IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**Coram: Mr. AJAY KUMAR VATSAVAYI,
HON'BLE JUDICIAL MEMBER**

**Mr. RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER**

**IA No. 298/JPR/2020
In
CP No. (IB) - 233/9/JPR/2019**

UNDER SECTION 33 & 34 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

IN THE MATTER OF

UNIWORD TELECOM LIMITED

...OPERATIONAL CREDITOR

VERSUS

M/s TAURUS EXPORTS PRIVATE LIMITED

...CORPORATE DEBTOR

AND IN THE MATTER OF

IA No. 298/JPR/2020

ANOOP BHATIA,
Resolution Professional of M/s Taurus Exports Private Limited
505, Sun Tower, SB-158A,
Gandhi Nagar Mod,
Jaipur-302015, Rajasthan

...APPLICANT

For the Applicant: Nitesh Shrivastava, Adv.

Order Pronounced on: 18.02.2021

ORDER

Per: Mr. Raghu Nayyar, Technical Member

1. The instant Application, IA No. 298/JPR/2020, is filed by the Resolution Professional of M/s Taurus Exports Private Limited ('Applicant' / 'RP') under Sections 33 and 34 of the Insolvency and Bankruptcy Code, 2016 ('Code') for initiation of Liquidation Proceedings against M/s Taurus Exports Private Limited ('Corporate Debtor').

2. This Adjudicating Authority, vide order dated 05.03.2020, had admitted the application filed by Uniword Telecom Limited under Section 9 of Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and as a consequence thereof appointed Mr. Anoop Bhatia as Interim Resolution Professional ('IRP').

3. In compliance with provisions of the Code, the IRP constituted the CoC with a sole operational creditor, Uniword Telecom Limited. The first meeting of the CoC was held on 23.06.2020, wherein the CoC unanimously resolved to appoint the IRP i.e., Mr. Anoop Bhatia as Resolution Professional ('RP') for the remaining period of CIRP. It is seen that RP had also appointed two registered valuers to determine fair and liquidation value in accordance with Regulation 35 of the CIRP Regulations.

4. It is submitted that the RP convened the 2nd meeting of CoC on 28.08.2020. In the said meeting the RP placed before the CoC members, the duly filled FORM G (Proposed Draft Copy) in accordance with Regulation 36A & 36B of CIRP Regulations. Further it is seen that the members of CoC duly reviewed the FORM G and unanimously resolved not to proceed further for the publication of the same, because they did not wish to incur any further cost in the CIRP and they preferred to initiate liquidation process of the Corporate Debtor due to non-availability of assets in the name of Corporate Debtor.

5. We have carefully heard and considered the arguments of the learned counsel for the RP and have also perused the records. Taking into consideration the above facts in relation to the affairs of the Corporate Debtor, the provisions of Section 33 of Code are as follows: -

> *"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;*

(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 creditor approved by not less than sixty-six percent 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)"

6. The Hon'ble National Company Law Appellate Tribunal ('NCLAT'), in *Praveen Kumar Nand Kumar Vs. VSL Securities Pvt. Ltd.* in CA No. 1/2020 in CA No. 308/2000, dated 09.06.2020, observed as under: -

> *"Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of 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."*

However, it is to be seen whether the relevant application is filed within stipulated time lines and as per applicable procedure.

7. **Prescribed period for filing application** - In the present case, the application under Section 9 of Code was admitted on 05.03.2020 and the present application is filed by the Resolution Professional on 25.09.2020. The period of 180 days was ending on 02.09.2020. The Insolvency and Bankruptcy Board of India vide Notification No. IBBI/2020-21/GN/REG059 dated 20.04.2020, inserted Regulation 47A to the

Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 to exclude the period of lockdown and the said regulation reads as under: -

> *"Exclusion of period of lockdown,*
> *47A. Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purpose of computation of the timeline for any task that could not be completed due to such lockdown, in relation to any liquidation process."*

8. As per Notification No. IBBI/2020-21/GN/REG059 dated 20.04.2020, the period of Lockdown is excluded for the purpose of calculating the timelines in CIR Process. Hence, after excluding the lockdown period w.e.f. 23.03.2020 to 31.05.2020, the present application is filed within the prescribed period.

9. **Appointment of Liquidator and fee to be paid–** Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process shall, subject to submission of written consent act as the liquidator for the purpose of liquidation. The relevant provisions of Sections 34(1) of the Code are as follows: -

> *"(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified form,*

shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4)."

10. The present RP Mr. Anoop Bhatia is eligible to be appointed as Liquidator. The COC had also resolved to appoint the RP as Liquidator. Mr. Anoop Bhatia, Resolution Professional with IBBI Registration No. IBBI/IPA-001/IP-P01142/2018-19/11969 has filed his written consent dated 19.09.2020 along with eligibility and registration certificate at Annexure-3 of Application. The credentials of the proposed Liquidator have been checked from IBBI website (www.ibbi.gov.in) and nothing adverse is found on record. Therefore Mr. Anoop Bhatia is appointed as Liquidator.

11. It is seen that Regulation 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder.

12. **Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)** – It is noted that the COC in its 2nd meeting held on 28.08.2020 has not decided the estimated liquidation cost. The liquidator is, therefore, directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.

13. **Assessment of Sale as a going concern (Regulation 39C of CIRP Regulations, 2016)** – The COC in its 2nd meeting has recommended the

sale of the corporate debtor as a going concern under clause (e) or (f) of Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016.

14. **Fees of the Liquidator (Regulation 39D of CIRP Regulations, 2016) –** It is seen that the CoC, in consultation with the resolution professional, has failed to fix the fee payable to the liquidator. Thus, the liquidator shall be entitled to a fee in such manner as prescribed under Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016.

15. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor, M/s Taurus Exports 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: -

(i) 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;

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; and

(ii) The provisions of sub-section (5) of Section 33 of the Code 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; and

(iii) This order of liquidation under Section 33 of the Code 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; and

(iv) All the 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 in the liquidator; and

(v) 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 in relation to liquidation process as they apply in relation to CIR process with the substitution of references to the Interim Resolution Professional for references to the liquidator; and

(vi) The Liquidator shall publish public announcement in accordance with 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 stake holders 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;and

(vii) In accordance with Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and shall file regular progress reports as per Regulation 15.

16. **Pending Applications, if any, and its / their effect -** The learned counsel for the Applicant has stated that there are no pending applications which have any bearing on the order of liquidation.

17. In view of the foregoing, IA No. 298/JPR/2020 is disposed of. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Jaipur, forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

Sd

Mr. RAGHU NAYYAR,
MEMBER (TECHNICAL)

Sd

Mr. AJAY KUMAR VATSAVAYI,
MEMBER (JUDICIAL)