

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

I.A. 1237 of 2021

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

Mr. Fanendra H. Munot

..... Resolution Professional/
Applicant

I.A. 862 of 2022

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

Ahmednagar Merchant's Cooperative Bank
Limited

...Applicant

Vs.

Fanendra H. Munot

..... Resolution Professional

In the matter of

C.P.(IB) No. 3215/MB/2019

Ahmednagar Merchant's Cooperative Bank
Limited

..... Financial Creditor

Vs.

Shree Ganesh Stampings Private Limited

..... Corporate Debtor

Order delivered on: 06.09.2022

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant/RP : Mr. Kunal Chheda Counsel for
the RP, Ms. Bushra Dadnak i/b
Mr. Aniket Sharma, Ld. Counsel
for the Intervenor.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

I.A. 1237 of 2021

1. The above Application is filed by Mr. Fanendra H. Munot Resolution Professional, seeking liquidation of Shree Ganesh Stampings Private Limited, (hereinafter referred as “Corporate Debtor”) under Section 33(1) (a) and 34(1) of Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”).
2. That this Tribunal vide an order dated 06.12.2019 in Company Petition No. 3215 of 2019 admitted the Petition under Section 7 of the Code, filed by Ahmednagar Merchant’s Co-Operative Bank Limited (hereinafter referred to as the “Financial Creditor”) and Corporate Insolvency Resolution Process (CIRP) was initiated against Shree Ganesh Stampings Private Limited, (hereinafter called as the “Corporate Debtor”). The Applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor by this Tribunal vide this Order.
3. Counsel for the Applicant submits that the period of 180 days from 06.12.2019 was concluding on 02.06.2020. However, in

light of lockdown imposed by the Central Government in view of COVID-19 outbreak on 25.03.2020, the period from 25.03.2020 till relaxation of the lock-down was automatically excluded from the time line. The inter-district travel was restricted till 09.09.2020, and was partially relaxed thereafter. After exclusion of lock down period i.e 219 days, the period of 180 days was concluded on 10.01.2021.

4. The Applicant submits that, Form-G was published on 24.02.2020 for invitation of Expression of Interest (EOI). Later on, fresh Form-G was published by the RP for invitation of Expression of Interest (EOI) on 14.09.2020 and 23.11.2020.
5. The Applicant/ RP submits that, the EOI had received from three Applicants. However, only one Applicant submitted the Resolution Plan. The Resolution Applicant/ Promoter Mr. Anil Sali submitted the Resolution Plan which was rejected due to non-eligibility. The Resolution Plan was rejected by the CoC and resolution for Liquidation was passed with 100% voting in favour of liquidation.
6. The Applicant further submits that the Committee of Creditors of the Corporate Debtor in its 6th Meeting held on 12.03.2021 resolved to liquidate the Corporate Debtor in order to avail the maximum realization value of the assets of the Corporate Debtor. In the said meeting, it was also resolved to appoint the Applicant/ RP as the Liquidator of the Corporate Debtor. The relevant extract of the Resolution passed in the 6th Meeting is reproduced hereunder:

“RESOLVED THAT the approval of the Committee of Creditors is hereby accorded for liquidation of the Corporate Debtor.

FURTHER RESOLVED THAT Mr. Fanendra Munot, the Resolution Professional of Corporate Debtor, be and is hereby authorised to take the necessary steps to file an Application with the NCLT, Mumbai Bench to obtain it’s approval for the same.”

7. Heard the arguments of the Counsel appearing for the Applicant and perused the material available on record. It is observed from the minutes of the 6th CoC meeting dated 12.03.2021 that the COC has, with 100% majority, decided to liquidate the Corporate Debtor and relying on the settled principle of law regarding the Commercial Wisdom of the COC.
8. I.A. 1237/2021 filed by the Applicant/ RP for Liquidation of the Shree Ganesh Stampings Private Limited.
9. Mr. Fanendra Munot, having Registration No. IBBI/IPA-001/IP-0515/2017-18/10916 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
10. 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.
11. 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.

12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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 being I.A. No. 1237 of 2021 is hereby **allowed** and **disposed of**.

I.A. 862/2022

1. The above Application is filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 by Applicant (Ahmednagar Merchant's Co-operative Bank Limited) for seeking change the Resolution Professional as Liquidator.
2. The Applicant submits that the Resolution of the Corporate Debtor could not be achieved. Therefore, resolution for liquidation of Corporate Debtor was passed in one of the meetings of Committee of Creditors wherein resolution for appointment of Mr. Fanendra Munot as Liquidator was also passed.
3. The Applicant submits that the Resolution Professional Mr. Fanendra Munot had filed an Application for liquidation of Corporate Debtor bearing I.A. No. 1237/2021 which was listed for hearing on 20.04.2022.
4. The Applicant was of an opinion that the Corporate Insolvency Resolution Process of Corporate Debtor is not done in satisfactory manner, therefore, it requested the Resolution Professional to call up a meeting of Committee of Creditors to consider proposal of another Liquidator in place of the Resolution Professional for the Liquidation. The meeting of

Committee of Creditors was called upon on 04.03.2022 for appointment of another Liquidator in place of Mr. Fanendra Munot in the said meeting (8th COC Meeting) the Resolution Professional stated that he does not have any objection for appointment of another person as liquidator.

5. Heard the Counsel for the Applicant in the matter. To appoint another Liquidator, Section 34 of the Code provides three grounds in which another Liquidator can be appointed. Section 34 is as follows:

“34. (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 1[Chapter-II 2[or for the pre-packaged insolvency resolution process under Chapter III-A] shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form,] act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under subsection (4).

(2) On the appointment of a liquidator under this section, 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 in the liquidator.

(3) 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 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.

(4) The Adjudicating Authority shall by order replace the resolution professional, if—

(a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or
(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded 3[in writing; or]
4[(c) the resolution professional fails to submit written consent under sub-section (1).]
(5) For the purposes of 5[clause (a) and (c)] of sub-section (4), the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator.”

6. This Bench is therefore of the considered view that the provisions of Section 34(4) are mandatory in nature and if not complied with, another Liquidator cannot be appointed. Hence, the Resolution Professional in the matter has to be appointed as Liquidator in liquidation process as the COC in its meeting has given no reasons in writing for the replacement of a resolution professional as required by S.34(4)(b).
7. In view of the above, this Bench finds no reason to appoint another Liquidator and hence, I.A. 862 of 2022 is rejected and **disposed of.**

Sd/-

MANOJ KUMAR DUBEY
Member (Technical)

06.09.2022

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)