



THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 2447/ND/2022

IN

Company Petition No. (IB) – 908/ND/2020

*Under Section 33(2) r/w Section 60(5) of the Insolvency
and Bankruptcy Code, 2016.*

In the matter of:

Orator Marketing Private Limited

.... Financial Creditor

VERSUS

Samtex Desinz Private Limited

..... Respondent/Corporate Debtor

And in the matter of:

Mr. Vimal Kumar

(Resolution Professional)

Reg No: IBB/1PA-002/IP-N00995/2022021/13236

G-10, 2nd Floor, Sector 63,

Noida, Gautam Budh Nagar

Uttar Pradesh - 201301

.... Applicant

I.A. 2447/ND/2022

In

(IB)– 908/ND/2020.

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CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

For the Applicant: Mr. Vimal Kumar, RP in person

ORDER

PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Order Pronounced on: 11.04.2023

1. This is an application filed under 33(2) read with section 60(5) of the Insolvency and Bankruptcy Code, 2016 (Hereinafter referred to as IBC, 2016/Code) for initiation of liquidation process of the Corporate Debtor

The applicant in the present application has prayed for the following reliefs: -

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- a) *Pass an order under Section 33(2) of IBC, 2016 requiring the Corporate Debtor to be liquidated in the manner as laid down under chapter III of the Code; and,*
- b) *Appoint the Applicant as Liquidator for the purpose of liquidation under Section 34(1) of IBC, 2016; and,*
- c) *Pass such other order/directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

2. The Applicant in the application has averred as follows:

- i. That the present Petition under Section 7 of the Code, for initiating CIRP filed by M/s Orator Marketing Pvt. Ltd. (hereinafter referred to as "Financial Creditor") against the Corporate Debtor namely Samtex Desinz Private Limited.
- ii. That, this Tribunal vide order dated 02.09.2021 allowed the application of the Financial Creditor and Appointed Vimal Kumar as the Interim Resolution Professional as proposed by the Financial Creditor.
- iii. That, public announcement was made on 11.09.2021 and IRP has constituted the Committee of Creditors (in short "COC") based upon the claims received by him and filed a Report certifying Constitution of Committee of Creditors



under Regulation 17(1) of Regulations, 2016 and List of Creditors under Regulation 13(2)(d) of the CIRP Regulation, 2016 vide Application bearing IA/4819/2019, which was taken on record by this Hon'ble Adjudicating Authority vide order dated 23.11.2021. It is stated that COC has been constituted in terms of Regulation 16 of the regulations, 2016, consisting of one (1) Financial Creditor, having 100% voting shared of COC.

- iv. That the first meeting of the COC of Corporate Debtor was held on 19.10.2021, in which, the member of CoC approved the appointment of IRP as Resolution Professional with 100% voting shares.
- v. It is submitted that the business/operations of the Corporate Debtor were shut down in the year 2020 and the registered office was also vacated by the Corporate Debtor, which was being run from a rented premises. Subsequent to the admission of the present petition, the bulky records of the Corporate Debtor were taken under control by the Applicant/RP and were shifted to a newly rented premises. Further, as per books of accounts of the Corporate Debtor,



there were several Debtors of the Corporate Debtor, from whom money was to be recovered. Given this, the Applicant/RP through his counsel sent Legal Demand Notice to Seventy Four (74) Debtors of the Corporate Debtor, whose addresses were available in the records. However, most of the Debtors of the Corporate Debtor claimed that the ledgers provided by the ex-management of the Corporate Debtor were either incomplete or wrong.

- vi. It is submitted that as per the decisions taken at the Fourth meeting of CoC, the Applicant/RP on 06.04.2022, in terms of Section 25(2)(h) of Insolvency and Bankruptcy Code, 2016 (IBC 2016), published 'Form G' inviting 'Expression of Interest' (in short "EOI"), from prospective Resolution Applicants. The said 'Form G' was published in newspapers namely "Jansatta" (Hindi) and "Financial Express" (English).
- vii. It is submitted that pursuant to publication of 'Form G', no resolution plan was received till the last date of submission of Expression of Interest. Subsequently, in the Fifth COC meeting held on 30.04.2022, the Applicant/RP informed



the COC members that no EOI has been received for submission of Resolution Plan as per Regulation 36A of IBBI (CIRP) Regulation 2016 and requested the COC to take decision to either extend the period for inviting the same or apply with the Adjudicating Authority to liquidate the CD. The CoC was of the opinion that issuance of fresh EOI is not viable and COC passed a resolution for liquidation of the Corporate Debtor in accordance with the provision of the IBC, 2016 and authorized the RP to file an application for liquidation under Section 33(2) of the IBC, 2016 before this Adjudicating Authority and approved the RP to act as Liquidator in the matter.

viii. That pursuant to the above stated facts and circumstances, the Applicant has preferred the present application for passing the order of Liquidation of the Corporate Debtor in terms of provisions enumerated under Section 33(2) of the IB Code, 2016 and appoints the Resolution Professional i.e. Mr. Vimal Kumar as Liquidator in the matter.

3. This Tribunal has gone through the application filed by the applicant / Resolution Professional, the present application is



filed under section 33(2) of the Insolvency and Bankruptcy Code, the relevant extract of the section is reproduced as under: -

Section 33: Initiation of liquidation.

33. (1) Where the Adjudicating Authority, —

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall—

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor,



the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

4. In the matter of Sreedhar Tripathy vs. Gujarat State Financial Corporation and Ors. (12.10.2022 - NCLAT) :MANU/NL/0788/2022 the Hon'ble NCLAT in para 7 stated as under: -

*The Explanation under Section 33(2) has been inserted by Act of 26 of 2019 contains the legislative declaration and intention. **The CoC in the Legislative Scheme has been empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The power given to the CoC to take decision for liquidation is very wide power which can be exercised immediately after constitution of the CoC. The reasons which has been given in Agenda Item 1, it is made clear by the CoC that the Corporate Debtor is not***



functioning for last 19 years and all machinery has become scrap, even the building is in dilapidated condition and the CIRP will involve huge costs. We are not convinced with the submission of learned counsel for the Appellant that the CoC's decision is an arbitrary decision. **CoC is empowered to take decision under the statutory scheme and when in the present case the decision of the CoC for liquidation has been approved by the Adjudicating Authority, we see not good ground to interfere at the instance of the Appellant.** However, we make it clear that the decision taken by the CoC was in the facts of the present case and it cannot be said that whenever decision is taken for liquidation the same is not open to judicial review by the Adjudicating Authority and this Appellate Tribunal. It depends on the facts of each case as to whether the decision to liquidate the Corporate Debtor is in accordance with the I & B Code or not. With these observations, the Appeal is dismissed.

5. The CoC has expressed its opinion in the 5th CoC meeting held on 30.04.2022 with 100% voting share that RP has not received any Resolution Plan. Further the resolution for liquidation of CD was approved by COC with 100% voting. Therefore, this Tribunal sees no



merit in interfering with the commercial wisdom of the CoC.

6. In light of the above, the application is **allowed** by ordering liquidation of the corporate debtor, namely Samtex Desinz Private Limited with following directions:
- a. That Mr. Vimal Kumar, the Resolution Professional of the Corporate Debtor, is relieved from the present assignment as Resolution Professional.
 - b. That Mr. Vimal Kumar, holding Registration Number IBBI/IPA-002/IP-N00995/2020-2021/13236 is appointed as the Liquidator in terms of Section 34(1) of the Code;
 - c. Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
 - d. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

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- e. This order shall be deemed to be notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- f. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- g. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- h. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- i. The Liquidator shall submit Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of



the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

j. Copy of this order be sent to the financial creditors, corporate debtor, CoC members and the Liquidator for taking necessary steps;

k. The CoC is directed to pay the remuneration and expenses of the Applicant including that of professional advisors subject to the provisions of IBC Code, 2016 and CIRP Regulations, 2016.

I.A 2447/2022 filed in CP(IB) 908/ND/2020 is disposed of in terms of the aforesaid terms

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(Rahul Bhatnagar)
Member (Technical)

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(Bachu Venkat Balaram Das)
Member (Judicial)

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