

THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(through web-based video conferencing platform)

IA No. 639/2020  
In  
CP (IB) No. 279/Chd/HP/2019  
(Admitted Matter)

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

**In the matter of:-**

M/s Bansal Traders, A Partnership Firm  
(Through: Anand Bansal, Partner)

...Operational Creditor

Vs.

M/s BBN Foods Hi-Tech Processing Private Limited

... Corporate Debtor

**And in the matter of IA No. 639/2020:-**

Mr. Gurdev Bassi,  
Resolution Professional  
of BBN Foods Hi-Tech Processing Private Limited,  
1629, Progressive Housing Society,  
Sector 50-B,  
Chandigarh-110047.

...Applicant-Resolution Professional

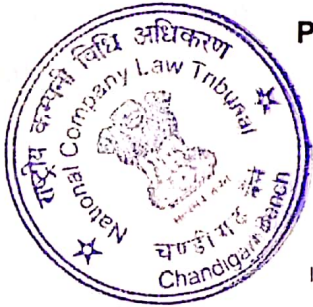
**Order delivered on 15.12.2020**

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)  
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)**

**Present through Video Conferencing:-**

For the applicant : Mr. Nitin Kant Setia, Advocate

**Per: Ajay Kumar Vatsavayi, Member (Judicial)**



**ORDER**

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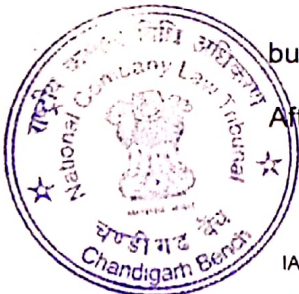
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This application has been filed by Mr. Gurdev Bassi, the Resolution Professional of M/s BBN Foods Hi-Tech Processing Private Limited (Corporate Debtor) under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation in the matter of M/s BBN Foods Hi-Tech Processing Private Limited (Corporate Debtor).

2. CP (IB) No. 279/Chd/HP/2019 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by "Bansal Traders" to initiate Corporate Insolvency Resolution Process (in short CIRP) against M/s BBN Foods Hi-Tech Processing Private Limited was admitted on 17.12.2019 and Mr. Gurdev Bassi was appointed as IRP. Subsequently, in the 1<sup>st</sup> meeting of CoC held on 14.01.2020, IRP was appointed as Resolution Professional. Copy of the minutes of first meeting of CoC is appended as Annexures A-3 of the application.

3. It is submitted that after public announcement in Form A was made on 18.12.2020, the CoC was constituted on 08.01.2020 and subsequently it was reconstituted on 23.06.2020 as per the claims received from the creditors of the corporate debtor. The Resolution Professional has appointed two registered valuers for the valuation of security & financial assets and land & building for determination of the fair value and liquidation value of the corporate debtor as per Regulation 35 of Insolvency Resolution Process for Corporate Persons Regulations, 2016. On 27.02.2020, Form G inviting Expression of Interest from the prospective Resolution Applicants was issued and two EOIs were received but both the applicants failed to submit the documents for meeting the criteria.

Afterwards, in the 7<sup>th</sup> meeting of CoC held on 23.09.2020, the members have



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resolved to liquidate the corporate debtor with 97.75% of voting share. Copy of the minutes of 7<sup>th</sup> meeting of CoC is attached as Annexure A-4 of the application.

4. The Hon'ble 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."*

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

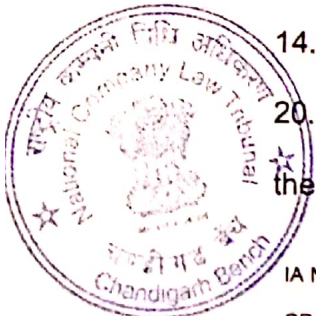
6. The relevant provisions of Sections 33 (2) of the Code are as follows:-

*"33. Initiation of liquidation. –*

*(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)."*

7. **Prescribed period for filing application** - In the present case, the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 was admitted on 17.12.2019 and the present application is filed by the Resolution Professional on 20.10.2020. The period of 180 days was completing on 14.06.2020 but 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.

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23.03.2020 to 31.07.2020, the present application is filed within the prescribed period.

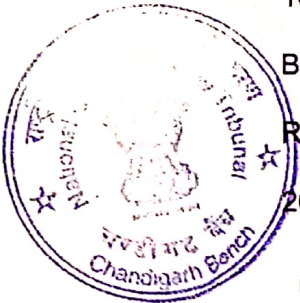
8. **Appointment of Liquidator and fee to be paid**– Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process shall, subject 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).”*

9. Since the CoC has not replaced the RP, the present RP Mr. Gurdev Bassi is eligible to be appointed as Liquidator. The Law Research Associate of this Tribunal has checked the credentials of liquidator and nothing adverse is found in record. Mr. Gurdev Bassi, Resolution Professional with IBBI Registration No. IBBI/IPA-001/IP-P01633/2019-20/12504 has filed his consent in Form AA dated 10.10.2020 (Annexure A-5). Therefore, Mr. Gurdev Bassi is appointed as the Liquidator.

10. 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/2019-20/GN/REG/048 dated 25.07.2019.

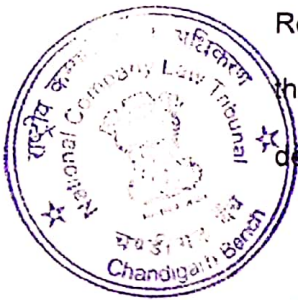


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11. **Liquidation Cost [Regulation 39B of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]** – The CoC has resolved in its 6<sup>th</sup> meeting held on 26.08.2020 that the liquidation cost is estimated to be ₹11.30 lakhs which shall be met by making contribution as per Regulation 2A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

12. **Assessment of Sale as a going concern (Regulation 39C of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]** – The CoC has resolved in its 6<sup>th</sup> meeting held on 26.08.2020 that the Liquidator will first explore the prospects of compromise and arrangement in terms of Section 230 of CA, 2013 and if no proposal is received then the corporate debtor will be sold as a going concern. Therefore, the Liquidator is directed to refer to Regulation 32 & 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

13. **Fees of the Liquidator (Regulation 39D of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)** – The RP proposed to be appointed as Liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of liquidation estate assets as may be specified by the Board. Rule 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provide for Liquidator's fee. Regulation 4(2) thereof states that the Liquidator shall be entitled to such fee and in such manner as has been decided by the CoC. The CoC in its 6<sup>th</sup> meeting held on 26.08.2020 has resolved



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that the Liquidator shall be entitled to the fee as stated in Regulation 4(2)(b) of the aforesaid Regulations.

14. **Pending applications and their effect-** – Learned counsel for the applicant has stated that there is no application pending which has any bearing on passing of the order of liquidation.

15. In view of the satisfaction of the conditions provided under Section 33(2) of the Code, the corporate debtor **M/s BBN Foods Hi-Tech Processing 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



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(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

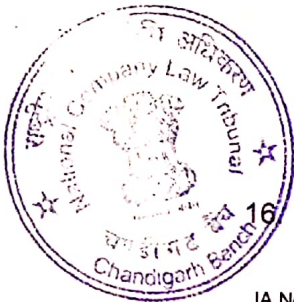
(v) That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation 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 (Insolvency Resolution Process for Corporate Persons) (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 every fortnightly thereafter.

Thus, IA No. 639/2020 stands disposed of.



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

Sd/-

(Raghu Nayyar)  
Member (Technical)

Sd/-

(Ajay Kumar Vatsavayi)  
Member (Judicial)

December 15, 2020

pc



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