

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI BENCH-III**

IA-2227/2020 filed in
CP/IB/1148/ND/2019 under Section
33(2) & 54 of the IBC Code, 2016.

In the matter of Chemlinker Tradex Private Limited (CD)

Mr. Vikas Garg
Resolution Professional

... Applicant

CORAM :

CH. MOHD. SHARIEF TARIQ, HON'BLE MEMBER (JUDICIAL)
SH. NARENDER KUMAR BHOLA, HON'BLE MEMBER (TECHNICAL)

For Resolution Professional: Mr. Vikas Garg, Mr. Umesh Gupta (CA),
Ms. Kajal Bhatia (Advocate)
For suspended BOD: Mr. Mukul Chaudhary,
Ms. Prapti Mehta (Advocates)
For HDFC Bank: Ms. Gurmeet Bindra, Ms. Amita Kumari,
Mr. Tarun Bhatt, Ms. Sampurna Gupta
(Advocates)
For Operational Creditor: Ms. Prapti Mehta (Advocate)

Order delivered on 17th August, 2020

ORDER

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. This is an Application filed by the Resolution Professional, under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "IBC, 2016"). The prayer made is to dissolve the Corporate Debtor instead of liquidation in accordance with Section 54(2) of the IBC Code, 2016.

2. The facts in brief are, an application under Section 9 of the IBC, 2016 was filed by the Operational Creditor i.e., *M/s. Fairway Trading Co. (P) Limited*, with this Authority and vide Order dated 23.09.2019 CIRP was initiated and Moratorium was declared. This Authority appointed Mr. Vikas Garg as the Interim Resolution Professional (hereinafter referred as "IRP"). The IRP made a publication on 27.09.2019 in the newspapers i.e., Jansatta (Hindi) and Financial Express (English), copy of which is placed on record. Further, the IRP received only one claim from Operational Creditor, who has initiated the CIRP against the CD. The IRP constituted the Committee of Creditors (hereinafter referred as "CoC") comprising of only one Operational Creditor.
3. The 1st meeting of CoC was convened on 25.10.2019 in which the following resolutions were passed with 100% voting share: -

***"RESOLVED THAT,** with the consent of the members of CoC, it is hereby approved that Vikas Garg, Interim Resolution Professional appointed in the matter of Chemlinker Tradex Private Limited be paid a fee Rs. 75,000 plus applicable taxes per month and reimbursement of expenses incurred during his tenure as interim resolution professional."*

***"RESOLVED THAT,** Vikas Garg, an insolvency professional (IBBI Registration No. IBBI/IPA-001/IP-P01050/2017-18/11733 be and is hereby appointed as the Resolution Professional in the matter of Corporate Insolvency Resolution process of Chemlinker Tradex private Limited in accordance with Section 22 (3) (a) of the Insolvency & bankruptcy Code, 2016)."*

4. The Resolution Professional further received two claims from Financial Creditors, viz., HDFC Bank Limited and Bajaj Finance Limited. Therefore, CoC was reconstituted on 16.10.2019. The sole Operational Creditor was also admitted as participant in the CoC in accordance with Section 24 (3) (c) as their aggregate due was more than 10% of the debt of the Corporate

Debtor. This Authority vide Order dated 11.02.2020 allowed the reconstitution of CoC.

5. The 2nd Meeting of the CoC was convened on 05.12.2019 wherein the possibilities of revival of Corporate Debtor and future business potentials and other issues were discussed. The copy of the minutes of the 2nd Meeting of the CoC as circulated on 06.12.2019 and voting results on the resolutions are attached to the Application. The Resolution Professional did not publish the Form G on the request of HDFC Bank Limited which is holding 73.22% voting share, as it was of the opinion that conditions present were not conducive to revive the Corporate Debtor. In the 3rd Meeting of the CoC convened on 23.12.2019 the remuneration of the Resolution Professional was approved.
6. The Resolution Professional filed CA No. 556/C-III/ND/2020 under Section 60(5) of the IBC, 2016 for appointment of one valuer for each class of assets instead of two valuers for each class of assets as specified in Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred as "CIRP Regulations, 2016") which was allowed vide Order dated 24.01.2020. In compliance of the Order the resolution Professional terminated the assignment of two valuers and retained Mr. Pramod Shakargaye (Plant & Machinery) and Ms. Nisha Malpani (Securities and Financial Assets).
7. The Resolution Professional submitted that the Corporate Debtor has received an Income Tax refund on 31.12.2019 amounting to Rs. 2,58,870/- for the assessment year 2019-2020. Further, the Resolution Professional stated that the Ex-director, Mr. Mukul Chaudhary orally intimated that he has initiated talks of settlement with HDFC Bank Limited and Bajaj Finance Limited which are at final stage and a settlement letter will be issued to him at the earliest.
8. The 4th Meeting of the CoC was convened on 20.02.2020 and the following resolutions were placed before the CoC for their approval:

“Resolved that a professional fee of Rs. 30,000 plus GST on account of fee of valuers appointed by the resolution professional in compliance of Regulation 35 of CIRP Regulations, 2016 be and is hereby approved.”

“Further Resolved that above shall form part of CIRP cost as defined under Section 5(13) of the Insolvency & Bankruptcy Code, 2016 would have priority as prescribed under Section 30 (2) (a) of the Code as well as in liquidation as prescribed under Section 53 of the Code.”

“Resolved that legal professional fee of Rs. 15,000 plus filing fee plus GST of Ms. Kajal Bhatia, Advocate in the matter of Chemlinker Tradex Private Limited be and is hereby approved.”

“Further Resolved that above shall form part of CIRP cost as defined under Section 5(13) of the Insolvency & Bankruptcy Code, 2016 would have priority as prescribed under Section 30 (2) (a) of the Code as well as in liquidation as prescribed under Section 53 of the Code.”

“Resolved that consent of the CoC of the Chemlinker Tradex Private Limited be and is hereby accorded for selling of Vehicle (Hypothecated to HDFC Bank Limited and other small value items in manner discussed in the CoC meeting).”

“Resolved further that HDFC bank Limited, upon realization of amount from sale of vehicle, be and is hereby agreed to remit the same into bank account of corporate debtor.”

“Resolved further that resolution professional be and is hereby agreed to not to use these funds without approval of CoC in this regard.”

The CoC voted with 73.22% of voting share in favour of the resolutions. Thus, the above-mentioned resolutions stood passed.

9. It is submitted by the Resolution Professional that on 04.03.2020, vehicle belonging to the Corporate Debtor has been sold at Rs. 7.41 Lakhs and other small items have been sold on 16.03.2020 at Rs. 0.21 Lakhs.

10. The 5th Meeting of the CoC was convened on 18.03.2020, wherein the following agenda items were placed before CoC for its consideration and approval:

“Resolved that consent of the CoC be and is hereby accorded for filing necessary application u/s 33(2) of the Insolvency and Bankruptcy Code, 2016 to liquidate M/s. Chemlinker tradex Private Limited.”

“Resolved that consent of the COC be and is hereby also accorded for appointment of a legal professional to file necessary application in the above matter and to plead the same before the Hon’ble NCLT.”

“Resolved that fee of the legal professional shall have priority as prescribed under Section 30 (2) (a) of the Code as well as in liquidation as prescribed under Section 53 of the Code.”

The CoC voted with 73.22% of voting share in favour of the resolutions. Thus, the above-mentioned resolutions stood passed.

11. In compliance to the Order dated 13.07.2020 the Resolution professional has filed an Affidavit wherein it is deposed that the distribution of funds is done as per Section 53 of IBC, 2016 and that no balance is left in the account of the CD. It is further stated that the unsecured financial creditor could not be paid in full and the Operational creditor *M/s Fairway Trading Company Private Limited* could not be paid anything.

12. Therefore, upon the recommendation of the CoC, and the fact that no assets of the CD are remaining for realization, this Authority after perusal of the documents annexed with the application deems it fit to order to **dissolve** the Corporate Debtor.

ORDER

13. In view of the facts and circumstances recorded by the Resolution Professional in IA No- 2227/2020 filed in CP/IB/1148/ND/2019, and in exercise of the powers conferred under Section 54 (2) of the IBC, 2016, R/w Regulation 14 of IBBI (Liquidation Process) Regulations, 2016 this authority proceeds to pass Dissolution Order in relation to **Chemlinker Tradex private Limited**, the CD as follows:-

- I. It is declared that not only on the ground of just and equitable, also because of the fact that no assets of the CD are available for the purpose of 'Liquidation' as reported by the Resolution Professional, the Corporate Debtor deserves to be dissolved as prescribed U/s 54 of the IBC, 2016.
- II. Thus, the Corporate Debtor stands '**Dissolved**' from the date of this Order i.e. 17.08.2020.
- III. Copy of this Order shall be forwarded within 7 (Seven) days to the concerned authorities and the Registrar of Companies having jurisdiction for further necessary action as prescribed under law.
- IV. The Corporate Debtor stands Dissolved vide this Order and no proceedings are now pending, therefore, the Registry is directed that the case file be consigned to records.

14. Accordingly, IA-2227/2020 filed in CP/IB/1148/ND/2019 stands **allowed** and the main CP is disposed of.

15. This Order is pronounced.


(NARENDRA KUMAR BHOLA)
MEMBER (TECHNICAL)


(CH. MOHD SHARIEF TARIQ)
MEMBER (JUDICIAL)