

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH**  
**(Exercising powers of Adjudicating Authority under**  
**The Insolvency and Bankruptcy Code, 2016)**  
**Through Virtual/ Physical Mode**

**IA No.643/2023**  
**In**  
**C.P. (IB) No.73/BB/2022**  
**Under Section 33(2) of the**  
**Insolvency and Bankruptcy Code, 2016**

**In the matter of IA No.643/2023:-**

Mr.Vasudevan Gopu  
Resolution Professional,  
Dentorth India Private Limited

...Applicant

**Order delivered on: 13.03.2024**

**Coram:** 1. Hon'ble Shri. K. Biswal, Member (Judicial)  
2. Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

**Parties/Counsels Present:**

For the Petitioner : Mr. Syed Shujath Mehdi

**ORDER**

**I.A No.643/2023**

**Per: K.Biswal, Member (Judicial)**

1. This Application has been filed by Mr Vasudevan Gopu, Resolution Professional of M/s. Dentorth India Private Limited (Corporate Debtor) under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation in the matter of M/s Dentorth India Private Limited (Corporate Debtor) and to appoint the Liquidator for initiation of Liquidation process of the Corporate Debtor etc.
2. CP (IB) No. 73/BB/2022 filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 by "Dentorth India Private Limited" to initiate

Corporate Insolvency Resolution Process (**in short 'CIRP'**) was admitted on 31.01.2023 and Mr. Vasudevan Gopu Patel was appointed as Interim Resolution Professional (IRP).

3. After receiving the Order, the IRP made a Public Announcement on 10.02.2023 in the prescribed form i.e, Form A. On the basis of claims received and admitted from the operational creditor, the applicant constituted the CoC with the operational creditors and there were no financial creditor. The First CoC meeting was held on 09.03.2023, the interim resolution professional had given consent to act as Resolution Professional and as per section 22(3)(a) of the IBC, 2016 the appointment of RP was communicated to this Tribunal on 22.03.2023.
4. It is submitted that the applicant had sent requisite intimation to various statutory authorities and creditors. Claims were received from employees/workmen for Rs. 1,11,860/- and the RP admitted the claims in totalling Rs. 1,02,585/-.
5. It is further submitted that during the visit of the applicant, it was found that the Registered Office was on rental basis and was vacated by the suspended management longback during the Covid period. The Suspended Director informed that the fixed assets of the company were computers, electronic equipments and furniture and fixtures at the rental premises to conduct classes. During the Covid period, the business suffered losses due to restrictions on physical classes. The assets were seized by the Landlords of premises against the rent payable by the suspended management. The employees of the corporate debtor did not return back to work due to non-payment of salaries. Further there has been no business activities in post Covid period.
6. The applicant appointed two registered valuers Ms. Sakunthala Chellappa and Ms. T. Saraswathy for valuation of the securities or Financial Assets (SFA) of the the CD in accordance with regulation 27 of IBBI (CIRP) Regulations, 2016. As per the valuation of the Reports

submitted on 05.05.2023 the average of fair value and liquidation is 4749.79. Further, the applicant submitted that the Insolvency resolution Process cost which were approved/ratified by the COC during the CIRP were paid and borne by the CD. Further, information Memorandum was circulated to the COC on 05.05.2023.

7. In the third meeting of CoC held on 02.06.2023, the CoC opted for liquidation of corporate debtor and the same is as under:

*“RESOLVED THAT consent of the members of the committee of creditors be and is hereby accorded to liquidate and dissolve the company in accordance with the provisions of Section 33 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 subject to receipt of final dissolution order from Hon’ble National Company Law Tribunal, Bengaluru Bench.”*

8. The Hon’ble NCLAT, in Praveen Kumar Nand Kumar v.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”.*

9. We have carefully considered the submissions made in the application by the Interim Resolution Professional and have also perused the records.

10. The relevant provisions of Sections 33(1) and 33(2) of the 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 creditors 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).”*

**11. Prescribed period for filing application-** In the present case, the Petition under Section 10 of the Insolvency and Bankruptcy Code, 2016 was admitted on 31.01.2023. The present Application is filed on 28.07.2023 i.e., before the expiry of the CIRP period. Hence, this application shall be considered under section 33(2) of the Insolvency and Bankruptcy Code, 2016.

**12. Appointment of Liquidator** - Appointment of Liquidator - 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 CIRP subject to submitting the written consent in Form-AA, to act as the Liquidator for the purpose of Liquidation. **Shri S.Vijay Mahindran**, Resolution Professional with Registration No. IBBI/IPA-002/IP-N01172/2021-22/13920 has been proposed by the 3<sup>rd</sup> CoC dated 11.12.2023 to act as the Liquidator.

13. Regulation 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No. IBBI/201920/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder.

**a. Liquidation Cost [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016]** – The members of the CoC in the 2nd meeting held on 02.06.2023, did

not approve any plan for the contribution towards liquidation expenses. However, the representatives of the board of directors of Dentorth India Private Limited present in the meeting informed the RP that the holding company of the corporate debtor American Orthodontics Corporation USA will contribute the required funds for meeting the liquidation costs. Therefore, the liquidator is directed to refer to Regulation 2A of IBBI (Liquidation Process) Regulation, 2016 and take necessary action.

**b. Assessment of Sale as a going concern [Regulation 39C of the Insolvency Resolution Process for Corporate Persons) Regulations, 2016]**

– The members of the CoC did not approve the sale of of Corporate Debtor as a going concern as per Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 in their 2nd meeting held on 02.06.2023. Therefore, the liquidator is directed to refer to Regulation 32A of IBBI (Liquidation Process) Regulation, 2016 and take necessary action.

**c. Fees of the Liquidator [Regulations 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]**

– The CoC in 2nd meeting held on 02.06.2023 did not approve the payment for the liquidator fees. Hence, the fee payable to the Liquidator is as per the Regulation 4(2) of the IBBI (Liquidation Process) Regulations, 2016.

14. **Pending applications, if any, and its effects** – The applicant analysed the transaction of teh corporate and formed an opinion that the CD has not been subjected to any transaction covered under Section 43,45,50 or 66 of IBC, 2016 during the relevant period prescribed under relevant sections of the code.
15. On 16.10.2023, the Learned Counsel was directed to give other name and details for the appointment of Liquidator as per the IBBI Circular. In compliance to the Order dated 16.10.2023, an affidavit is filed vide Diary No.

6338 dated 15.12.2023 is taken on record. The applicant filed a memo vide diary no: 6338 dated 15.12.2023 stating that the applicant has withdrawn his consent to act as liquidator and in the 3<sup>rd</sup> COC meeting dated 11.12.2023 has approved his withdrawal.

16. In view of the satisfaction of the conditions provided under Section 33 (2) of the Code, the Corporate Debtor **M/s. Dentroth India Private Limited is directed to be liquidated** in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:

- i. That 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 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;
- ii. That 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. That 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. That 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. That 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 provision of Section 19 of the Code shall apply in relation to voluntary

liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.

- vi. That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (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.
- vii. That the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016.
- viii. That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 thereafter.

17. Thus **I.A No. 643 of 2023** stands disposed of.

18. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Bengaluru forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

-Sd-

**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

-Sd-

**(K.BISWAL)**  
**MEMBER (JUDICIAL)**