

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I**

IA No. 2856 of 2021 IN CP (IB) No. 2675/2019

Under Section 33(1) & Section 60(5) of the Insolvency
and Bankruptcy Code, 2016.

In the matter of

MR. BIRENDRA KUMAR AGRAWAL

F-1901, Whispering Palms Xxclusive, LOkhandwala
Township, Akurli Road, Kandivali (East) Mumbai -
400101

.....Financial Creditor

Vs

VYAS MERCANTILE PRIVATE LIMITED

402, Corporate Annex, Sonawala Road, Near Udyog
Bhawan, Goregaon (East), Mumbai -400063

.....Corporate Debtor

Order Delivered on: **21.07.2023**

Coram:

Hon'ble Member (Judicial) : Mr. Kishore Vemulapalli

Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Applicant : Ms. Bindu Bhatia, Advocate

ORDER

Per: Anu Jagmohan Singh, Member (Technical)

1. An application to initiate Corporate Insolvency Resolution Process against the Corporate Debtor was filed by the Operational Creditor under section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the said Application was admitted by this Tribunal at Mumbai Bench vide order dated 16 March 2021, wherein Mr. Ankur Kumar (Regn. No. IBBI/IPA-002/IPN00113/2017-18/10283) was appointed as the Interim Resolution Professional (“IRP”) of the Corporate Debtor. A copy of the order dated 16 March 2021 is annexed and marked as **Exhibit – “A”**.
2. The Applicant states that Form-A i.e. public announcement was made inviting claims from the creditors of the Corporate Debtor was published in Pratahkal (Marathi language) and Financial express (English language) on 08 April 2021. The said form-A i.e. public announcement inviting claims from the creditors of the Corporate Debtor was uploaded on the website of Insolvency & Bankruptcy Board of India on 08 April 2021 and the last date for submission of claims with the IRP was 19 April 2021.

3. The Applicant states that after collating and verifying the claims received from the creditors of the Corporate Debtor, the Applicant constituted the Committee of Creditors (“**COC**”) as required under section 21(1) of the Code and accordingly the list of Creditors and report constituting COC as per Regulation Process for Corporate Persons) Regulations, 2016.
4. The Applicant states that the COC in its first meeting held on 05 May 2021 *inter-alia* appointed the Applicant herein as the Resolution Professional (“**RP**”) of the Corporate Debtor.
5. The Applicant states that the second COC meeting was held on 20 May 2021, when the Applicant informed the Committee that as per Regulation 36A of the CIRP Regulations Form-G inviting Expression of Interest (“**EOI**”) from Prospective Resolution Applicant (“**PRA**”) is required to be issued / published. The Applicant states that the Committee in the said meeting finalized the eligibility criterion of PRA and accordingly authorized the Applicant herein to publish Form - G for inviting EOI from the PRA. Subsequently, Form – G was published in two newspapers i.e. Pratahkal (Marathi Edition) and Business Line (English Edition) on 21 May 2021 for inviting EOI’s from the PRA.

6. The applicant states that in the said second meeting of COC held on 20 May, 2021 the applicant further apprised the Committee that Mr. Abhishek Jagdish Prasad Gupta and Ms. Shailja Gupta, the Registered valuers have been appointed to determine the fair value and the liquidation value of the Corporate Debtor on 10 May, 2021. The applicant apprised the Committee that M/s. Rohan Yadav & Company, Chartered Accountants have been appointed as the transaction auditor to submit their report on transaction, if any undertaken by the Corporate Debtor under Section 43,45,49,66 of the code.
7. The applicant states that in the third meeting of COC held on 18 June 2021, the Applicant informed the Committee that the Transaction Auditor M/s. Rohan Yadav & Company have submitted the transaction audit report dated 02 June 2021 as per the said report no Preferential transactions (section 43), Undervalued transactions (section 45), Extortionate creditor transactions (Section 50) and Fraudulent transactions (section 66) have been carried out by the Corporate Debtor during the two years preceding the CIRP commencement date of the Corporate Debtor.
8. The Applicant further states that in the third meeting of COC held on 18 June 2021, the Applicant informed the Committee about the

publication of Form G in the newspaper on 21 May 2021 and on the IBBI website. The Applicant also informed the Committee that last date for submitting the EOI by the PRAS was 05 June 2021, however, except few enquiries from the investors, no formal EOI was received by the Applicant till the last date of submission of EOI ie. 05 June 2021. Thereafter, the COC advised the Applicant to communicate with the investors who have enquired and also with other investors to explore the possibility of getting the resolution plan.

9. The Applicant in the fourth meeting of COC held on 25 July 2021 informed the Committee that the Applicant had communicated with the investors who had enquired as well as with the other investors in order to explore the possibility of obtaining the resolution plan, however, no formal EOI was received from the PRA till 25 July 2021.
10. The Applicant in the said meeting also informed the Committee that the CIRP period of 180 days of the Corporate Debtor is set to expire on 02 October 2021, hence the Committee may either advise on publication of fresh Form - G or decide on the liquidation of the Corporate Debtor upon completion of CIRP period of 180 days period. Thereafter, upon having detailed discussion, the Committee was of the view that since there are no operations being carried out by the Corporate Debtor, no recovery has been made from the debtors

of the Corporate Debtor and that there are no prospects of EOI or resolution plan, therefore, the Corporate Debtor may be liquidated. However, the Committee in the said meeting advised the Applicant to obtain the fair value and liquidation value of the Corporate Debtor so that the Committee may either consider extending the CIRP period for again issuing form-G or initiate liquidation proceedings against the Corporate Debtor under Section 33(2) of the Code.

11. The Applicant states that in the fifth meeting of COC held on 23 September 2021, the Applicant informed the Committee that Mr. Abhishek Jagdish Prasad Gupta and Ms. Shailja Gupta, Registered valuers for Securities or Financial Assets of the Corporate Debtor have submitted their final valuation report dated 22 July 2021 and 29 July 2021 respectively.
12. The Applicant states that in the said fifth meeting of COC held on 23 September 2021, the Committee observed that there are no prospects of revival of the Corporate Debtor as no formal EOI was received from the PRA/ investors till date and since no operations were being carried out by the Corporate Debtor and also due to Covid-19 Pandemic, the chances of receiving the EOI were bleak, therefore the Corporate Debtor may be liquidated as per Section 33(2) of the Code. The Applicant then briefed the Committee about the relevant

provisions laid down under the Code alongwith the Regulations apropos the initiation of the Liquidation proceedings against the Corporate Debtor.

13. The Applicant states that in the said fifth meeting of COC the RP also informed the Committee that due to various ongoing assignments he may not be able to act as the Liquidator of the Corporate Debtor. Thereafter upon having due deliberation, the COC proposed the name of Mr. Sachin Dharmendra Jain (Registration No. IBBI/IPA-001/IP-P-02327/2020-2021/13482) being eligible to act as the Liquidator of the Corporate Debtor.
14. Thereafter, the Committee in its fifth meeting passed the following resolution to initiate the liquidation proceedings of the Corporate Debtor through physical voting and resolved to appoint Mr. Sachin Jain as the Liquidator. The minutes of the 5th CoC meeting are annexed to the Application as “Exhibit-C”
15. In the aforesaid circumstances, we hereby order the Liquidation of the Corporate Debtor with directions as follows:
 - a) The Corporate Debtor (i.e. **VYAS MERCANTILE PRIVATE LIMITED**) shall be liquidated in the manner as laid down in Chapter-III of the Code.

- b) **Mr. Sachin Dharmendra Jain**, an Insolvency Professional (IBBI RegistrationNo. **IBBI/IPA-001/IP-P-02327/2020-2021/13482**, is appointed as the Liquidator of the Corporate Debtor.
- c) The fees payable to the Liquidator shall be in accordance with Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d) The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate here from.
- e) Liquidator shall issue public announcement stating that Corporate Debtor is in liquidation.
- f) The Liquidator shall endeavour to sell the Company as a going concern during the liquidation in terms of Regulation 32A of the Liquidation Process Regulations. In case he is not able to do so within a period of 90 days from this date, he shall proceed in accordance with clauses (a) to (d) of Regulation 32 of the Liquidation Process Regulations.
- g) Subject to section 52 of the IBC 2016 no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however 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.

- h) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- i) The liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.
- j) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- k) The Liquidator shall submit progress reports as per Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- l) The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.
- m) This 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.

n) Copy of the Order shall be furnished to the Insolvency and Bankruptcy Board of India, New Delhi; Regional Director (Western Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Maharashtra, the Registered Office of the Corporate Debtor; and the Liquidator.

16. With the aforesaid observations and directions, the Interlocutory Application bearing **IA No. 2856 of 2021**, stands disposed of as **Allowed**.
17. Ordered Accordingly.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

21.07.2023

Jagdish

Sd/-

KISHORE VEMULAPALLI
MEMBER(JUDICIAL)