



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III**

Item No.02

IA-2803/2022

In

(IB) -301(ND)/2021

IN THE MATTER OF:

M/s. ALCHEMIST ASSET RECONSTRUCTION PRIVATE LIMITED

..... Financial Creditor

VERSUS

M/s. VINESH TRADERS PRIVATE LIMITED

..... Corporate Debtor

AND IN THE MATTER OF:

Mr. SAPAN MOHAN GARG

Resolution Professional of M/s. Vinesh Traders Private Limited

..... Applicant

Order Pronounced On: 31.08.2023

SECTION

U/s 33 of IBC, 2016

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Milan Negi, Adv.

ORDER

Order pronounced in open court vide separate sheets. **IA-2803/2022** is
allowed.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

**IA-2803/2022
In
(IB) –301(ND)/2021**

Order under Section 33(2) of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

M/s. ALCHEMIST ASSET RECONSTRUCTION PRIVATE LIMITED

..... Financial Creditor

VERSUS

M/s. VINESH TRADERS PRIVATE LIMITED

..... Corporate Debtor

AND IN THE MATTER OF:

Mr. SAPAN MOHAN GARG

Resolution Professional of M/s. Vinesh Traders Private Limited

..... Applicant

Order Pronounced On: 31.08.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Milan Negi, Adv.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This Application has been filed by Mr. Sapan Mohan Garg, the Resolution Professional of M/s. Vinesh Traders Private Limited, the

IA-2803/2022 In (IB) – 301(ND)/2021
Date of Order: 31.08.2023



Corporate Debtor on 02.06.2022, before this Adjudicating Authority under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code"), seeking initiation of liquidation proceedings of the Corporate Debtor on the basis of the decision taken by the Committee of Creditor ("CoC") in the Second CoC meeting held on 30.04.2022, for seeking the following relief:

"a) Pass an order for initiation of liquidation process of Vinesh Traders Pvt. Ltd., the Corporate Debtor, in terms of Section 33 of the Code;

b) appoint Sh. Sapan Mohan Garg as the Liquidator in the instant case in terms of Section 34 of the Code;

c) pass any other order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."

2. An Application was filed to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. Vinesh Traders Private Limited ("Corporate Debtor") under Section 7 of the Code filed by M/s. Alchemist Asset Reconstruction Private Limited ("Financial Creditor") before this Adjudicating Authority in (IB)-301/ND/2021. This Adjudicating Authority vide order dated 22.03.2022 ("Admission Order") was pleased to admit the application, initiate CIRP against the Corporate Debtor and appointed Mr. Sapan Mohan Garg as the Interim Resolution Professional ("IRP"). Further, the IRP was appointed as Resolution Professional ("RP") by this Adjudicating Authority.
3. During the CIRP, the IRP made public announcements for the invitation of claims under Form-A in terms of Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") from the Creditors of the Corporate Debtor. The Applicant received one claim from Financial Creditor i.e., M/s. Alchemist Asset Reconstruction Private Limited and one claim from Operational Creditor i.e., State Tax Department, Gujarat.



4. The Applicant prepared the list of creditors and constituted the Committee of Creditors (CoC) as on 12.04.2022 and the same was filed before this Adjudicating Authority. The Applicant also filed e-form INC-28 with the Registrar of Companies in terms of the Compliance with Circular No. 08/2020 F. No. 01/02/2019-CL-V issued by the Ministry of Corporate Affairs.
5. The CoC consisted of only one member i.e., M/s. Alchemist Asset Reconstruction Private Limited as Financial Creditor. The Applicant convened the first meeting of the CoC on 19.04.2022, wherein the CoC with 100% voting rights, appointed the Applicant as the Resolution Professional. The CoC also took note of the fact that as per the latest audited financial statements of the Corporate Debtor for the FY 2020-21, the Corporate Debtor only has cash and cash equivalents as assets.
6. Considering the Financial position of the Corporate Debtor, the CoC was of the opinion that since there are almost negligible assets therefore, continuing with the CIRP proceedings might not be viable and hence, the CoC suggested to initiate the Liquidation of the Corporate Debtor. However, on the recommendation of the Applicant, so to look into the current financial position and to consider the financial statements as on the CIRP date, the Committee deferred the proposal to initiate the liquidation process of the Corporate Debtor.
7. On receipt of the Financial statements of the Corporate Debtor, the Applicant shared the copy of said financial statements with the CoC and on 27.04.2022 the sole member of the CoC wrote an email to the Applicant/Resolution Professional, based on the said financial statement stated that the, liquidation of the Corporate Debtor shall be in the best interest of the stakeholders. Accordingly, an agenda for the initiation of the liquidation process of the Corporate Debtor may be brought in the forthcoming CoC meeting for consideration of the CoC.



8. The second meeting of the CoC was convened on 30.04.2022, wherein, the Applicant apprised the Sole Member of the CoC that since there are negligible assets in the Corporate Debtor, it is preferable to liquidate the Corporate Debtor in terms of the powers entrusted with the CoC.
9. In furtherance of the above view of the CoC members, the Applicant placed the resolution to liquidate the Corporate Debtor and to allow the Applicant/Resolution Professional to file the Application before this Adjudicating Authority for passing an order of Liquidation. Accordingly, the following resolution was placed before the CoC, and the same was approved by the CoC, representing 100% votes:

"Resolution:

To Consider and if thought fit, to pass with or without modification, the following Resolution:

RESOLVED THAT the consent of the Committee of Creditor (CoC) be and is hereby accorded to liquidate the Corporate Debtor ("Vinesh Traders Private Limited") under Section 33(2) of IBC, 2016.

RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorized to file Application and approach the Adjudicating Authorities, Hon'ble NCLT, New Delhi, to intimate the decision of the Committee of Creditors with a request to pass an order of liquidation of Corporate Debtor in terms of Section 33(2) of IBC, 2016."

10. The CoC also passed a Resolution to fix the fee payable to the Liquidator in terms of Regulation 39D of the CIRP Regulations with 100% voting share. The CoC also approved a resolution for the appointment of the Applicant as the Liquidator in terms of Section 34 of the Code. In addition, the CoC also took into account the estimated Liquidation Cost of Rs. 14,25,000/- and passed a Resolution and the plan for meeting the Liquidation



Cost in accordance with Regulation 39B of CIRP Regulations by 100% vote share.

11. It is well-settled law that the provisions of Sub-Section (2) of Section 33 of the Code empower the CoC to pass a resolution, with the requisite majority, to liquidate the CoC even during the CIRP proceedings, without even inviting Expression of Interest/ Resolution Plans from Prospective Resolution Applicants.
12. Hence, the present Application is being filed by the RP in the interest of justice and the same is bona fide in nature.
13. In light of the above facts and circumstances, it is hereby ordered as follows:

- i.** Prayers as sought for in **IA-2803/2022** filed by Mr. Sapan Mohan Garg, the Resolution Professional of M/s. Vinesh Traders Private Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of Section 33(1) of the Code read with sub-clause (i) of clause (b) thereof;

- ii.** Mr. Sapan Mohan Garg having Reg. No. IBBI/IPA-002/IP-N00315/2017-2018/10903, having e-mail id: sapan10@yahoo.com; having address: D-54, 1st Floor, Defence Colony, New Delhi-110024, having contact No. +919810502994 whose name has been proposed by CoC in its 2nd meeting held on 30.04.2022 is hereby appointed as liquidator as provided under Section 34(1) of the Code read with Regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.

The ICSI Institute of Insolvency Professionals had issued the Authorization for Assignment dated 07.01.2022 which was valid from 07.01.2022 to 06.01.2023 only as reflected which is filed along with the Application.

Therefore, the Liquidator shall file a valid Authorization for Assignment within 3 days of the pronouncement of this order.



- iii.** The Liquidator shall initiate the liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- iv.** Public Notice shall be issued in the same newspapers in which advertisements were issued earlier stating that the Corporate Debtor is in liquidation.
- v.** All the powers of the Board of Directors, and of key managerial personnel, shall cease to exist in accordance with Section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- vi.** The personnel of the Corporate Debtor are directed to extend all assistance and cooperation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- vii.** On initiation of the liquidation process but 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 the suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.
- viii.** In accordance with section 33(7) of the Code, 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.
- ix.** The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.



- x. The liquidator shall also follow up the pending applications for disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- xi. The Liquidator shall submit Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- xii. The Liquidator and the Registry are hereby directed to send a copy of this order within 3 days from the date of this order to the Registrar of Companies, NCT of Delhi & Haryana. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.
- xiii. The application bearing **IA-2803/2022** shall stand disposed of in accordance with the above directions.
- xiv. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- xv. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.
- xvi. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- No order as to costs.

-SD-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-SD-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)