

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI, SPECIAL BENCH (Court-II)**

(IB) 718 (ND)/2019  
IA/ 4667/2020

**IN THE MATTER OF:**

**GP PETROLEUM LIMITED**

**....OPERATIONAL CREDITOR/ PETITIONER**

**VS**

**VCRM PETROCHEMICALS PRIVATE LTD. ....CORPORATE DEBTOR**

**IN THE MATTER OF:**

**MR. DEEPAK BANSAL**

**....RESOLUTION PROFESSIONAL**

**VS**

**MR. AJAY GOEL & ORS**

**.....RESPONDENTS**

**SECTION: U/S 33 of IBC, 2016**

**Order delivered on: 23.12.2020**

**CORAM:**

**MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

**MR. NARENDER KUMAR BHOLA (TECHNICAL)**

**PRESENT: Advocate Rishi Singhal for Applicant/RP**

**ORDER**

**AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

1. The present petition is filed under Section 33 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code") by the Resolution Professional for intimation of



decision of the Committee of Creditors and seeking order under Section 33(1) for liquidation of the Corporate Debtor.

2. The facts mentioned in the application in brief are as follows:

- i. Vide order dated 27.09.2019, Insolvency Resolution Process was initiated against VCRM Petrochemicals Private Ltd. (Corporate Person), and the moratorium was declared as well as Mr. Deepak Bansal was also appointed as an Interim Resolution Professional.
- ii. Further, a public announcement in the prescribed Form A was made on 25.10.2019 and pursuant to the advertisement only one Financial Creditor i.e., UCO Bank, Punjabi Bagh Branch, New Delhi submitted its claim and in the 1<sup>st</sup> meeting of the Committee of Creditors held on 21<sup>st</sup> November, 2019, the Interim Resolution Professional namely Mr. Deepak Bansal was appointed by the Committee of Creditors as Resolution Professional.
- iii. Further, Pursuant to the decision of the 2<sup>nd</sup> Committee of Creditors in their meeting held on 19<sup>th</sup> December, 2019, the Resolution Professional invited Expression of Interest from the prospective Resolution Applicants vide newspaper advertisement dated 2<sup>nd</sup> January, 2020.
- iv. Further, as the business carried on by the Corporate Debtor was of a very specialised nature and the Resolution Professional had not received Expression of Interest from



any person/entity, in response to the aforesaid advertisement. The status of non-receipt of any Expression of Interest from any Resolution Applicant was placed before the 3<sup>rd</sup> Committee of Creditors in their meeting held on 29<sup>th</sup> January, 2020.

- v. That the Committee of Creditors in their 4<sup>th</sup> meeting held on 28<sup>th</sup> February, 2020 desired that Form G with the revised timelines be issued in order to give another opportunity to the prospective Resolution Applicants to submit the Expression of Interest for the efficient and fruitful completion of the corporate insolvency resolution process of the Corporate Debtor, instead of going for liquidation of the Corporate Debtor. The Revised Form G- Invitation for Expression of Interest was published on 08<sup>th</sup> March, 2020.
- vi. That in response to the aforesaid advertisement, the Resolution Professional had by that date received two number of Expression of Interests but the interest of the Resolution Applicants waned in light of COVID -19 and other attendant circumstances.
- vii. That in pursuance of Regulation 27 of Insolvency & Bankruptcy Beard of India (Insolvency Resolution Process for Corporate Persons) 2016, RP appointed two valuers each on 7<sup>th</sup> December, 2019.
- viii. That the moratorium period & the CIRP period of 180 days of the Corporate Debtor has expired on 25.03.2020

(considering the date of CIRP order dated 27.09.2019) and by which the Resolution Plan conforming to the provisions of the Code and the Regulations made there under could not be completed in view of the above revised timelines. It has thus become necessary to request the Adjudicating Authority to extend the time period of CIRP Process under Section 12(2) & 12(3) of the Code for successful outcome of the CIRP.

- ix. In view of the above, the Committee of Creditors in their 5<sup>th</sup> meeting held on 13<sup>th</sup> March, 2020 instructed the Resolution Professional under Regulation 40 of the Regulation to make an application to the Adjudicating Authority under Section 12 to extend the insolvency resolution process period.
- x. Upon receiving the aforesaid instruction, the Resolution Professional filed the application for extension of time period of CIRP process U/S 12(2) & (3) of the Code read with Regulation 40 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) Regulations, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016 as resolved by the Committee of Creditors by 100% voting rights in its 5<sup>th</sup> meeting held on 13.03.2020.
- xi. That the Resolution Professional has conducted the 6<sup>th</sup> CoC meeting on 15.05.2020 and appraised the detailed progress about the CIRP to the CoC.



- xii. That by order dated 14.09.2020 this Adjudicating Authority had directed to the Resolution Professional for conducting the fresh CoC meeting and to place the entire status of the CIRP before the CoC for further consideration and will then file a supplementary Affidavit indicating the decision of the CoC regarding the proposed extension of the CIRP.
- xiii. That in compliance of the order dated 14.09.2020, the Resolution Professional conducted two CoC meeting. First meeting i.e., 7<sup>th</sup> CoC meeting was held on 19.09.2020, in which it has been decided that for taking the decision of extension or liquidation again CoC meeting will be held within a week and therefore, RP conducted another CoC meeting on 28.09.2020.
- xiv. That RP has conducted the 8<sup>th</sup> CoC meeting on 28.09.2020 in which Committee of Creditors was of the opinion that no resolution plan has been received till today and further there is no expectation of receipt of any further resolution plan(s) therefore, there is no option but to go for liquidation.
- xv. CoC members with 100% voting share resolved to liquidate the Corporate Debtor and authorised RP to file the necessary application before the Hon'ble NCLT for passing of Liquidation order U/S 33 of IBC 2016.
- xvi. That as per direction given vide order dated 14.09.2020, RP has filed the supplementary affidavit and communicated the decision of the CoC for the liquidation of the CD and Hon'ble



Adjudicating Authority has passed the order on 30.09.2020 that the RP is on job to file the liquidation application and therefore extension application has now become infructuous.

xvii. That RP has conducted the 9<sup>th</sup> CoC meeting on 12.10.2020, in which it was discussed that as existing RP did not give his consent to continue as liquidator, therefore, in terms of Section 33 & 34 of the Code, the CoC proposed the name of liquidator along-with his written consent. The COC has provided the written consent of proposed liquidator Mr. Pankaj Khetan having IBBI Reg. No. IBBI/IPA-002/IP-N00010/2016-2017/10014 to act as liquidator. The fee of liquidator shall be as per Schedule 4 of IBBI (Liquidation process) Regulations @ 90% of IBBI Regulations.

xviii. That COC further discussed to authorise liquidator to sell the corporate debtor as going concern or to sell the business of corporate debtor as going concern as per Regulation 39C of CIRP Regulation and passed the following resolution as e-voting item no B5.

"The Committee discussed and resolved that Liquidator may sell the CD as a going concern." by 100% voting.

xix. That the Resolution Professional in this meeting also apprised the members of COC as per the Regulation 39B & 39D of CIRP Regulation, 2016, the cost of liquidation is to be taken into consideration in case when the CD goes into liquidation. The COC discussed and took note of the



estimate of liquidation cost and value of liquid assets of the corporate debtor. The CoC approved the estimated Liquidation Cost as mandated under the IBC under Regulation 39 B and 39 D while passing the resolution for Liquidation of Corporate debtor. The RP in 9<sup>th</sup> COC Meeting, proposed the minimum liquidation cost.

- xx. That in view of above, the Resolution Professional has filed present application under section 33(2) of the Code, for passing an Order of Liquidation of the Corporate Debtor as referred to in Section 33(1) of the Code as no Resolution Plan was received by the Resolution Professional Under Section 30 of the Code and COC in its 8<sup>th</sup> & 9<sup>th</sup> meeting has decided to liquidate the Corporate Debtor.
3. We have heard the Ld. Counsel for the RP and perused the averments made in the application.
4. Ld. Counsel for the RP submitted that the CoC in its 8<sup>th</sup> meeting dated 28.09.2020 by 100% voting resolved to liquidate the Corporate Debtor and also authorized the RP to file the necessary application under Section 33 of the IBC and accordingly, the present application has been filed. He further submitted that earlier an application for extension of period has been filed in which the RP has communicated the decision of the CoC and on the basis of that this Adjudicating Authority held that the application has become infructuous. He further submitted that in the meeting dated 12.10.2020, the RP did not give any consent to



continue as a liquidator, therefore, the CoC has proposed the name of Mr. Pankaj Khetan as an liquidator.

5. In the lights of the submissions raised on behalf of the applicant, we have gone through the averment made in the application but before that we would like to refer the Section 33 of the IBC and the same is quoted below: -

**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).**





*2[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.]*

*(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*

*(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*

*(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:*

*Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.*

*(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

*(7) The order for liquidation under this section 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.*

6. Mere plain reading of the provisions shows that there are three circumstances under which the Adjudicating Authority will pass an order under Section 33 of the IBC, **firstly**, 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 resolution plan is required under Section 30(6) of the IBC or reject the resolution plan under Section 31 of the IBC, **secondly**, 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 and **thirdly**, when the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, ***any person other than the corporate debtor, whose interests are prejudicially affected by such contravention,***

7. In the light of that, when we shall consider the case in hand then we notice that as per the averment made in para 7 of the application, when the Expression of Interest was invited, the RP had not received any Expression of Interest in response to the said advertisement made on 02.01.2020, thereafter, in the 4<sup>th</sup> meeting of the CoC, which was held on 28.02.2020, the CoC was decided to publish the revised Form-G and accordingly, the revised Form-G was published for invitation of Expression of Interest subject to the extension of CIRP period by this Adjudicating Authority and we further notice that the RP in the light of that publication of revised Form-G received two Expression of Interest but the interest of the resolution applicants waned in the light of the COVID-19 and other attendant circumstances, therefore, the RP in pursuance of



the Regulation 27, appointed two valuers who accordingly submitted the valuation report.

8. We further notice that vide order dated 14.09.2020, this Adjudicating Authority directed the applicant to place the entire status of CIRP before the CoC within a week and list the matter on 30.09.2020 and on 30.09.2020, this Adjudicating Authority in view of the new development by which the CoC resolved to liquidate the Corporate Debtor, held the application for extension has become infructuous and accordingly, the present application has been filed.

9. We further notice, at the CoC in its 8<sup>th</sup> meeting dated 28.09.2020 as item no. B-1 of agenda B resolved "the CoC discussed in detail this agenda item and recalled the discussions had at last 7<sup>th</sup> CoC meeting held on 19.09.2019. The CoC agreed that there is no little of any Resolution Plan and the members present are of the considered view that not much use is left to invite the EOI and it would only lead to further the CIRP costs yielding no fruitful results which was witnessed even after publication of the Revised Form-G on 08.03.2020 and so there is no commercial wisdom left to proceed with the CIRP. Accordingly, the CoC decided to seek direction from the Hon'ble NCLT with its recommendation to proceed with the liquidation of the Corporate Debtor and to adopt further process and procedure. Liquidation as per the IB Code from time to time and on voting the following resolutions were adopted:



Whether the CD should be recommended to be liquidated:

Yes

Whether an extension of time for CIRP process be sought beyond the time already passed from Hon'ble NCLT Bench (within the law permitted): No.”

10. This was approved by 100% voting, so, under such circumstances by exercising our powers under Section 33 (1) and (2) of the IBC, since there is no resolution plan and period of the CIRP has already been expired and the CoC by 100% voting resolved to liquidate the Corporate Debtor, hence we are inclined to approve the resolution of COC and allow the prayer made in the application.

11. We further notice that when the present RP has showed their unwillingness to Act as a liquidator then in its 9<sup>th</sup> CoC meeting dated 12.10.2020 resolved to appoint Mr. Pankaj Khetan as a liquidator because the RP had already express his desire to not to continue as a liquidator and liquidator has also filed its written communication which would be evident from the Resolution dated 12.10.2020 Agenda B-2 and the same is quoted below:- “the CoC noted that the RP had already expressed his desire to not to continue as liquidator in the last meeting held on 28.09.2020. The FC member placed a proposal to appoint Mr. Pankaj Khetan, Insolvency Professional for appointment as liquidator. The CoC perused the consent received from Mr. Pankaj



Khetan to act as Liquidator and after discussions the following resolution was put up for voting.

Members of the CoC present proposed the appointment of Mr. Pankaj Khetan, IP having registration number IBBI/IPA-002/IP-N00010/2016-17/10014 as liquidator of VCRM Petrochemicals Pvt. Ltd. The fee of the liquidator shall be as per Schedule 4 of the IBBI (Liquidation Process) Regulation @ 90% of the IBBI Regulations. The RP be and is hereby authorized to file the Liquidation application with the Adjudicating Authority” and same is hereby approved by 100% voting.

So, under such circumstances, **we have no option but to allow the application, accordingly, we hereby allow the application ordering the liquidation of the Corporate Debtor**

VCRM Petrochemicals Pvt Ltd, in the manner as led in Chapter III Part II of the IBC, 2016 in accordance with the relevant rules and regulations and along with the following directions: -

**12. Accordingly, it is therefore, ORDERED**

**A. Mr. Pankaj Khetan, IP having registration number IBBI/IPA-002/IP-N00010/2016-17/10014 is appointed as Liquidator.**

**B. The Liquidator shall issuing a public announcement stating that the Corporate Debtor is in liquidation in terms of Regulation 12 of the IBBI (Liquidation Process) Regulations 2016.**

**C. The order of moratorium passed under Section 14 of the IBC, 2016 and fresh moratorium under Section 33(5) of the IBC shall commence. The order for liquidation under this**



*Section shall be deemed to be notice of discharge to the officer, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor continued during the liquidation process by the liquidator.*

*D. Liquidator shall follow up and investigate the financial affairs of the Corporate Debtor to determine the under valued preferential transactions if any*

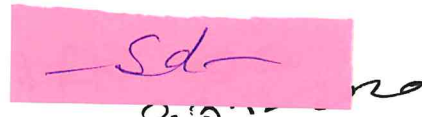
*E. The liquidator shall submit a preliminary report to the Adjudicating Authority within 75 days from the liquidation commencement date as per Regulation 13 of the IBBI (Liquidation Process) Regulation 2016.*

13. Registry is directed to communicate the copy of this order to the Financial Creditor, Corporate Debtor, Liquidator and the Registrar of Companies , NCT of Delhi and Haryana for needful and IBBI for the record.
14. With this order the present application stands disposed off.



**NARENDER KUMAR BHOLA**

**Member (T)**



**ABNI RANJAN KUMAR SINHA**

**Member (J)**