



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-5**

**I.A. 1079 OF 2022
IN
C.P.(IB) 65 OF 2020**

Under Section 33 (1) (a) of the Insolvency
& Bankruptcy Code, 2016

Filed by

Mr. Naren Sheth

Resolution Professional for:

Vindhyavasini Corporation Private
Limited

..... Applicant

In the matter of

State Bank of India

..... Financial Creditor

Versus

**Vindhyavasini Corporation Private
Limited** Corporate Debtor

Order Delivered on: 16.11.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (Via Videoconferencing)

For the Applicant: Mr. Abdullah Qureshi, Advocate.

1. The above application I.A. No. 1079/2022 is filed by the Resolution Professional, Mr. Naren Sheth (hereinafter referred as the "**Applicant**") seeking liquidation of M/s. Vindhyavasini Corporation Limited (herein



after referred as the “**Corporate Debtor**”) under Section 33 (1) (a) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “**the Code**”), praying the following reliefs:

- a) *This Hon’ble Tribunal be pleased to pass order under Section 33 (1) (a) of the Insolvency and Bankruptcy Code,2016 for commencement of liquidation process of the Corporate Debtor;*
- b) *This Hon’ble Tribunal be pleased to appoint the Applicant as Liquidator to conduct Liquidation Process of the Corporate Debtor;*
- c) *This Hon’ble Tribunal be pleased to pass order for exclusion of 45 days (i.e. from 14.01.2022 till 28.02.2022) from the CIRP period of the Corporate Debtor;*
- d) *That this Hon’ble Tribunal pass such further and other orders and direction as the nature and circumstances of the case may require and as this Hon’ble Tribunal may deem fit and proper in the interest of justice.*

2. The facts of the case are as follows:

- a. The Applicant mentions that this Tribunal, vide its order dated 30.08.2021 in Company Petition No. (IB) 65/MB/2020 admitted the petition, under Section 7, of the Code, filed by State Bank of India (hereinafter referred to as the “**Financial Creditor**”) and Corporate Insolvency Resolution Process (hereinafter referred to as the “**CIRP**”) was initiated against the Corporate Debtor. Under the same Order, this Tribunal appointed the Applicant as IRP of the Corporate Debtor.



- b. The Applicant thereafter published, a Public Announcement Form- A dated 23.10.2021, inviting the claims from the creditors of the Corporate Debtor in two newspapers namely, Mumbai Lakshdeep and Active Times. Consequently, the Applicant upon receipt of the Public Announcement received claims from the creditors of the Corporate Debtor. Thereafter the Applicant, constituted the Committee of Creditors (“**COC**”) of Corporate Debtor.
- c. The Applicant submits that 1st meeting of the COC was convened on 12.11.2021 wherein the members of the COC resolved to appoint the Applicant as the Resolution Professional (“**RP**”) of the Corporate Debtor.
- d. The 2nd meeting of the COC was convened on 22.12.2021 wherein the members of the COC approved the draft of Expression of Interest (“EOI”). Accordingly, the Applicant published the Form-G on 05.01.2022 for inviting EOI in two newspapers namely, Active Times and Mumbai Lakshdeep. According to the Form-G the last date for submission of Resolution Plan was mentioned as 26.02.2022.
- e. The 3rd meeting of the COC was convened on 10.03.2022 wherein the Applicant had appraised the members of COC with regard to, one EOI received from Mr. Sumit Kumar Khanna. The Applicant submits that, even after receiving the EOI, no Resolution Plan was received by the Applicant before 26.02.2022.
- f. The 4th meeting of the COC was convened on 30.03.2022 wherein the members of the COC unanimously agreed and resolved to initiate the Liquidation process of the Corporate Debtor in view of not receiving any Resolution Plan. In the same meeting, the members of the COC has also resolved to appoint the Applicant as



the Liquidator of the Corporate Debtor and also fixed the fees of the Liquidator. The Relevant extracts of the resolutions are extracted as hereunder:

“RESOLVED THAT pursuant to the provisions of Section 33(2) of Insolvency and Bankruptcy Code,2016, the approval of Committee of Creditors of VINDHYAVASINI CORPORATION PRIVATE LIMITED be and is here accorded to liquidate the Corporate Debtor.”

“RESOLVED FURTHER THAT, Pursuant to the Section 34(1) of Insolvency and Bankruptcy Code 2016 read with Regulation 3 of IBBI (Liquidation Process) Regulations 2016, and subject to approval of the Adjudicating Authority, consent of Committee of Creditors be and is hereby accorded for appointment of Mr. Naren Sheth, Insolvency Professional, IBBI/IPA-001/IP-P00133/2017-18/10275 Resolution Professional of the Corporate Debtor (VINDHYAVASINI CORPORATION PRIVATE LIMITED) as Liquidator to carry out the liquidation process of the Corporate Debtor.”

“RESOLVED FURTHER THAT, During the liquidation period Liquidator Fee structure given in Regulation 4 of IBBI (Liquidation Process) Regulations 2016. However, as a part of Liquidation Fee, liquidator may charge the equivalent amount of Resolution Professional Fee of Rs.35,400 per month (including GST @18%) and adjust the same against fees structure given in regulation 4 (Liquidation Process) Regulations, 2016.”

The Applicant submits that, the above resolutions were passed with 100% majority of COC members. Further the Applicant has



also provided his consent to act as the Liquidator of the Corporate Debtor.

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, The Counsel for the Applicant submits that no Resolution Plan has been received and there is no option to except to put the Corporate Debtor Company into Liquidation as per the Code, as well as also to protect the asset of the Corporate Debtor from further deterioration since it is observed from the minutes of the 4th COC meeting that the COC with required mandate of 100% voting approved to liquidate the Corporate Debtor in view of not getting any Resolution Plans. Under these circumstances, this Tribunal has very limited judicial review in such matters of commercial wisdom therefore there is no option except to allow the above Liquidation Application. The COC thereby has appointed Mr. Naren Sheth (IBBI Registration No. IBBI/IPA-001/IP-P00133/2017-18/10275) as Liquidator to carry on the process of Liquidation of the Corporate Debtor. The proposed Liquidator has agreed to act as Liquidator to carry on the process of Liquidation and given his consent to act as Liquidator. This bench, therefore feels this is a fit case for ordering Liquidation as going concern of the Corporate Debtor.

It is noteworthy that the Applicant has also prayed for exclusion of 45 days (i.e. from 14.01.2022 till 28.02.2022) with a view to ratify the two COCs conducted after 26.02.2022, due to third wave of COVID-19 pandemic. For this purpose, the Applicant has relied on Order of the Hon'ble Apex Court dated 10.01.2022, through which the Hon'ble Apex Court has allowed the exclusion of time lost due to COVID-19 from 15.03.2020 till 28.02.2022. In view of the above order of Hon'ble Supreme Court the exclusion period of 45 days also stands allowed.



Accordingly, the above Interlocutory Application Number 1079 of 2022 is allowed directing the Liquidation of the Corporate Debtor. Accordingly, we pass the following:

ORDER

- a. The above I.A. No. 1079/2021 is allowed and the Corporate Debtor **Vindhyavasini Corporation Private Limited** is ordered to be liquidated as a going concern for the first attempt and if it fails, then sale by other methods should be tried.
- b. Mr. Naren Sheth, having Registration No. IBBI/IPA-001/IP-P00133/2017-18/10275, having office at: 1014 Prasad Chamber Tata Road No. 1, Opera House, Mumbai, Maharashtra- 400 004, is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled for fees Liquidator Fee structure given in Regulation 4 of IBBI (Liquidation Process) Regulations 2016. However, as a part of Liquidation Fee, liquidator may charge the equivalent amount of Resolution Professional Fee of Rs.35,400 per month (including GST @18%) and adjust the same against fees structure given in regulation 4 (Liquidation Process) Regulations, 2016
- d. 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.
- e. 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.



- f. 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.
- g. 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.
- h. 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.
- i. 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.

With the above directions, this application i.e. I.A. No. 1079 of 2022 is hereby allowed and disposed of.

SD/-

Anuradha Sanjay Bhatia
Member (Technical)

SD/-

H.V. Subba Rao
Member (Judicial)