



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

I.A. 2863 OF 2022

Under Section 33(1)(a) of Insolvency &
Bankruptcy Code, 2016

Filed by

Naren Sheth

1014-1015, Prasad chamber,
Tata Road No. 1, (Opera House, Charni
Road(East), Mumbai: 400004.

...Resolution Professional/Applicant

In the matter of

CP (IB) No. 4658/MB/2019

State Bank of India

State Bank Bhavan, Madame Cama road,
Nariman Point, Mumbai, 400 021

...Financial Creditor/Petitioner

Versus

**M/s. Vijay Trading Company Private
Limited**

Flat No. 101, OG-III, Oberoi Garden,
Thakur Village Off Western Express
Highway, Kandivali (E), Mumbai: 400101

...Corporate Debtor



Order Delivered On: 25.11.2022

Coram:

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

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance: Mr. JVL Bharati, Advocate

ORDER

1. The above application is filed by **Naren Sheth**, Resolution Professional, (hereinafter referred to as the "**Applicant**") seeking liquidation of **M/s. Vijay Trading Company Private Limited** (hereinafter referred to as the "**Corporate Debtor**") under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "**the Code**"), praying for following reliefs:

- a. That this Hon'ble tribunal maybe pleased to pass an order under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 for the commencement of the liquidation process of the Corporate Debtor.*
- b. This Hon'ble Tribunal maybe pleased to appoint the Applicant as Liquidator to conduct the Liquidation Process of the Corporate Debtor.*
- c. That this Hon'ble Tribunal pass such further and other and directions as the nature and directions as the nature and circumstances of the case may require and this Hon'ble Tribunal may deem fit and proper in the interest of justice.*



2. The brief facts of the application are as follows:

- A. That this tribunal vide an order dated 28.03.2022 in Company Petition No. (IB) 4658 of 2020, admitted the Petition under Section 7 of the Code, filed by State Bank of India (hereinafter referred to as the “**Financial Creditor**”) and Corporate Insolvency Resolution Process (hereinafter referred to as the “**CIRP**”) was initiated M/s Vijay trading Company Private Limited (hereinafter referred to as the “**Corporate Debtor**”). The Applicant herein was appointed as the Interim Resolution Professional, (hereinafter referred to as the “**IRP**”) of the Corporate Debtor.
- B. Applicant submits that a Public announcement in Form-A was made on 23.04.2022 in two newspapers viz Laksdeep (Marathi newspaper) and Active Times (English newspaper).
- C. On 12.05.2022 during the 1st meeting of the Committee of Creditors (hereinafter referred to as the “**CoC**”) the Applicant was appointed as the Resolution Professional, which is approved by 100% members voting in favour of the same.
- D. During the 2nd COC meeting held on 28.06.2022, through video conferencing the Applicant published Form G on 01.07.2022, for inviting the Expression of Interest via two newspapers i.e. the Lakshdeep being a Marathi newspaper and Active Times being a English newspaper. As per the Form G, the timeline for submission of Expression of Interest (hereinafter to as “**EOI**”) was up to 22.07.2022.



- E. It is further submitted in the 2nd CoC by RP that, there is a common asset, land shared by M/s Vindhya Vasini Corporation Pvt. Ltd. (which is also under CIRP) and there is no demarcation between the areas owned by the two companies separately. It is also stated that, as per the records, the Company has no other asset. Furthermore, the Suspended Directors has not informed of any asset. Moreover, the CBI has already arrested the promoters/directors as per the complaint given by SBI.
- F. The Applicant submits that, in the 3rd meeting of CoC held on 29.07.2022 has appraised CoC members about not receiving any EOI, hence there is no chance of submitting a Resolution Plan before 29.08.2022 as per FORM G. Pursuant to which, the CoC directed the Applicant to put before the next CoC meeting, all the necessary requiring approvals for Liquidation of the Corporate Debtor as there is no business in the Company and also there is no possibility of Resolution Plan.
- G. The Applicant further submits that the CoC in its 4th meeting dated 17.08.2022, wherein the CoC members unanimously agreed and decided in their best commercial wisdom to go for Liquidation of the Corporate Debtor there was no Resolution Plan and accordingly requested the Applicant to put up a resolution for Liquidation. Accordingly, the following resolution was placed before the CoC for e-voting:



“RESOLVED THAT Pursuant to the provisions of Section 33(2) of Insolvency and Bankruptcy Code 2016, the approval of Committee of Creditors of VIJAY TRADING COMPANY PRIVATE LIMITED be and is here by accorded to liquidate the Corporate Debtor.”

The above resolution was put to vote and passed with 100% majority of the CoC members

- H. The Applicant further submits that, in the said meeting, the CoC members have decided unanimously and resolved to appoint the Applicant as the Liquidator to conduct liquidation process of the Corporate Debtor and accordingly following resolution were passed:-

RESOLVED FURTHER THAT, Pursuant to the Section 34(1) of the Insolvency and Bankruptcy Code 2016, read with Regulation 3 of IBBI (Liquidation Process) regulations, 2016 and subject to approval of the Adjudicating Authority, consent of Committee of Creditors be and is hereby accorded for appointment of Mr. Naren Sheth, Insolvency Professional, IBBI/IPA-001/IP-P00133/2017-18/10275

Resolution professional of the Corporate Debtor (VIJAY TRADING COMPANY PRIVATE LIMITED) as Liquidator to carry out the liquidation process of the Corporate Debtor.



RESOLVED FURTHER THAT, *During the liquidation period Liquidator Fee Structure given in Regulation 4 of IBBI (Liquidation Process) Regulations, 2016, However as a part of Liquidator Fee, liquidator may charge the equivalent amount of Rs. 1500 per month plus GST@18% and adjust the same against fees structure given in Regulation 4 of (Liquidation Process) Regulations 2016.*

The said resolution was passed with 100% majority of the CoC members.

- I. Heard the Counsel appearing for the Resolution Professional and perused the material available on record. The Counsel for the Resolution Professional submits that no Resolution Plan has been received and there is no option except to put the Corporate Debtor Company into Liquidation as per the Code as well as also to protect the asset of the Corporate Debtor from further deterioration. Since the COC with a required mandate of 100% voting approved for Liquidation of the Corporate Debtor in view of not getting any Resolution Plans, this Tribunal has very limited judicial review in such matters of commercial wisdom and therefore this Bench has no option except to allow the above Liquidation Application. The Counsel appearing for the Applicant also filed consent letter dated 03.08.2022 of Resolution Professional, Mr. Naren Sheth to act as the Liquidator. In view of the above facts, this Bench feels that this is a fit case for ordering Liquidation as going concern of the Corporate Debtor.



Accordingly, the Interlocutory Application Number 2863 of 2022 is allowed directing Liquidation of the Corporate Debtor. Accordingly, we pass the following:

ORDER

The above **I.A. No. 2863 of 2022** is allowed and the Corporate Debtor **Vijay Trading Company Private Limited** is ordered to be liquidated as a **going concern**.

- a. **Mr. Naren Sheth**, having Registration No. **IBBI/IPA-001/IP-P00133/2017-18/10275** and having office at: 1014-1015, Prasad Chamber, Tata Road No. 1, (Opera House, Charni Road(East), Mumbai: 400004, 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.

With the above directions, this application i.e. I.A. No. 2863 of 2022 is hereby allowed and disposed of.

SD/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)