

**IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD**  
**COURT - 1**

ITEM No 42

IA/354(AHM)2021 in CP(IB) 807 of 2019

**Order under Section 33 IBC,2016**

**IN THE MATTER OF:**

Darshan Bharatbhai Patel RP of Padmavati Intermediates Pvt .....Applicant  
Ltd

.....Respondent

**Order delivered on ..16/11/2021**

**Coram:**

Madan B. Gosavi, Hon'ble Member(J)  
Ajai Das Mehrotra, Hon'ble Member(T)

**PRESENTS:**

For the Applicant :  
For the IRP/RP :  
For the Respondent :

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.



(AJAI DAS MEHROTRA )  
MEMBER (TECHNICAL)



(MADAN B GOSAVI)  
MEMBER (JUDICIAL)

**IN THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT-1**

**I.A. No. 354 of 2021  
IN  
C.P. (I.B.) No.807/9/NCLT/AHM/2019**

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

**In the Matter of:**

**Mr. Darshan Bharatbhai Patel**

Resolution Professional of,  
M/s Padmavati Intermediates Private Limited,  
Address at: 31, Vrindavan,  
Nr. Akshar Flat Inquilab Society,  
Gulbai Tekra, Ahmedabad- 380015

**...Applicant/ RP**

**AND**

**In the matter between:**

**M/s Dipal Chemical Industries**

**...Operational Creditor**

**Versus**

**M/s Padmavati Intermediates  
Private Limited**

**...Corporate Debtor**

**Order delivered on 16<sup>th</sup> November, 2021.**

**Coram: Madan B. Gosavi, Member (Judicial)  
Ajai Das Mehrotra, Member (Technical)**





**Appearance:**

**Mr. Kamal Lokhandwala counsel of Resolution Professional.**

**ORDER**

**(Through Video Conferencing)**

**[Per: Ajai Das Mehrotra, Member (Technical)]**

1. The instant Application is filed by Mr. Darshan Bharatbhai Patel, Resolution Professional of Corporate Debtor M/s Padmavati Intermediates Pvt. Ltd., under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “Code”) for liquidation of the Corporate Debtor.
2. This Adjudicating Authority, vide order dated 03.02.2021, had admitted the application filed by M/s Dipal Chemical Industries under Section 9 of Code for initiation of Corporate Insolvency Resolution Process (‘CIRP’) of the Corporate Debtor and appointed Mr. Darshan Bharatbhai Patel as the Interim Resolution Professional (‘IRP’). Thereafter, Mr. Darshan Bharatbhai Patel was confirmed as Resolution Professional (‘RP’) in the 1<sup>st</sup> COC meeting held on 09.03.2021.
3. It is evident from the record that in compliances of Section 21 of Code read with Rule 6 & 8 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations,



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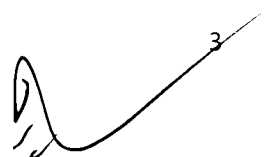
2016 (hereinafter referred to as “**CIRP Regulation**”), the IRP constituted CoC.

4. The CoC in the 3<sup>rd</sup> meeting held on 07.04.2021 discussed that as there are no assets with the Corporate Debtor, the chance of Resolution is rare. Thus decided not to publish expression of interest and invite resolution plan. Thereby, the CoC in the 4<sup>th</sup> meeting held on 11.05.2021 had unanimously resolved to liquidate the Corporate Debtor and also resolved to appoint the Applicant herein Mr. Darshan Bharatbhai Patel bearing registration No. IBBI/IPA-001/IP-P01579/2018-19/12442 as a liquidator under Section 34 (4) of the Code. Further in accordance with Regulation 39D of CIRP Regulations, liquidator’s fee was fixed to the tune of Rs. 40,000/- per month. Shri Rushi Dattani, being suspended management present in the 4<sup>th</sup> meeting of CoC stated that he has no objection if the Corporate Debtor is liquidated.
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) ”*

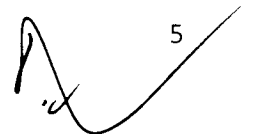
6. The Hon'ble National Company Law Appellant Tribunal ('NCLAT'), in *Praveen Kumar Nand Kumar Vs. VSL Securities Pvt. Ltd.* in CA No. 1/2020 in CA No. 308/2000, dated 09.06.2020, observed as under: -

*“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.”*

7. In view of the foregoing, we hereby pass the order of liquidation of the Corporate Debtor M/s Padmavati Intermediates Pvt. Ltd., consequently allow IA No. 354 of 2020 and issue following directions:

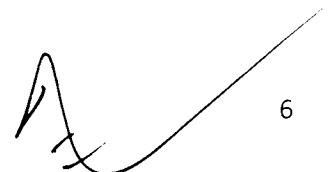


- 1) The liquidation of the Corporate Debtor is effective from the date of this order and the Moratorium declared vide order dated 03.02.2021 in CP (IB) No.807/9/NCLT/AHM/2021, henceforth, ceases to exist.
- 2) The CoC had resolved to appoint the RP as the Liquidator. It is noted that Applicant has failed to file its written consent to act as liquidator in prescribed form. Thus subject to filing of written consent to act as liquidator in Form AA within five days from this Order, this Adjudicating Authority appoints Applicant / Resolution Professional Mr. Darshan Bharatbhai Patel (Registration No. IBBI/IPA-001/IP-P01579/2018-19/12442) as a liquidator of the Corporate Debtor i.e. M/s Padmavati Intermediates Pvt. Ltd. who shall complete the liquidation process as per the provision of Code read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.
- 3) It is noted that the no resolution is passed by CoC under Regulation 39B and 39C of CIRP Regulations, the liquidator is therefore directed to take necessary action in accordance with relevant regulations of the IBBI (Liquidation Process) Regulations, 2016.
- 4) 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;
- 5) 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

- 6) 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
- 7) 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
- 8) 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.
- 9) The Liquidator shall publish public announcement in accordance with Regulation 12 of the CIRP (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.
- 10) The announcement shall be published in accordance with Regulation 12(3) of the CIRP (Liquidation Process) Regulation, 2016.



- 11) That in accordance with Regulation 13 of the CIRP (Liquidation Process) Regulations, 2016, the Liquidator shall file preliminary report within 75 days and also file regular progress reports as per Regulation 15.
- 12) It is seen that IA No. 295/2021 and IA 511/2021 filed under Section 60(5) and 43 & 44 of the Code respectively are pending. The said IAs have bearing on the issues in liquidation proceedings, they are directed to be listed along with the CP No. 807/9/JPR/2019 when the matter is next placed before this Adjudicating Authority. If so advised, the liquidator may move appropriate applications for prosecution of the said applications by a suitable person / entity instead of the RP and the Liquidator is not precluded from carrying on the said proceedings.
- 13) Registry is directed to upload this order on the official website within maximum two working days from the date of this order. The authenticated copy of this order also be sent by the registry to the Financial Creditor, Corporate Debtor, Registrar of the Company, Resolution Professional and Liquidator by Speed-post within one week from this order.
- 14) Accordingly, the present I.A. No. 354 of 2021 stands disposed of.



**(Ajai Das Mehrotra)**  
**Member (Technical)**



**(Madan B. Gosavi)**  
**Member (Judicial)**