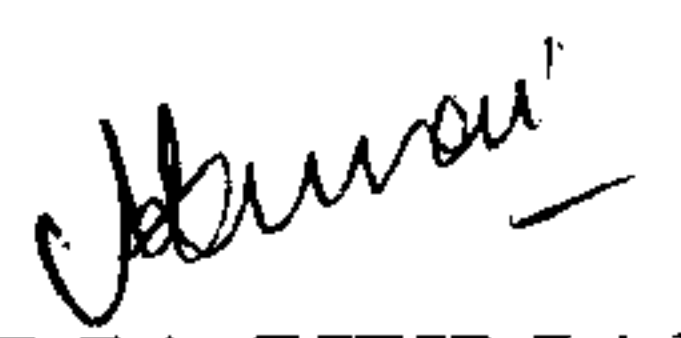
employees be protected to their level best, as observed in the matter of M/s.

**Gujarat NRE Coke Limited** as under:

*(a) The Liquidator shall try to dispose of the Corporate Debtor company as a going concern after publication of notice in newspaper with the reserve price which shall be equal to the total debt amount including interest and maximum period applicable for trying the sale of the Corporate Debtor as a going concern will be only three months from the date of the order if the process of sale as a going concern is failed during this period, then process of the sale of the assets of the company will be according to the provisions of sale of asset of the Corporate Debtor prescribed under Section 33, Chapter-VI of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016. In case of it is not concluded within this period, the order of this Court directing the sale of the company as a going concern shall stand set aside and corporate debtor to be liquidated in the manner as laid down in Chapter III of the Liquidation process provided in Insolvency & Bankruptcy Code.”*

17. In terms of the above, the instant IA No.02 of 2018, filed in CP (IB)06 of 2018 by the RP under Section 33 of the I&B Code, 2016 for initiation of liquidation proceedings against the Corporate Debtor viz. Shree Siddhi Vinayak Foods & Fabrics Private Ltd. is allowed and disposed of.
18. The Registry is directed to send copy of this order to the Company Liquidator immediately for information and compliance.

  
**CHOCKALINGAM THIRUNAVUKKARASU**  
**ADJUDICATING AUTHORITY**  
**MEMBER TECHNICAL**

  
**MANORAMA KUMARI**  
**ADJUDICATING AUTHORITY**  
**MEMBER JUDICIAL**