

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD  
Court 2**

**IA 376 of 2020 in CP (IB) No. 60/NCLT/AHM/2019**

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL  
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 24.09.2020**

Name of the Company: Chandra Prakash Jain RP For Khushbu  
Vinyl Pvt Ltd

Section 33(1),33(2),34(1) of IBC, 2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER**

**(through video conferencing)**

Advocate, Ms. Krina Parekh appeared on behalf of advocate, Mr. Arjun Sheth for the Applicant.

The Order is pronounced in the open court vide separate sheet.



**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

Dated this the 24th day of September, 2020



**MANORAMA KUMARI  
MEMBER JUDICIAL**

**BEFORE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**IA No. 376 of 2020  
&  
IA No. 570 of 2020  
In  
C.P.(IB) No. 60/NCLT/AHM/2019**

**In the matter of:**

Chandra Prakash Jain  
Resolution Professional of Khushbu Vinyl Pvt.  
Registered Office at:  
D-501, Ganesh Meridian,  
Opp. High Court.  
S.G Highway, Ahmedabad-380 060.

....Applicant  
(Resolution Professional)

**And in the matter of:**

Positive Point Graphics Private Limited

.... Petitioner

**Versus**

1. Chandra Prakash Jain  
Resolution Professional of Khushbu Vinyl Pvt.

2. Committee of Creditors of Khushbu Vinyl Pvt.

.... Respondents

**Order delivered on 24<sup>th</sup> September, 2020**

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)  
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

**Appearance:** Learned Lawyer, Mr. Arjun Sheth appeared on behalf of RP. Advocate, Mr. Kuldeep Adesara appeared on behalf of Committee of Creditors. Advocate Mr. Monaal J. Davawala for Applicant.

**COMMON ORDER**

**[Per se: Ms. Manorama Kumari, Member (J)]**

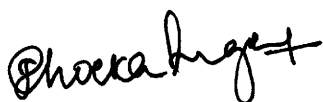
**IA 376 of 2020**

*Chockalingam*

*Manor*

**IA No. 376 of 2020**  
**&**  
**IA No. 570 of 2020**  
**In**  
**C.P.(IB) No. 60/NCLT/AHM/2019**

1. The instant application is filed by the RP under section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IB Code") in Company Petition (IB) No. 60 of 2019 for liquidation of the Corporate Debtor.
  
2. The facts of the case are stated herein:
  - 2.1 CP(IB)No. 60 of 2019 was filed by Financial Creditor viz., Bank of India under Section 7 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Corporate Debtor. The said Application was admitted by this Adjudicating Authority vide its Order dated 19.07.2019 and appointed Mr. Chandra Prakash Jain as Interim Resolution Professional (hereinafter referred as "IRP") of the Corporate Debtor and further continued as RP.
  
  - 2.2 After the last date of submission of EOI, one M/s Shreenathji Rasayan Pvt Ltd on 13.01.2020 came with a resolution plan. As such, CoC members in its Sixth Meeting held on 13.01.2020, decided to apply for extension of CIRP period for further 90 days beyond 180 days as the 180 days were completing on 22.01.2020. The application for extension of time was allowed by this Adjudicating Authority vide its order dated 24.01.2020.
  
  - 2.3 On perusal of the record, it is found that the 9th meeting of the COC was held on 22.06.2020, wherein, CoC decided to liquidate the Corporate Debtor as no EOI was received in respect of the Corporate Debtor and directed the RP to file an application for Liquidation as per the provisions of the IB Code for liquidation of the Corporate Debtor. The Resolution for appointment of Liquidator was also passed with 100% voting unanimously by COC in the 9th COC Meeting. The written consent of Liquidator, namely, **Mr. Vinod Tarachand Agrawal [Registration No. IBBI/IPA-001/IP-P00641/2017-18/11090]** is in **Annexure-K** at page no. 67-68 of the application.





3. Heard the applicant and also seen the records, it is found that no viable Resolution Plan has been received by the RP and the situation post COVID-19 is depressing. Therefore, the CoC has resolved for liquidation of the Corporate Debtor vide its 9th CoC meeting held on 22.06.2020. It is also to be noted that this Adjudicating Authority has no jurisdiction to interfere in the commercial wisdom of the CoC as observed in **K. Sasidhar's** case and subsequently also reiterated by Hon'ble Supreme Court of India in its judgement passed in **Civil Appeal No.8766-67 of 2019- Committee of Creditors of Essar Steel India Limited through Authorised Signatory vs. Satish Kumar Gupta & Ors** observed as follows:

*"The commercial wisdom of the Committee of Creditors cannot be interfered into by the Adjudicating Authority. The Hon'ble Supreme Court affirmed K. Sashidhar's judgement that neither the Adjudicating Authority nor the Appellate Authority has been endowed with the jurisdiction to reverse the commercial wisdom of the CoC.*

*The Hon'ble Supreme Court took the view that the commercial wisdom has been exercised by the CoC after taking into count all the factors leading to maximisation of asset value of the Corporate Debtor, but the ultimate discretion of what to pay and how to pay each class or sub-class of creditors lies with the CoC."*

4. Under the facts and circumstances as narrated above, we pass the following orders:
- a) The moratorium declared under Section 14 of the IB Code shall cease to have effect from the date of the order of liquidation.
  - b) The Liquidator is further directed to issue public announcement stating that the Corporate Debtor is in liquidation.





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- c) The Liquidator is required to send certified copy of this order to the authority with which the Corporate Debtor is registered.
- d) Subject to Section 52 of the IB Code, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
- e) This Authority makes it clear that para (d) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
- f) The Order 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.
- g) 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 with the Company Liquidator. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the IB Code, 2016, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- h) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- i) The Company Liquidator shall be entitled to charge such fee for the conduct of the liquidation proceedings in such a proportion to the value of the liquidation estate assets as may be specified by the Board.
- j) The Registry is directed to communicate this order with immediate effect to the concerned Registrar of Companies, registered office of the Corporate Debtor and Company Liquidator for information and compliance





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5. In view of the above, the instant IA 376 of 2020 in CP(IB) 60 of 2019 so filed by the RP under Section 33 of the IB Code, 2016 is allowed and the Adjudicating Authority passes an order for initiation of liquidation of the Corporate Debtor viz., M/s. Khushbu Vinyl Pvt Ltd. filed under Section 7 of the IB Code. The liquidator namely Mr. Vinod Tarachand Agrawal, shall act as the Liquidator for the purpose of liquidation of the Corporate Debtor.

**IA 570 of 2020**

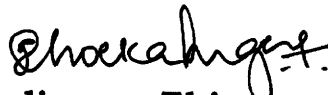
6. During the pendency of the above Liquidation application, the instant application is filed by one of the prospective Resolution Applicant under section 60(5) of the IB Code in Company Petition (IB) No. 60 of 2019 for condoning the delay in submitting the Resolution Plan and allowing the prospective Resolution Applicant to submit the Resolution Plan.
7. It is stated in the application that the prospective Resolution Applicant approached the RP for submission of EoI, which subsequently was rejected by the RP stating that the prospective Resolution Applicant was not eligible.
8. Thereafter, the prospective Resolution Applicant again submitted documents for its eligibility and on being found eligible, prospective Resolution Applicant requested the RP for details of EoI, RFRP documents and Information memorandum.
9. Thereafter, RP informed the prospective Resolution Applicant that the requested documents cannot be shared as a resolution for Liquidation of the Corporate Debtor was passed by the CoC with majority on 22.06.2020 and the application under Section 33 of the IB Code has been filed and is pending before the Adjudicating Authority for disposal.


*Shankar Singh*

*Adhikari*

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10. Heard the applicant and also seen the record, it is found that the prospective Resolution Applicant have come at a belated stage for submission of Resolution Plan. Moreover, CoC has already resolved for liquidation of the Corporate Debtor by majority voting share. Abiding by the judicial precedents on wisdom of CoC as mentioned above, we, the Adjudicating Authority, do not find any reason to condone the delay for submission of the Resolution Plan by the prospective Resolution Applicant at such belated stage and allow submission of Resolution Plan as the same will amount to revisit the total process when CIRP has already been completed.
11. Accordingly, IA 376 of 2020 is allowed and IA 570 of 2020 is rejected. Hence, both the IAs stands disposed of with the above observations.

  
**Chockalingam Thirunavukkarasu**  
**Adjudicating Authority**  
**Member(Technical)**

  
**Manorama Kumari**  
**Adjudicating Authority**  
**Member(Judicial)**

SA/ Shreya