

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

I.A No.4080 of 2023

In

CP (IB) No.310/MB/2019

Under Section 33(2) of The Insolvency and
Bankruptcy Code, 2016

In the Matter of

Shri.Viral Vora,

Resolution Professional for M/s Adgaonkar
Saraf Pvt. Ltd ,512, Hub town Solaris, N. S
Phadke Marg, East West Flyover, Opp.Telli
Galli,Near Hotel Suba Galaxy, Andheri(E)
Mumbai- 400 069

... Applicant /Resolution
Professional

In the matter of

Alpa Sandeep Jain,

The Sole Proprieties of Nakoda Gold

...Operational Creditor

V/s

M/s Adgaonkar Saraf Pvt Ltd

....Corporate Debtor

Order dated on 09.02.2024

Coram:

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member (Technical)

For the Applicant:

M/s .V. Deshpande & Co, Advocate.

Order

Per: Reeta Kohli, Hon'ble Member (Judicial)

1. This is an Application filed under Section 33 of the Insolvency and Bankruptcy Code, 2016 (Hereinafter referred to as the Code) by the Applicant who is also the Resolution Professional (RP) of the Corporate Debtor seeking the following reliefs:
 - a. *Pass an order directing the initiation of Liquidation of the Corporate Debtor in accordance with Chapter III of Part II of the IBC, 2016.*
 - b. *Appoint the applicant as the Liquidator of the Corporate Debtor to conduct the liquidation process of the Corporate Debtor in accordance with Chapter III of the Insolvency and Bankruptcy Code, 2016 and regulations thereto.*
 - c. *Pass such other and further reliefs as in the circumstances this Hon'ble Tribunal may deem fit and proper.*

Brief facts of the cases:

2. The Applicant in the present application has submitted that the Corporate Debtor was admitted to CIRP vide an order dated 31.01.2023 wherein applicant was appointed as Interim Resolution Professional. Pursuant to the receipt of the CIRP Admission order dated 31.01.2023 on 03.02.2023, a Public Announcement in Form A under Regulation 8 of CIRP Regulations was made by applicant in *Times of India* (English Edition) and *Nashik Pudhari* (Marathi Edition) of Nashik edition, intimating commencement of CIRP and inviting claims from the Creditors of the Corporate Debtor on or before 17.02.2023. The said Public Announcement was also published on the website of the Insolvency and Bankruptcy Board of India (IBBI).
3. The applicant submits that, the Corporate Debtor does not have any tangible assets and the Corporate Debtor is not a going concern. The only tangible assets of the corporate debtor was the office premises situated at Nashik. The ownership of the same initially the applicant could not determine. There are litigations going on against Corporate Debtor and the Economic Offence Wing (EoW) has also registered a complaint against the Corporate Debtor and investigating the same.
4. In pursuance of the aforementioned Public Announcement, the IRP admitted total claims of Rs.73,43,59,083/- which was filed by 'Saraswat Co-Operative Bank Ltd' and 'Omkara Assets Reconstruction Pvt. Ltd.

Sr.No	Name of the Creditor	Nature of Creditor	Amount of claim admitted(in Rs)
1	Saraswat Co-Operative Bank Ltd	Financial Creditor	58,86,52,324/-
2	Omkara Assets Reconstruction Pvt. Ltd	Financial Creditor	14,57,06,759/-
	Total		73,43,59,083/-

1. There are no other claims from any other financial creditor. The Applicant duly constituted the CoC in compliance with Section 21(1) of Insolvency and Bankruptcy Code, 2016. The voting rights of both CoC members were as follows.

Sr. No	Name of the creditor	Nature of the creditor	Amount of claim admitted (in Rs.)	Voting Share
1	Saraswat Co-operative Bank Ltd	Financial Creditor	58,86,52,324/-	80%
2	Omkara Assets Reconstruction Private Limited	Financial Creditor	14,57,06,7569/-	20%
	Total		73,43,59,083/-	100%

2. After collation of the aforementioned claims received against the Corporate Debtor and determination of the financial position of the Corporate Debtor, the IRP constituted the Committee of Creditors (CoC) of the Corporate Debtor. A report certifying the Constitution of Creditors was filed before the Hon'ble Tribunal on 22.02.2023 in compliance with Regulation 17(1) of the *CIRP Regulations*. The Applicant submits that a 'List of Creditors' of the Corporate Debtor was also filed in this Hon'ble Tribunal on 25.02.2023 in compliance with Regulation

13(2) (d) of *CIRP Regulations*.

3. The Interim Resolution Professional (IRP) was subsequently made Resolution Professional in the first CoC meeting dated 02.03.2023 with 100% voting. The Resolution Professional appointed Mr. Gaurang Shah Reg No. IBBI /RV /06 /2019/ 11305 and Mr. Anand Pande Reg No. IBBI /RV /07/ 2021/ 13890 as valuers, registered with IBBI for determining the value and Liquidation value of assets of Corporate Debtor, the same was unable to complete their valuation exercise for want of necessary documents.
4. Form G as per the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 was published on 26.05.2023 in *Times of India* (English Edition) and *Nashik Pudhari* (Marathi Edition) of Nashik edition for inviting Expression of Interests (EOIs) from various Prospective Resolution Applicants (PRAs) before 24.06.2023. In pursuance of Form- G the applicant received many queries regarding the availability of any shop/ unit of the Corporate Debtor in Nashik, but after knowing the fact that no shop/ unit is owned by the Corporate Debtor they were not interested in submitting the Expression of Interest. The applicant did not receive any Earnest Money Deposit(EMD).
5. In pursuance of the abovementioned non-receipt of any EOI in the processes of CIRP for the Corporate Debtor, the CoC was not inclined to once again invite Expression of Interest from prospective Resolution Applicants by re-publishing

From-G in the newspaper. Thus in the 5th meeting of CoC dated 28.05.2023, the resolution for liquidation was passed by CoC with 100% voting. The details regarding resolution has been recorded in the meeting dated 28.05.2023 itself. The applicant has been nominated by the CoC to be appointed as liquidator of the corporate debtor by 100 % voting in the favour of the applicant. Hence, the Applicant (Resolution Professional) filed IA No.4080/2023 under Section 33 of *The Insolvency and Bankruptcy Code, 2016* seeking liquidation of the Corporate Debtor.

6. 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 EOI and Resolution Plan has been received and since the Corporate debtor is not operational and does not have assets that can be realised as observed from the 5th CoC Meeting, there is no option except to put the Corporate Debtor Company into Liquidation as per the Code. In view of the fact that there are no assets available of the corporate debtor, the CoC considered it appropriate to direct the applicant to move an appropriate application for seeking permission of liquidation of the corporate debtor. After having appreciated the contention of the applicant, we deem it appropriate to agree with the commercial wisdom of the CoC to allow present application for liquidation.
7. Accordingly, the above Interlocutory Application Number 4080 of 2023 is stands disposed of. The Prayers are

allowed, directing the Liquidation of the Corporate Debtor.
Accordingly, we pass the following order.

ORDER

8. The above I.A. No. 4080 of 2023 is allowed in terms of the above said and is disposed of.

9. The Corporate Debtor **M/s Adgaonkar Saraf Private Limited** is ordered to be liquidated.

10. Mr. Viral Vora, having IP Registration No. IBBI/IPA-001/IP-P02703/2022-2023/14141 is hereby appointed as the Liquidator as provided under Section 34(1) of the *Code*.

11. That the Liquidator for conduct of the liquidation proceedings would be entitled for fees as per table mentioned in Regulation 4(3) of the *IBBI (Liquidation Process Regulations), 2016*.

12. 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*.

13. The Liquidator is 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.

14. 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.
15. 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.
16. 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.
17. 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.

SD/-

Madhu Sinha
Member (Technical)

SD/-

Reeta Kohli
Member (Judicial)

/Priyanka/