

**BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

MA 17 of 2018 in C.P. (I.B) No.135/NCLT/AHM/2017

**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 19.12.2019**

Name of the Company: Abhay N Manudhane RP of
Vimal Oil & Foods Ltd.
V/s
Vimal Oil & Foods Ltd.

Section of the Companies Act : Section 33(1)(a) of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	ANIP GANDHI RANU KATHARI	ADY.	RES-	Mr
2.	Chintan Sonwane with AKSHAT KHARE for Mason Le Exports	Adv.	IDBI	Chintan
3.	NOOPUR K. DALAL	ADV.	R.P.	NK Dalal

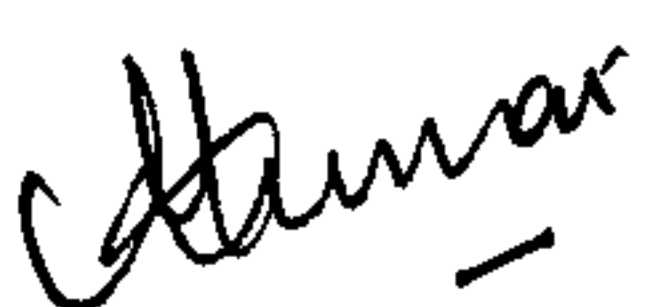
ORDER

The parties are represented through learned counsels.

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


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 19th day of December, 2019


MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

**M.A. No. 17 of 2018
&
IA No. 453 of 2018
in
CP(IB) No. 135 of 2017**

In the matter of:

MA 17 of 2018

Abhay N Manudhane,
RP of Vimal Oil & Foods Ltd.

...Applicant

in

Re. Vimal Oil & Food Ltd

...Corporate Debtor

IA 453 of 2018

Parixit Irrigation Ltd.

...Applicant

Versus

Shri Abhay Manudhane & Ors.

...Opponent

Order delivered on 19th December, 2019

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

Appearance: Advocates Mr. Anip Gandhi and Mr. Raju Kothari for Respondent.
Advocate Mr. Chintan Sonwane with Advocate Mr. Akshat Khare
for IDBI. Advocate Ms. Noopur K. Dalal for RP. Thakkar and
Pahwa Advocates for M/s. Parixit Irrigation Ltd.

ORDER

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

1. The Applicant, the Resolution Professional (hereinafter referred as "RP") of the Corporate Debtor filed the instant MA No. 17 of 2018 in the aforesaid Company Petition (IB) No. 135 of 2017 for liquidation of the Corporate Debtor under section 33(1) (a) of the Insolvency and Bankruptcy Code,

Chockalingam

Manorama

2016 (hereinafter referred as "IB Code") and for the appointment of the Liquidator.

2. The facts of the case are stated herein:

- 2.1 CP(IB)No. 135/2017 filed by Financial Creditor, Bank of Baroda against the Corporate Debtor Vimal Oil & Foods Ltd under Section 7 of the IB Code seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") was admitted by this Adjudicating Authority vide its Order dated 19.12.2017 and appointed Mr. Abhay N Manudhane as Interim Resolution Professional (hereinafter referred as "IRP") of the Corporate Debtor.
- 2.2 It is stated in the application that Committee of Creditors (hereinafter referred as "CoC") in its First Meeting held on 22.01.2018 decided for continuation of the IRP as RP.
- 2.3 It is stated by the applicant that RP has received six EoIs after the public advertisement, out of which only four Resolution Plans were found eligible. It is further stated that Resolution Plan submitted by M/s. Parixit Irrigation Ltd., one out of the four Resolution Applicant, was found higher in offer value by the RP. The CoC informed the representatives of M/s. Parixit Irrigation Ltd. that their plan will approved if they increase the offer by 15%. The representatives of M/s. Parixit Irrigation Ltd. agreed for the same and revised the plan. Similar process of suggestions of CoC and revision of Resolution Plan took place in subsequent CoC meetings. Further, RP also got the extension of 90 days' time beyond 180 days vide order dated 19.06.2018 as the said period was expired on 16.06.2018.
- 2.4 Even after such extension of time, the revised Resolution Plan of M/s Parixit Irrigation Ltd. was rejected by CoC with 70.69% voting result. Since no Resolution Plan was approved, RP moved this application before the Adjudicating Authority for passing order under section 33(1) (a) of the IB Code for liquidation of the Corporate Debtor.
3. During the pendency of the application under Section 33 of IB Code, **one IA 453 of 2018** was filed by one of the Resolution Applicant viz., M/s Parixit Irrigation Ltd., whose plan was rejected, with the prayer to quash

Phoekahngay

and set aside the decision of CoC of rejecting the Resolution Plan submitted by the Applicant/Resolution Applicant and further direct the CoC to reconsider the Resolution Plan submitted by the Applicant/Resolution Applicant.

4. On perusal of the records, it is found that CoC took the Resolution Plan for fresh consideration however the same was rejected by 70.69% voting. Under such circumstances, this Adjudicating Authority is of the view that the 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 the 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. Sasidhar'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.

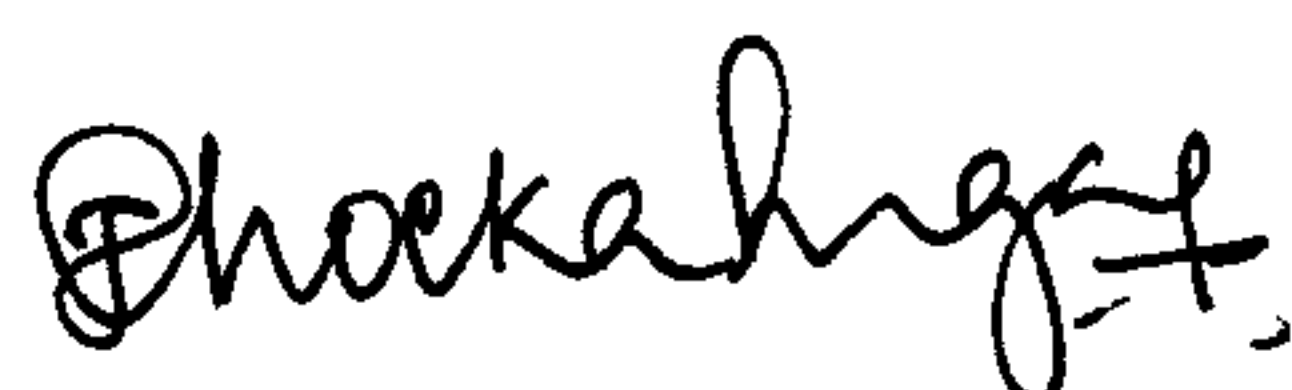
The Hon'ble Supreme Court took the view that the commercial wisdom has been exercised by the CoC after taking into count all the factors leading to maximisation of asset value of the Corporate Debtor, but the ultimate discretion of what to pay and how to pay each class or sub-class of creditors lies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

5. 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.

Shreekanth


Hanuman


- b) The Liquidator is further directed to issue public announcement stating that the Corporate Debtor is in liquidation.
- 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
6. Hence, the IA 453 of 2018 filed by the Applicant/ Resolution Applicant for direction upon CoC is dismissed and MA 17 of 2018 is allowed with above observations. The Adjudicating Authority passes an order for initiation liquidation of the Corporate Debtor viz., M/s Vimal Oil & Foods Limited under Section 33 of the IB Code, 2016. **Mr. Manoj Khattar (Reg. No. IBBI/IPA-002/IP-N00748/2018-2019/12264)** shall act as the Liquidator for the purpose of liquidation of the Corporate Debtor.
7. Accordingly, the instant IAs stands disposed of with the above observations.


CHOCKALINGAM THIRUNAVUKKARASU
Adjudicating Authority
Member Technical


MANORAMA KUMARI
Adjudicating Authority
Member Judicial

Shreya