

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT No. - I

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IA No. 1094 of 2021  
in  
C.P. (IB) No. 2684/MB/2019

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

Mr. P Shivan Raju,  
Resolution Professional for Onus Enterprises Private Limited,  
Registration No.: IBBI/IPA-002/IP-N00496/2017-18/11596  
214-215, Second Floor, Om Dutta CHS, Khamdeo Nagar,  
90 Feet Road, Sion- Bandra Road, Sion (W), Mumbai 400017.

...Applicant

*In the matter of*

Avanse Financial Services Limited

...Operational Creditor

*V/s*

Onus Enterprises Private Limited

...Corporate Debtor

Date of Order: 24.12.2021

CORAM:

Shri. Bhaskara Pantula Mohan, Hon'ble Member (Judicial)

Shri. Narender Kumar Bhola, Hon'ble Member (Technical)

Sd/-

*Appearance:*

For the Applicant:

Mr. Durgaprasad Halwai i/b Ms. Hema Desai, Mr. P  
Shivan Raju.

Sd/-

*Per: Shri. Bhaskara Pantula Mohan, Member Judicial*

**ORDER**

1. This is an application filed by the Resolution Professional P. Shivan Raju under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating Liquidation Process against the Onus Enterprises Private Limited (Corporate Debtor).
2. The facts leading to the Application are as under.
  - a. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Tribunal vide order dated 03.03.2020 upon admission of a Petition under Section 7 of the Code and Mr. P Shivan Raju (Applicant) was appointed as the Interim Resolution Professional (IRP).
  - b. The IRP made a public announcement on 12.03.2020 for inviting claims from the creditors of the Corporate Debtor. After receipt of the claims, the IRP constituted the Committee of Creditors (CoC) of the Corporate Debtor on 18.09.2020 and filed the report for the same with this Tribunal.
  - c. The Applicant submitted that, in the 1<sup>st</sup> Coc meeting held on 25.09.2020 the members of CoC decided to pass the resolution for liquidation of the Corporate Debtor as the CoC does not want to proceed in the matter of Corporate Insolvency Resolution Process of Onus Enterprises Private Limited in accordance with provisions of the IBC, 2016. Accordingly, the members of CoC passed a resolution with 88.26% majority to liquidate the Corporate Debtor.
  - d. Further the Applicant communicated his unwillingness to continue as Resolution Professional. Therefore the members of CoC in the same

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CoC meeting passed a resolution to appoint Mr. Anil Vrijdas Rajkotia as Resolution Professional/ liquidator.

e. The said resolutions are as below:

*"RESOLVED THAT, M/s Onus Enterprises Private Limited shall be initiated for liquidation as the CoC does not want to proceed in the matter of Corporate Insolvency Resolution Process of Onus Enterprises Private Limited in accordance with provisions of the IBC, 2016."*

*RESOLVED THAT Mr. Anil Vrijdas Rajkotia an Insolvency Professional (Registration No. IBBI/IPA/001/IP-P01045/2017-18/1178) is hereby appointed as the Resolution Professional/liquidator in the matter of Corporate Insolvency Resolution Process/ Liquidation of Onus Enterprises Private Limited in accordance with provisions of section 22(3) of the IBC, 2016"*

3. Hence the Applicant came up with present application dated 07.05.2021.

4. Section 33 of the Code reads as below:

*"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, it shall*

*(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*

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- (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 per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*
- (3) *Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) .*
- (4) *On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*
- (5) *Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:*

*Provided that a suit or other legal proceeding may be instituted by the Liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.*

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- (6) *The provisions of sub-section (5) 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.*
- (7) *The order for liquidation under this section 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."*

5. From the above, it would appear that the Applicant communicated his unwillingness to continue as Resolution Professional and the members of CoC passed a resolution to appoint Mr. Anil Vrijdas Rajkotia an Insolvency Professional (Registration No. IBBI/IPA/001/IP-P01045/2017-18/1178) as Resolution Professional/liquidator. Mr. Anil Vrijdas Rajkotia has submitted his consent to act as liquidator. Therefore, this tribunal appoint Mr. Anil Vrijdas Rajkotia as Resolution Professional/Liquidator for the Corporate Debtor.
6. It would further appear that the members of CoC does not want to proceed in the matter of Corporate Insolvency Resolution Process of Onus Enterprises Private Limited in accordance with provisions of the IBC, 2016. The CoC in its wisdom has resolved with 88.26% voting share in favour of the liquidation of the Corporate Debtor. The copy of the same is annexed to the application. This Authority has no reason before it to take a contrary view in terms of Section 33(2) of the Code. Therefore, it has no option than to pass an order for liquidation of the Company in the manner laid down in Chapter III of the Code. Hence ordered.

ORDER

The Application be and the same is allowed. The Corporate Debtor, Onus Enterprises Private Limited, shall be liquidated in the manner as laid down in Chapter-III of the Code with the following directions:

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- a) Mr. Anil Vrijdas Rajkotia having Registration No. IBBI/IPA/001/IP-P01045/2017-18/1178 is appointed as Liquidator.
- b) The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.
- c) The Liquidator shall endeavour to sale the Company as a going concern during the liquidation in terms of Regulation 32A of the Liquidation Process Regulations. In case he is not able to do so within a period of 90 days from this date, he shall proceed in accordance with clauses (a) to (d) of Regulation 32 of the Liquidation Process Regulations.
- d) The Liquidator shall issue public announcement stating that the Corporate Debtor is in liquidation.
- e) The Moratorium declared under section 14 of the Code shall cease to operate here from.
- f) Subject to Section 52 of the Code no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however 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.
- g) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- h) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code read with the Liquidation Process Regulations.
- i) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- j) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the

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business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

- k) The Liquidator is directed to send a copy of this Order to Registrar of Companies concerned and Insolvency and Bankruptcy Board of India, New Delhi.

Sd/-

Narender Kumar Bhola  
Member (Technical)

Sd/-

Bhaskara Pantula Mohan  
Member (Judicial)