

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

9. I.A. 222/2022

I.A. 155/2022

I.A. 32/2022

I.A. 2962/2021

I.A. 2935/2021

I.A. 2618/2021

IN

C.P.(IB)-3994(MB)/2019

CORAM: MS. SUCHITRA KANUPARTHI, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **14.02.2022**

NAME OF THE PARTIES: Vandana Enterprises Pvt Ltd

V/s

Varun Sacks Pvt Ltd

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Counsel for the Resolution Professional, Mr. Pramod Kumar Dokania along with Mr. Aninash Poddar and counsel for the Applicant, Mr. Ashish Verma are present through virtual hearing.

I.A. 155/2022

The above Application is filed by the Applicant for Liquidation of the Corporate Debtor Company. The above Application is allowed. Detailed order will follow.

List other pending applications on 23.03.2022.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Sd/-
SUCHITRA KANUPARTHI
Member (Judicial)

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

I.A. 155 OF 2022

IN

CP (IB) - 3994/MB/2019

Under Section 33 (2) of the Insolvency &
Bankruptcy Code, 2016

Filed by

Mr. Pramod Kumar Dokania

Resolution Professional for:

Varun Sacks Private Limited

...Applicant

In the matter of

**M/s Vandana Enterprises Private
Limited**

H. No. 321/A, Juni Oli, ZAL Compound,

Residency Road, Sadar, Nagpur,

Maharashtra - 440001

...Operational Creditor

Versus

Varun Sacks Private Limited

D-40, Industrial Area MIDC, Butibori,

Nagpur, Maharashtra - 441122

...Corporate Debtor

Order delivered on: 14.02.2022

Coram:

Hon'ble Ms. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance:

For the Applicant: Mr. Avinash Poddar (Advocate)

a/w Mr. Pramod Kumar Dokania (Resolution Professional)

1. The above application I.A. No. 155/2022 is filed by Resolution Professional, Mr. Pramod Kumar Dokania (hereinafter referred to as the “Applicant”) seeking liquidation of Varun Sacks 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. To pass order of liquidation of the Corporate Debtor; and/or*
- b. To pass appropriate orders for appointment of the applicant as the Liquidator for Corporate Debtor; and/or*
- c. Any such order and or other further relief as the Hon’ble Tribunal deems fit and proper in the interest of justice.*

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

- A. The Applicant mentioned that this Tribunal vide its order dated 29.07.2021 in Company Petition No. 3994/MB/2019 admitted the petition under Section 9 of the Code, filed by Vandana Enterprises Private Limited (hereinafter referred to as the “Operational Creditor”) and Corporate Insolvency Resolution Process (hereinafter referred to as the “CIRP”) was initiated against Varun Sacks Private Limited. Mr. Pramod Kumar Dokania was appointed as the Interim Resolution Professional (hereinafter referred to as the “IRP”) of the Corporate Debtor by this Tribunal vide Order dated 29.07.2021.
- B. It is further stated by the Applicant that on 05.08.2021 a public announcement was made inviting claims from the Creditors of the Corporate Debtor.
- C. On 01.09.2021, the 1st meeting of the Committee of Creditors (hereinafter referred to as the “CoC”) was convened. The IRP

was automatically promoted to Resolution Professional (hereinafter referred to as the “RP”) as per regulation 17(3) of the IBBI (Insolvency Regulation Process for Corporate Persons) Regulations, 2016, where the CoC fail to appoint a new RP within 40 days (07.09.2021) of the commencement of the CIRP (29.07.2021).

- D. The Applicant published Form-G on 09.10.2021 whereby the last date to submit EoI was 24.10.2021. Further a revised Form-G was published on 27.10.2021 and the last date for the submission of EoI was extended till 06.11.2021 whereby the last date for the submission of Resolution Plans was 17.12.2021.
- E. The Applicant states that two Prospective Resolution Applicants (hereinafter referred to as the “PRAs”) submitted their EoI by 06.11.2021 and also submitted the required Earnest Money Deposit (hereinafter referred to as the “EMD”). Thereby the Applicant did not receive any other EoI, the final list of PRAs was issued on 17.11.2021.
- F. Further the Resolution Plans along with all documents, undertakings and upfront payment was submitted by two PRAs:
- i) M/s S.C. Agarwal and
 - ii) Shri Vijay Bansilal Agrawal
- on 17.12.2021 to the Applicant.
- G. The Applicant further states that on 24.12.2021, 5th CoC meeting was conveyed whereby the Applicant presented the Resolution Plan submitted along with evaluation metrics score, financial projections and terms and conditions of the plan to the committee. The final proposal/decisions after negotiations with the Applicant and CoC, the final resolution

plan along with final financial offer was presented before the CoC for voting and the voting on Resolution Plan was open till 26.12.2021 but it was further extended till 06.01.2022.

- H. The Applicant states that both the Resolution Plans submitted by respective PRAs were rejected by the CoC with 100% voting against the Resolution Plan.
- I. The CoC in its 6th meeting which was held on 07.01.2022 decided to liquidate the Corporate Debtor as there was neither any EoI nor any Resolution Plan for further consideration. Therefore, the Committee of Creditors with 100% voting unanimously approved initiation of liquidation of the Corporate Debtor by passing the resolution. The relevant extract of the resolution is reproduced herein below for ready reference:-

- a. RP to file an application to liquidate the Corporate Debtor with the Adjudicating Authority-

“It is hereby resolved that the resolution professional will file application with AA for intimating decision of CoC to liquidate the CD and pray relief as mentioned.

It is also resolved that RP will refund the EMD money & upfront payment received from prospective resolution applicants as the resolution plan is rejected.”

- b. Mode of Liquidation and assessment of Sales as going concern as per regulations 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 –

“It is hereby resolved that Mode of Liquidation would be first to try and sell the CD as a going concern with complete set of Land and Building, Plant and Machinery and other assets and if due to some reason this could not be sold then sell it as different lots for Land and Building and 2nd Lot of Plant and Machinery.

This will be formulated by RP in consultation with stakeholders committee to be formed.”

- J. In the 6th CoC meeting, it was further approved that the Applicant will continue as Liquidator of the Corporate Debtor. The CoC also decided the fee payable to the Liquidator as 75% of the fee prescribed in table mentioned in Regulation 4(2)(b) of the IBBI (Liquidation process) Regulations, 2016. The relevant extract of the resolution is reproduced herein below for ready reference:-

“It is hereby resolved that Resolution Professional Pramod Kumar Dokania to continue to act as Liquidator of the company based on his written consent in Form AA received. Further his fee approved is 75% of the % Fee Prescribed under regulation 4(2)(b) of IBBI Liquidation Process) regulation 2016 payable as per realisation and distribution milestone. This does not include other costs like Public announcement fee, Advocate fee, E-Auction related expenses and other travel and out of pocket expenses which will be charged at actuals.”

- K. The Applicant further states that the CoC in the 6th CoC Meeting on 07.01.2022 took the following decisions with 100% voting in favour of the resolutions:

- a. To proceed with the liquidation of the corporate debtor.
- b. Resolution Professional to file application under Section 33(2) with the Adjudicating Authority to intimate the decision of the committee to liquidate the Corporate Debtor.
- c. To continue with the RP/Applicant Mr. Pramod Kumar Dokania as the liquidator of the corporate debtor. The CoC also decided on the fee payable to the liquidator. RP/Applicant has submitted consent

in Form-AA to the committee to act as Liquidator of the corporate debtor.

- d. To first try and sell the assets of the Corporate Debtor as going concern in one lot as the mode of liquidation. If not possible to sell as one lot then try and sell the assets in different lots.

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, it is observed from the minutes of the 6th CoC meeting that the CoC has with 100% majority decided to liquidate the Corporate Debtor as a going concern. The CoC has appointed the Applicant/Resolution Professional Mr. Pramod Kumar Dokania as Liquidator to carry on the process of Liquidation of the Corporate Debtor. The Applicant has agreed to act as Liquidator to carry on the process of Liquidation and given his consent to act as Liquidator. This bench, therefore allows the above Interlocutory Application Number 155 of 2022. Accordingly, we pass the following:

ORDER

1. The above I.A. No. 155/2022 is allowed and the Corporate Debtor Varun Sacks Private Limited is ordered to be liquidated as per the recommendation of the CoC as a going concern. However, again in accordance with the CoC recommendation, in the event this does not succeed than the Liquidator in Consultation with Stakeholders Committee may sell it in different lots of Land & Building and Plant & Machinery.
 - a. **Mr. Pramod Kumar Dokania**, having Registration No. IBBI/IPA-001/IP-P-01994/2020-2021/13062 and having office at: 54-1101, Future Towers, Amanora Park Town,

Hadapsar, Pune – 411028 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 75% of the % fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016, this does not include other costs like Public announcement fee, Advocate fee, E-Auction related expenses and other travel and out of pocket expenses which will be charged at actuals.
- 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 ceases 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. 155 of 2022 is hereby allowed and disposed of.

Sd/-

Chandra Bhan Singh
MEMBER (TECHNICAL)

Sd/-

Suchitra Kanuparthi
MEMBER (JUDICIAL)