

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. IA(LIQ.)/62/2024 C.P. (IB)/212(MB)2021

IN THE MATTER OF

M/s. Kamal Metal Corporation
VS
Shri Vaijanath Industries Private Limited

U/s 9 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 09.10.2026

CORAM:
SH. VINAY GOEL
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner:

For the Respondent:

ORDER

IA(LIQ.)/62/2024: The above IA is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/-
VINAY GOEL
Member (Judicial)

//Rahul//

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, V**

IA (LIQ) No. 62 OF 2024

Order under Section 33(1) of the Insolvency
and Bankruptcy Code, 2016

IN THE MATTER OF:

Mr. Vikas Khiyani

**Resolution Professional of Shri Vaijanath
Industries Private Limited**

Having its registered address at:

103, Palm Acre Sunder Nagar No.1

Kalina, Santacruz East, Mumbai - 400028

... Applicant/Resolution Professional

IN THE ORIGINAL MATTER OF:

CP (IB) No. 212/MB-V OF 2021

M/s. Kamal Metal Corporation

... Operational Creditor

Versus

Shri Vaijanath Industries Private Limited

...Corporate Debtor

Order Delivered on: 09.10.2026

Coram:

Sh. Vinay Goel

Member (Judicial)

Sh. Charanjeet Singh Gulati

Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: - Adv. Maulik Chokshi (VC)

ORDER

IA (LIQ) NO. 62 OF 2024

1. The present Interlocutory Application has been filed under Section 33 of the Insolvency and Bankruptcy Code, 2016 (**“the Code”**), by the Resolution Professional Mr. Vikas Khiyani (**“Applicant/Resolution Professional”**), of Shri Vaijanath Industries Private Limited (**“Corporate Debtor”**), seeking the following prayers:

- a. This Hon'ble Tribunal be pleased to allow liquidation that of the Corporate Debtor;*
- b. This Hon'ble Tribunal be pleased to appoint the Applicant as the liquidator.*
- c. Any other order/s as the Hon'ble Bench shall deem fit and proper, in the facts and circumstances of the case.*

Brief Facts of the Application

2. The Corporate Insolvency Resolution Process (**“CIRP”**) of Shri Vaijanath Industries Private Limited was initiated by this Tribunal vide order dated 06.06.2023 in CP (IB) 212/MB-V/2021 under Section 9 of the Code, filed by M/s. Kamal Metal Corporation (**“Operational Creditor”**). Pursuant to the said order, Mr. Vikas Khiyani was appointed as the Interim Resolution Professional (**“IRP”**) of the Corporate Debtor.
3. Pursuant thereto, the IRP made a Public Announcement in Form A in Business Standard (English edition) and Kesari Newspaper (Marathi edition), on 08.06.2023, inviting claims from the creditors of the Corporate Debtor on or before 20.06.2023.
4. The Applicant received two claims after the stipulated last date for submission as per the public announcement. Upon verification, the said claims were admitted

and included in the constitution of the Committee of Creditors (“CoC”) dated 19.08.2023. The Applicant subsequently filed the CoC Constitution Report with the IBBI. The details of the two claims are set out below:

List of Operational Creditors as on 17/08/2023

(Amount in INR)					
Sr. No	Name Of Operational Creditors	Amount Claimed	Amount Admitted	Amount Under Verification	Voting % in CoC
1	Kamal Metal Corporation	1,78,64,899.00	1,78,64,899.00	0.00	91.74
2	Income Tax Department	16,08,250.00	16,08,250.00	0.00	09.26
	Total	1,94,73,149.00	1,94,73,149.00	0.00	100

5. The Applicant convened the 1st meeting of the CoC on 28.08.2023, wherein the CIRP costs and IRP fees, including expenses incurred towards public advertisement and constitution of the CoC, were discussed and put to vote. The Applicant also informed the CoC that, during his visit to the registered office to take custody of the Corporate Debtor’s assets, the suspended directors stated that the assets had already been auctioned by Union Bank of India. The issuance of Form G was also discussed and put to vote. Further, a resolution under Agenda Item B-1 was proposed pursuant to which IRP was accordingly appointed as the Resolution Professional (“RP”).
6. The Applicant convened the 2nd meeting of CoC on 17.11.2023, wherein he apprised the members of the recovery efforts undertaken from the debtors and identified certain transactions potentially falling under preferential and fraudulent transactions, for which the name of M/s. AHSK & Co. was proposed as Transaction Auditors. The Applicant further informed the CoC that the 180-day CIRP period would expire on 03.12.2023 and that revival of the Corporate Debtor was not feasible as its assets had already been auctioned. The CIRP costs and IRP fees incurred for the CIRP were also discussed.
7. The agendas of the 2nd CoC meeting were put to vote on 19.11.2023 and 24.11.2023, wherein the CoC, by a majority of 91.75%, approved the appointment of M/s. AHSK & Co., Chartered Accountants, as Transaction Auditor at a professional fee of Rs.50,000 plus applicable taxes and out-of-pocket

expenses, and approved the liquidation of the Corporate Debtor, authorising the Resolution Professional to file the liquidation application. The resolution is reproduced below:

"Agenda Item B-3: To Take note and Approve Liquidation of Corporate Debtor

RESOLVED that Approval is accorded to liquidation of corporate debtor and resolution professional is entrusted with filing the application of Liquidation with Hon'ble adjudicating authority."

8. The CoC also approved and ratified the CIRP costs of Rs.8,55,950 plus applicable taxes incurred by the Resolution Professional up to the filing of the liquidation application.

"Agenda Item B-4: Approve the Cost incurred till date and to be incurred till filing of Liquidation Application.

RESOLVED THAT pursuant to Regulation 34 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Corporate Insolvency Resolution Process cost amounting to Rs. 8,55,950.00 plus applicable taxes incurred by the Resolution Professional till the date of filing of Liquidation application hereby approved and ratified.

9. The CoC proposed the Applicant/Resolution Professional for appointment as the Liquidator, and the Resolution Professional furnished his written consent in Form AA dated 08.12.2023.
10. Hence, the present Interlocutory Application has been filed seeking liquidation of the Corporate Debtor.

Analysis and Findings

11. We have heard the Ld. Counsel for the Applicant and perused the material available on record.
12. Having considered the submissions made and perused the averments contained in the present Interlocutory Application, this Adjudicating Authority is vested with the power to pass an order for liquidation of the Corporate Debtor. The CIRP commenced on 06.06.2023, and the prescribed CIRP period expired on

03.12.2023, without any extension having been sought. Further, no Resolution Plan has been submitted before this Adjudicating Authority under Section 30(6) of the Code. The Corporate Debtor has also ceased its operations and is no longer a going concern.

13. In the absence of any Resolution Plan, this Adjudicating Authority is empowered to pass an order for liquidation of the Corporate Debtor under Section 33 of the Code. The relevant provision of Section 33 of the IBC, 2016 is reproduced below for ready reference:

Section 33 - Initiation of liquidation

- (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 percent of the voting share to liquidate or dissolve the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in- sub-clauses (i)(ii)(iii)(iv) and (v) of clause (b) of sub-section (1).*

Explanation – For the purposes 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.”

14. Section 33(1) provides that where the Adjudicating Authority does not receive a resolution plan before the expiry of the CIRP period or the maximum period permitted for completion of the CIRP, it shall pass an order for liquidation of the Corporate Debtor. Whereas Section 33(2) of the Code provides that, at any stage during the CIRP, but before the approval of a resolution plan by the Adjudicating Authority, the CoC may, in exercise of its commercial wisdom, pass a resolution to liquidate the Corporate Debtor by a vote of not less than 66% of the voting share. Upon such decision being communicated by the RP to the Adjudicating Authority, the Adjudicating Authority is required to pass a liquidation order. Thus, the existence of a CoC resolution with requisite majority is the statutory precondition for initiating liquidation under Section 33(2) of the Code. There is no such requirement under Section 33(1) of the Code.
15. Having regard to the aforesaid provisions, it is necessary to examine the facts and circumstances of the present case and determine the applicability of the relevant provisions governing the liquidation of the Corporate Debtor. In the present case, the Corporate Debtor was admitted into the Corporate Insolvency Resolution Process (CIRP) vide order dated 06.06.2023, and the initial period of 180 days prescribed for completion of the CIRP expired on 03.12.2023. Neither was any extension of the CIRP period sought, nor was any resolution plan received by the Adjudicating Authority under Section 30(6) of the Code.
16. Though certain interlocutory applications relating to the affairs of the Corporate Debtor are stated to be pending, the same would not preclude the commencement

of liquidation proceedings and may be pursued by the Liquidator in accordance with law.

17. Further, the CoC has proposed the Resolution Professional as the Liquidator of the Corporate Debtor. Taking into account the amendment to Section 34 of the Code vide the Insolvency and Bankruptcy Code (Amendment) Act, 2026, with effect from 26.05.2026, which stipulates that the Resolution Professional appointed for the CIRP under Chapter II shall not be appointed or replaced as the Liquidator for the liquidation process of such Corporate Debtor, the matter is referred to the Board for making a recommendation of an Insolvency Professional to be appointed as the Liquidator. Therefore, the amended provisions of the Code and the amended IBBI (Liquidation Process) Regulations, 2016, with effect from 01.06.2026, shall apply to the liquidation process of the Corporate Debtor. Accordingly, the prayer clause (B), seeking the appointment of Mr. Vikas Khiyani, the Resolution Professional, as the Liquidator of the Corporate Debtor, is rejected.
18. In view of the aforesaid facts and circumstances, particularly considering that the CIRP commenced on 06.06.2023 and the prescribed CIRP period expired on 03.12.2023 without any extension being sought, that no Resolution Plan has been submitted to this Adjudicating Authority under Section 30(6) of the Code, and that the Corporate Debtor has ceased operations and is no longer a going concern. The CoC has passed a resolution in favour of Liquidation with 91.75% majority in their 2nd Meeting of the Committee of Creditors held on 17.11.2023. Under these circumstances, this Adjudicating Authority is of the considered view that the Corporate Debtor is liable to be liquidated under Section 33(2) of the Code, and accordingly, liquidation proceedings deserve to be initiated in accordance with Chapter III of the Code. Accordingly, the Corporate Debtor is ordered to be liquidated, and the following consequential order is passed.

ORDER

- a. The Corporate Debtor, **Shri Vaijanath Industries Private Limited**, is directed to be liquidated in accordance with the provisions of Chapter III of the Code and applicable regulations. Consequently, the Applicant/RP stands relieved subject to procedural/necessary compliances under Section 34(5) of the Code.
- b. In view of the discussion at Para No.17 of this Order, we deem it appropriate to appoint an Insolvency Professional from the panel of Insolvency Professionals shared by the IBBI, as Liquidator in this case. Accordingly, we hereby appoint **Mr. Neehal Mahamulal Pathan** bearing Registration No. **IBBI/IPA-001/IP-P-01561/2018-2019/12406**, having address at Office No. 301, R.S. No.820/A,'Rachana-Anad' Building, E-Ward, Shahupuri, 4th Lane, Kolhapur, Shahupuri 4th Lane, Near Amron Battery Showroom, And Adv. C. B. Kore Office, Kolhapur, Maharashtra, 416001 Email id: **ca[dot]neehal[at]gmail[dot]com** having AFA valid upto 31-Dec-26, to act as the Liquidator in terms of Section 34 of the Code.
- c. The Liquidator shall initiate the liquidation process as envisaged under Chapter III of the Code and the Liquidation Process Regulations applicable on the date of passing of this order. He shall take control of all the assets of the Corporate Debtor and also continue or institute proceedings in respect of any avoidance transactions or fraudulent or wrongful trading, if any, as per section 35(1)(l) of the Code.
- d. The Liquidator shall be entitled to a fee for conducting the liquidation proceedings, as approved by the CoC or in accordance with Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process)

Regulations, 2016, as applicable on the date of passing of this order, as the case may be.

- e. The Committee of Creditors constituted under section 21 shall continue to function during the liquidation process as per Regulation 8 of the IBBI (Liquidation Process) Regulations, 2016.
- f. A fresh moratorium shall commence in terms of the provisions of Section 33(1)(iv) of the Code.
- g. The Liquidator shall issue a public announcement stating that the Corporate Debtor is in liquidation.
- h. This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor.
- i. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within 30 days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. The Liquidator shall also submit progress reports as per Regulation 15 of the Liquidation Process Regulations.
- j. The Liquidator is hereby authorised to represent the Corporate Debtor before the Government Authorities, if required.
- k. Registry shall furnish a copy of this Order within seven days from the passing of this Order to the following:
 - i. Insolvency and Bankruptcy Board of India;
 - ii. Regional Director (Western Region), Ministry of Corporate Affairs;

- iii. Registrar of Companies, Mumbai-II;
- iv. Official Liquidator attached to Bombay High Court;
- v. Erstwhile Resolution Professional, Mr. Vikas Khiyani;
- vi. Liquidator, Mr. Neehal Mahamulal Pathan

19. Accordingly, the **I.A. (LIQ.) No.62 of 2024** is **allowed** in the above terms and stands **disposed of**.

Sd/-

VINAY GOEL

Member (Judicial)

JL/Steno

Sd/-

CHARANJEET SINGH GULATI

Member (Technical)