

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

IA(IBC) (Liq) No. 02/JPR/2024
In CP No. (IB)- 76/7/JPR/2022

***UNDER SECTIONS 33(2) READ WITH 60(5) OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016.***

IN THE MATTER OF:

UNION BANK OF INDIA

...Financial Creditor/Petitioner

Versus

VADERA TRADELINK PRIVATE LIMITED

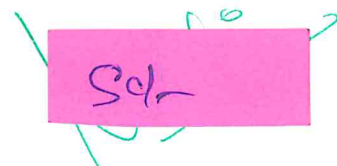
...Corporate Debtor/Respondent

IA(IBC) (Liq.) No. 02/JPR/2024:

MEMO OF PARTIES

RISHABH CHAND LODHA
RESOLUTION PROFESSIONAL OF
VADERA TRDELINK PVT. LTD.
E-5, SHARMAN VASANT VIHAR,
GANDHI NAGAR, BHILWARA,
RAJASTHAN.
EMAILID: rishabhlotha57@gmaiL.com

...Applicant



For the Resolution Professional: Rishabh Chand Lodha, RP
Abhishek Devgan, Adv.



Order Pronounced On: 09.01.2026

ORDER

1. This Application has been filed by *Mr. Rishabh Chand Lodha* ('Applicant'/ 'RP') under Section 33 (2) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') seeking initiation of Liquidation Process of the Corporate Debtor, *Vadera Tradelink Pvt. Ltd.*, pursuant to the resolution of liquidation passed by the members of Committee of Creditors ('CoC') in the 5th CoC meeting held on 03.07.2024.

Facts in Brief:

2. The Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor was initiated by this Adjudicating Authority *vide* Order dated 19.01.2024 under Section-7 of the Code and *Mr. Rishabh Chand Lodha*, the Applicant, was appointed as the Interim Resolution Professional and was subsequently confirmed as Resolution Professional in the 1st meeting of CoC held on 15.02.2024.
3. In compliance with provisions of the Code, the IRP issued a public announcement under Form-A in two newspapers namely, *Maru Lehar (Hindi)* and *Indian Express (English)*, on 21.01.2024 inviting claims from

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the creditors of the Corporate Debtor. Consequently, the IRP constituted the CoC under Regulation 17 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 ('CIRP Regulations') and conducted the 1st meeting of the CoC on 15.02.2024.

4. As per Regulation 27 of the CIRP Regulations, the Registered Professional in 2nd CoC meeting, appointed two registered valuers namely, *M/s. Fintech Valuation Advisory Pvt. Ltd.* and *M/s. GTech Valuers Pvt. Ltd.*, for each class of assets of the Corporate Debtor. However, *M/s. GTech Valuers Pvt. Ltd.* was unable to continue due to some personal difficulty and accordingly, new valuers were appointed in its place. However, the valuers expressed their inability to carry out valuation on account of non-sharing of relevant records by the suspended directors of the Corporate Debtor.
5. In the 2nd CoC meeting convened on 14.03.2024, the members were pleased to approve the eligibility criteria for:
 - i. Expression of Interests (EOI),
 - ii. Evaluation Matrix for evaluating the resolution plans, and
 - iii. Major terms of Request For Resolution Plan (RFRP).
6. Further, in the said meeting, to ascertain if any avoidance transactions i.e. preferential (under Section-43), undervalued (under Section- 45), or extortionate (under Section-50) or fraudulent transaction(s) (under Section-66) has been committed by Corporate Debtor prior to commencement of

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process, the Applicant appointed *M/s Sikka and Associates* as the Transactional Auditor. However, on not receiving requisite financial statements from the suspended management, the auditor was unable to finalise the report.

7. Thereafter, the Applicant, as per Rule 36B of the CIRP regulations, issued the list of Final Prospective Resolution Applicants ('PRAs') consisting of 7 names on 22.04.2024 and the same is reproduced hereunder: -

<i>S. No.</i>	<i>Name</i>	<i>Address</i>	<i>Category</i>
1.	<i>Kapil Mistri</i>	<i>k-12, 1st Floor, Tagor Garden, Rajouri Garden, New Delhi – 110027</i>	<i>Individual</i>
2.	<i>Nakshatra Asset Ventures Limited</i>	<i>Plot No. 377, H no. 1016, Nakshatra 4th floor, Gandhi Nagar, Ambazari Road, Nagpur-440010</i>	<i>Public Limited</i>
3.	<i>SPSS infrastructure Private Limited</i>	<i>C-41, Uppal Marble Arch Pocket No. 2&3 Manimajra Chandigarh</i>	<i>Private Limited</i>
4.	<i>AKB Ventures Private Limited.</i>	<i>Office no. 209, Part of Property no. 524, School Block, Shakarpur, Delhi-110092.</i>	<i>Private Limited</i>

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5.	<i>Goutam Jain</i>	<i>85, Vaishali Enclave, Pall Village, Opp. Nasrani Petrol Pump, Pal (Rural), Jodhpur, Rajasthan - 342001</i>	<i>Individual</i>
6.	<i>Noida Holdings Private Limited</i>	<i>D-16, Sector-41, Noida, Gautam Buddha Nagar Uttar Pradesh-201301</i>	<i>Private Limited</i>
7.	<i>Subhlaxmi investment Advisory Private Limited</i>	<i>Unit no 111, Acy - Aggarwal City Square, Plot No 10, District Centre Manglam Place, Sector-3, Rohini, New Delhi- 110085</i>	<i>Private Limited</i>

8. However, only one of the PRAs namely, *Mr. Goutam Jain*, suspended director, submitted the plan but failed to deposit the Earnest Money Deposit ('EMD') and accordingly, the resolution plan was considered non responsive as per the Request For Resolution Plan ('RFRP'). The aforementioned details were noted by the members of the CoC in the 4th Meeting convened on 14.06.2024.
9. On account of non-submission of any Resolution Plan in terms of the RFRP, in the 5th CoC meeting dated 03.07.2024 the Resolution Professional presented the following options to the CoC:

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- i. Either the publication of a Fresh Form G and an extension of the CIRP period by 90 days, or
 - ii. the liquidation of Corporate Debtor.
10. In the said meeting the resolution seeking the liquidation of the Corporate Debtor was approved by the Sole CoC member namely, *Union Bank of India*, whereas the resolution for extension of CIRP period was rejected.
11. We have carefully heard and considered the arguments of the learned counsel for the RP and perused the records.
12. At this juncture, it is pertinent to refer to Section 33(2) of the Code and for ease of reference, the same is reproduced hereunder:

*“33. Initiation of liquidation. —
 (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 (1)”.*

13. On a bare reading of Section 33(2), it becomes conspicuous that the aforementioned Section empowers the Resolution Professional to file an Application seeking liquidation of a Corporate Debtor at any time during CIRP but before approval of the Resolution Plan, if liquidation has been approved by the CoC with at least sixty-six percent voting share. In the present case, the Petition under Section 7 of the Code was admitted on

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19.01.2024. Form G was issued on 19.03.2024 and thereafter the list of final PRAs consisting of 7 names was issued. However, only one of the PRAs, namely, *Mr. Goutam Jain*, submitted a Resolution Plan but failed to deposit the EMD amount. Thus, no Resolution Plan was received in consonance with the terms of the RFRP. Consequently, the CoC in its 5th CoC meeting dated 03.07.2024 approved the agenda item qua liquidation of the Corporate Debtor with 100% majority. The instant Application has been filed on 19.07.2024 in compliance of the decision taken by the CoC in its 5th meeting. Thus, we are of the opinion that the instant Application has been filed in accordance with Section 33(2) if the Code.

14. Further, in support of the instant Application, the Resolution Professional has submitted the following grounds apropos decision for liquidation in terms of Regulation 40D of CIRP Regulations, 2016:

- a. The Corporate Debtor, unable to carry out his business of construction activities, on account of non-release of funds/payment from Jodhpur Development Authority JoDA;
- b. The Corporate Debtor, handling only the projects floated by JoDA at 05 sites, have been terminated by JoDA;
- c. The Corporate Debtor is not carrying out any business activity due to the above-mentioned reasons which has led to its Corporate Death;
- d. The suspended directors of the Corporate Debtor have failed to cooperate or aid the Resolution Professional;

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- e. There is no legally compliant resolution plan to be proceeded with, received from the aforementioned PRAs;
- f. The members of the COC in the 05th CoC meeting held on 03.07.2024 unanimously decided to liquidate the Corporate Debtor in their commercial wisdom.
15. At this juncture, it is relevant to refer to the Judgment of the Hon'ble National Company Law Appellate Tribunal ('NCLAT') in *Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 308 of 2020 wherein it was observed that:
- “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”.*
16. In view of Section 33 of the Code and the Judicial Pronouncement referred above, this court is of the opinion that the instant application has been filed in accordance with the law.
17. **Appointment of Liquidator**– In the present case, the RP for the Corporate Debtor namely, *Rishabh Chand Lodha*, has not filed his written consent to act as the Liquidator for the CD. At this point, it is pertinent to take note of Section 34(4) of the Code which empowers this Adjudicating Authority to replace the Resolution Professional as Liquidator if he/she fails to file a written consent. In terms of Section 34(4) of the Code, we deem it appropriate to appoint *Mr. Arvind Kaushik* having Registration Number

Sd/-



IBBI/IPA-001/IP-P00291/2017-18/10535 (ca73588@gmail.com), as the Liquidator for the Corporate Debtor.

18. **Fees of the Liquidator:** In its 5th meeting, as per Regulation 39D of CIRP Regulations, the CoC has given its consent for payment of fee to the Liquidator in accordance with Sub- Regulation 2 (a) & (b) of Regulation (4) of IBBI Regulations, 2016.
19. **Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)** –In the 5th CoC meeting, the Resolution Professional has submitted that the liquidation cost of the Corporate Debtor namely, *Vadera Tradelink Private Limited*, is estimated to be Rs. 1,55,000 plus Fee of Liquidator plus GST. Further, the Corporate Debtor does not have any available liquid assets to meet the liquidation cost. In pursuance to the same, the sole CoC member namely, *Union Bank of India*, gave its consent to pay the liquidation costs plus Liquidator Fees plus GST payable as per Sub- Regulation 4 (2) of IBBI (Liquidation Process) Regulation, 2016.
20. **Assessment of Compromise or Arrangement (Regulation 39BA of CIRP Regulations, 2016)**- As per Regulation 39BA of the CIRP Regulations, 2016, the CoC in its 5th meeting recommended the Liquidator to first explore the opportunity of compromise or arrangement before any step is taken to liquidate the Corporate Debtor, namely, *Vadera Tradelink Pvt. Ltd.*
21. **Assessment of Sale as a going concern (Regulation 39C of CIRP Regulations, 2016)** : As per Regulation-32 clause (e) or clause (f) of IBBI



(Liquidation Process) Regulations, 2016, the CoC recommended the Liquidator to first explore the possibilities of sale of the CD namely, *Vadera Tradelink Pvt. Ltd.*, as a going concern thereby authorizing the Liquidator to sell the Corporate Debtor, after identifying the assets and the liabilities, in consultation with the Stakeholders Consultation Committee ('SCC').

22. In view of the satisfaction of the conditions provided under Section 33(2) read with Section 60(5) of the Code, the Corporate Debtor, *Vadera Tradelink 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:

22.1 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;

22.2 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;

22.3 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;

22.4 All the powers of the Board of Directors, key managerial personnel, and the partners of the Corporate Debtor shall cease to have an effect and shall be vested in the Liquidator.



- 22.5 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 to CIR process with the substitution of references to the Resolution Professional for the Liquidator;
- 22.6 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;
- 22.7 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.

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23. In view of the foregoing, *IA(IBC) (Liq.) No. 02/JPR/2024* is allowed and disposed of. A copy of this order is supplied to the parties, 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.


REETA KOHLI
JUDICIAL MEMBER