

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**I.A. 842 OF 2020**

Under Section 33 of Insolvency &  
Bankruptcy Code, 2016

Filed by

**Mr. Vijay Pitamber Lulla**

Resolution Professional,

Office at: 201, Satchitanand Bldg.,

2<sup>nd</sup> Floor, 12<sup>th</sup> Road,

Opp. Ram Mandir, Khar (West),

Mumbai 400052

...Applicant

In the matter of

**C.P. No. 342 of 2018**

**Smart Serve Houseware Private  
Limited**

Unit No. 24, Sumitinath Industrial  
Premises Co-operative Housing  
Society Ltd., Chincholi Bunder Road,  
Mindscape, Link Road, Malad West,  
Mumbai 400064

...Petitioner

versus

**Virgo Home Deziner Private  
Limited**

Regd. Office at Godown No. 1,  
Building No. 183, Jumboshed,  
Village-Gundavali, Taluka-Bhiwandi,  
District Thane 421302

...Corporate Debtor

**Order delivered on: 30.08.2021**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

**Appearance:**

**For the Resolution Professional:** Adv. Raina Birla

**Per: Shri H.V. Subba Rao, Member (Judicial)**

**ORDER**

1. It is an application filed by Resolution Professional Mr. Vijay Pitamber Lulla seeking liquidation of M/s Virgo Home Deziner Private Limited (hereinafter referred as Corporate Debtor) under Section 33(1) read with Section 60 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”), praying for following reliefs:

*“In view of the aforesaid facts, the Applicant RP most respectfully prays before this Hon’ble Tribunal:*

- a. To pass the order for liquidation of the Corporate Debtor;*
- b. To appoint Mr. Vijay Pitamber Lulla as the liquidator of the Corporate Debtor;*
- c. To pass any such other order and further orders as this Hon’ble Tribunal may deem, fit and appropriate in the interest of justice.”*

2. The counsel for the Applicant submitted that this Tribunal vide an order dated 19.02.2019 in Company Petition No. 342 of 2018 admitted the petition under Section 9 of the Code, filed by Smart Serve Houseware Private Limited (hereinafter referred to as the “Financial Creditor”) and Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor. One Mr. Hirachand Nemichand Bafna was appointed as the Interim Resolution Professional vide that order.

3. An application for replacement of the IRP was filed before this Tribunal bearing M.A. No. 1818 of 2019 and the same was allowed by this Tribunal vide its Order dated 27.05.2019 and the applicant here was appointed as the Resolution Professional (RP) of the Corporate Debtor.
4. The counsel for the applicant RP submitted that the meetings of the CoC were duly conducted from time to time. The RP also had meetings with Mr. Anand Vora, the Director of the Corporate Debtor, after which it was learnt that an injunction suit was filed against M/s Deepak Fertilizer and Petrochemicals Private Limited from selling the goods kept in their possession. Further the RP had addressed a letter to M/s Deepak Fertilizer and Petrochemicals Private Limited on 16.07.2019 that it has come to his knowledge that the premises taken on lease and licence basis by the Corporate Debtor and the possession thereof has been taken back by Deepak Fertilizers on 03.02.2018 wherein the goods of the Corporate Debtor were lying and they have shifted them to some other place and as such are in illegal possession of goods and assets of the Corporate Debtor and that in view of discharging his duties under the said Code, the RP needs to take control and possession of those goods. This was informed by the RP to the CoC during its 7<sup>th</sup> CoC meeting. The RP had also informed the CoC members that on various occasions he had asked the erstwhile director of the Corporate Debtor, Mr. Anand Vora to handover documents of the company but has failed to do so.
5. The counsel for the RP further submitted that in the above meeting, the date of submission of EOI was extended to

31.07.2019 as no EOI had been received till date. Further, the draft of the Evaluation Matrix was placed before the CoC meeting which needs to be circulated by the Resolution Applicant so that they can submit Resolution Plan in accordance therewith.

6. The counsel for the RP submitted that another letter dated 27.07.2019 was sent to M/s Deepak Fertilizer and Petrochemicals Private Limited regarding the material goods/articles lying in the premises of their shop amounting to Rs.3.12 crores and also the balance goods which amount to approx. 75 lakhs are still in their possession, thus all in all, amounting to total stock of Rs.3.87 crores which is to be handed by them in good and marketable condition before 30.08.2019 and to also inform them where it can be collected and to intimate them how much it weighs so that adequate arrangements can be made for their transport. M/s Deepak Fertilizer and Petrochemicals Private Limited replied to this letter on 30.08.2019 stating that they have no knowledge of the value of the goods lying with them and also admitted that the goods have been kept in a safe storage which can be inspected by the RP by producing orders of NCLT which were already enclosed in the letter dated 27.07.2019 written by the RP.
7. The counsel submitted that after several letters addressed to M/s Deepak Fertilizer and Petrochemicals Private Limited, inspection was finally allowed which was carried out on 09.09.2019 by the RP and his team members. The erstwhile director Mr. Anand Vora also accompanied but was not allowed to participate in the inspection by M/s Deepak Fertilizer and Petrochemicals Private Limited. Due to this, another inspection was demanded by the RP through a letter addressed by him to M/s Deepak Fertilizer and

Petrochemicals Private Limited because only the erstwhile director can identify the goods. However, this request was denied by M/s Deepak Fertilizer and Petrochemicals Private Limited on the ground that they have already cooperated and allowed proper inspection. But finally, on 01.10.2019, inspection was allowed by M/s Deepak Fertilizer and Petrochemicals Private Limited.

8. Extension application bearing MA No. 2659 of 2019 was filed before this Tribunal which was allowed vide an Order dated 25.09.2019 granting extension of 90 days and exclusion of 35 days.
9. Further, during the 8<sup>th</sup> CoC meeting held on 14.10.2019, the CoC members asked Mr. Vora whether the stock could be kept in the godown owned by him which is mortgaged to the Bank. This suggestion was rejected by Mr. Vora refusing to give the possession of the godown and stated that stock may be kept there but he will not handover the possession. The CoC decided to look for an alternative place for the said stock. One M/s Kakode and Associates and Mr. Alok Gupta were appointed for the valuation of the stock as approved and confirmed by the CoC. Further, the RP was asked to prepare for liquidation of the Corporate Debtor and also explore various options with M/s Deepak Fertilizer and Petrochemicals Private Limited for sale, disposal and display of the stock.
10. Further, during the 9<sup>th</sup> CoC meeting held on 18.12.2019, a resolution was passed to file a liquidation application of the corporate debtor as the only asset of the Corporate Debtor is the stock lying in possession of M/s Deepak Fertilizer and

Petrochemicals Private Limited which is four years old and also another application to be filed for sale or disposal of stock or display thereof. In this meeting, it was also approved that Mr. Vijay P. Lulla be appointed as the liquidator of the Corporate Debtor. Accordingly, the RP filed this present application for liquidation of the Corporate Debtor. The consent of the RP to perform duties as a liquidator is also annexed with this application.

### **ORDER**

We have heard the applicant RP and perused all the documents submitted by him. The reasons assigned in the application with respect to taking the decision of liquidation of the Corporate Debtor by the CoC appears to be genuine considering the scenario that the assets of the Corporate Debtor are four years old. It is observed from the minutes of the 9<sup>nd</sup> CoC meeting that the CoC has, with 100% majority, decided to liquidate the Corporate Debtor and relying on the settled principle of law regarding the Commercial Wisdom of the CoC, we hereby allow this Miscellaneous Application bearing Number I.A. 842 of 2020 with the following observations and directions:

- a. **Mr. Vijay Pitamber Lulla**, having Registration No. IBBI/IPA-001/IP-P00323/2017-2018/10593 and having office at: 201, Satchitanand Bldg., 2<sup>nd</sup> Floor, 12<sup>th</sup> Road, Opp. Ram Mandir, Khar (West), Mumbai 400052, is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in

Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.

- c. 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.
- d. The Liquidator appointed under section 34(1) of the Code. Will have 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.
- e. 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.
- f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- g. 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.
- h. 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.

- i. 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.

Also, it is pertinent to note here that there is another IA bearing no. IA 1785 of 2020 which was filed by the RP for preferential transactions and is pending before this Bench. Now, the liquidator has been appointed and we hereby direct the liquidator to pursue this application till its disposal.

With the above directions, this application i.e. I.A. No. 842 of 2020 is hereby allowed and disposed of.

Sd/-

**CHANDRA BHAN SINGH**  
**MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**