



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (Court-I), CHANDIGARH**

IA(IBC)(LIQ.)/18 (CH)2024

In

CP (IB) No. 132/Chd/Chd/2023

**Order under Section 33(2) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of the National Company Law
Tribunal Rules, 2016.**

IN THE MATTER OF:

IDBI Bank Limited

....Petitioner

Vs.

Cheema Spintex Limited

....Respondent

AND IN THE MATTER OF:

Mr. Nipan Bansal

Resolution Professional of M/s. Cheema Spintex Limited

....Applicant

Order delivered on: 08.05.2025

CORAM:

SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (J)

SH. SHISHIR AGARWAL, HON'BLE MEMBER (T)

PRESENT

For the Applicant : Mr. Harsh Garg & Mr. Pulkit Goyal, Advocates.
Mr. Nipin Bansal (through vc)

ORDER

PER: SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)

This Application has been filed by Mr. Nipan Bansal, the Resolution
Professional of M/s Cheema Spintex Limited, the Corporate Debtor before



this Adjudicating Authority under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking initiation of liquidation proceedings of the Corporate Debtor on the basis of the decision taken by the Committee of Creditor ("CoC") in the 2nd CoC meeting held on 09.07.2024 with 100% voting shares. The Applicant seeks the following relief:

- "a. Pass necessary order for Liquidation of the corporate debtor under Section 33(2) of the Code considering the resolution passed by the CoC with 100% voting share in favor of liquidation;***
- b. Pass order for appointment of Mr. Nipan Bansal, bearing IBBI Reg. No. IBBI/IPA-001/IP-P00039/2017-18/10100 as the Liquidator under Section 34(1) of the Code;***
- c. Pass such other further order/orders as may be deemed fit and proper in the facts and circumstances of the instant case."***

FACTS OF THE CASE

2. The brief facts, as stated by the Applicant in the IA, are as below:

- (i) An Application was filed by IDBI Bank Limited, ("**Financial Creditor**") to initiate Corporate Insolvency Resolution Process ("**CIRP**") against M/s Cheema Spintex Limited ("**Corporate Debtor**") under Section 7 of the Code filed before this Adjudicating Authority (Court-I) in CP(IB)-132/CHD/CHD/2023. This Adjudicating Authority (Court-I) vide order dated 17.05.2024 ("Admission Order") was pleased to admit the application and a moratorium was declared including the appointment of Mr. Nipan Bansal as an Interim Resolution Professional. Subsequently, the present Applicant herein was



confirmed as the Resolution Professional by the CoC in its 1st CoC meeting held on 15.06.2024.

- (ii) The IRP in compliance of Section 13 of the Code read with Regulation 6 of IBBI (CIRP) Regulations, 2016, made the public announcement in the prescribed Form A within the specified time to call upon the creditors to submit their claims as on the Insolvency Commencement Date, in two newspapers in (English edition) and (Hindi edition).
- (iii) The CoC in its 2nd meeting held on 12.07.2024, discussed the eligibility criteria for prospective resolution applicants and for release of advertisement inviting expression of interest in Form-G and thereafter, upon the request of CoC, resolution professional apprised the CoC about the debit entries and assessed losses and also apprised that the suspended board of directors have not yet provided any information regarding assets mentioned in the financial statement of FY2022-23, so that an informed decision can be taken regarding publication of Form-G. The eligibility criteria for submission of expression of interest of resolution plan and publication of Form-G was also discussed and the said agenda when put for e-voting and the same was rejected with voting share of 100%
- (iv) Further in the 2nd meeting, CoC members after going through the details of the assets of the corporate debtor had requested the resolution professional to put an additional agenda for liquidation of corporate debtor to voting, in the said meeting., and accordingly as per the request of CoC an additional agenda for liquidation of corporate debtor was also put for e-voting in the second CoC meeting and it was resolved that:



“RESOLVED THAT pursuant to Section 33(1) of the Code, the consent of the Members of CoC is hereby accorded for the initiation of Liquidation of Cheema Spintex Limited,

RESOLVED FURTHER THAT necessary resolutions for Liquidation under the provisions of Insolvency and Bankruptcy Code, 2016 and rules and regulations made thereunder shall be passed in the next meeting of CoC.

RESOLVED FURTHER THAT the Resolution Professional shall file an application with Hon’ble NCLT, Chandigarh in such regard.

RESOLVED FURTHER THAT Resolution Professional is entitled to any such deed which may be necessary or incidental thereto”

- (v) In 3rd COC meeting held on 03.08.2024, the agenda for the appointment of liquidator was also placed before the COC, whereby the COC have resolved:

“RESOLVED THAT Mr. Nipan Bansal, Insolvency Professional having IBBI Reg No: IBBI/IPA-001/IP-P00039/2017-18/10100 is hereby appointed as Liquidator in the matter of Cheema Spintex Limited.

RESOLVED FURTHER THAT Resolution Professional is entitled to any such deed which may be necessary or incidental thereto”.

- (vi) The agenda for compliance of Regulation 39 B, 39 C & 39D of the CIRP regulations was also placed before the COC in the 3rd COC meeting, whereby it was resolved:

“RESOLVED THAT the Committee of Creditors in consultation with Resolution Professional has estimated Liquidation Cost as Rs. 9,32,400/- and other Out of Pocket expenses of Liquidator and other professionals along with any regulatory fees payable to IBBI.



RESOLVED THAT the Committee shall explore the possibility of Compromise and Arrangements as referred to under sub regulation (1) of regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 as mentioned in the Regulation 39BA of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

RESOLVED THAT Committee of creditors will recommend Liquidator to make an attempt to sell the Corporate Debtor as Going Concern as per Regulation 32(e) of Liquidation Regulations, 2016 or Sale of business of Corporate Debtor as going concern as per Regulation 32(f) of Liquidation Regulations, 2016 as mentioned in the Regulation 39C of the Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016.

RESOLVED FURTHER THAT Resolution Professional is entitled to any such deed which may be necessary or incidental thereto”

Further with respect to the fee of the liquidator the representatives of IDBI banks mentioned that:

“They do not have the valuation or any detailed analysis of expected realization from the assets of the Corporate Debtor, the fixation of liquidation cost at this point of time shall not be feasible. Further the representatives of PNB also concurred with the view of IDBI Bank. Hence the members of CoC requested to defer this agenda till the first meeting of Stakeholders Consultation Committee that shall be held after the commencement of liquidation.”

3. It is submitted by the Resolution Professional that the present Application is being filed in the interest of justice and the same is bona-fide in nature.
4. This Adjudicating Authority vide order dated 05.11.2024 passed the following order which is extracted below:



“Ld. Counsel for the applicant has requested that he may also allow to place on record the audited balance-sheet as on 31.03.2024 and provisional balance-sheet as on the date of insolvency commencement date. Let the same be done within one week.”

5. In compliance of the order dated 05.11.2024, the Applicant/RP filed a submission note along with the last audited balance sheet dated 31.03.2024 and a provisional balance sheet dated 17.05.2024.
6. Further, the compendium of judgments has been filed by counsel for the applicant/resolution professional regarding the issue whether CoC can file the application for liquidation under Section 33 without calling of expression of interest (EOI).
7. On perusing the matter in hand, two major issues arise for our consideration:

- **Issue No.1**

Can the Resolution Professional, with the approval of CoC with 100% vote share, directly proceed for the liquidation of Corporate Debtor Company without taking any steps for Resolution of the Corporate Debtor?

That during the course of hearing, the counsel for the applicant resolution professional had referred to the judgement passed in the matter of **ACRE-81 Trust and Ors. Vs. Pawan Kumar Goyal IRP and Ors. bearing Comp. App. (AT) (Ins) No. 447 of 2023 & I.A.No.1475, 1476 of 2023**, in which the order of dismissal of liquidation application passed on the ground that CoC cannot approve agenda of liquidation without taking the steps for the resolution of corporate debtor, was challenged and Hon'ble NCLAT has allowed the appeal while setting aside



the impugned order while referring to the matter of **Sunil S. Kakkad Vs. Atrium Infocom Pvt. Ltd.** and had decided that:

“There is an error in the approach of the Adjudicating Authority that for the purpose of taking a decision regarding the liquidation of the CD, the CoC has to complete all the steps regarding resolution of the CD because it would be against the spirit of Section 33(2) and explanation appended to it wherein the legislature has used the word any time twice i.e., firstly, in Section 33(2) and secondly, in the explanation of Section 33(2) of the Code that the CoC has the jurisdiction to pass the order of liquidation of the CD, approving it by not less than sixty six per cent of the voting share, but it should be before the confirmation of the resolution plan. In the case of Sunil S. Kakkad (Supra), this Court has categorically framed a question as to whether the RP, with the approval of the CoC with sixty six per cent vote share, directly proceed for the liquidation of CD without taking any steps for resolution of the CD. In the said case, there were three meetings of CoC in which without making endeavour for inviting EOI, the CoC unanimously resolved to liquidate the CD and that issue came for adjudication before this Court in which while referring to Section 33(2) and the explanation appended thereto it has been ordered that the CoC has the power to liquidate the CD before confirmation of the resolution plan. The said decision in the case of Sunil S. Kakkad (Supra) has further been affirmed by the Hon’ble Supreme Court when the appeal was filed by Sunil S. Kakkad was dismissed on 07.01.2021.”

In view of the provision enshrined under section 33(2) of the code and interpretation thereto as noted by Hon’ble NCLAT in the authority (supra), it can be safely concluded that CoC is competent and empowered in taking a decision regarding the liquidation of corporate debtor without following all the steps regarding resolution of corporate debtor.



- **Issue No.2**

Whether the same resolution professional can be appointed as Liquidator when IBBI vide its notification bearing No. Liq-12011/214/2023-IBBI/840 dated 18.07.2023 has recommended that the person other than IRP/RP of the Corporate Debtor to be appointed as the Liquidator in the case of liquidation the Corporate Debtor.

On this issue Ld. Counsel for the applicant resolution professional had placed the reliance on the order of **Hon'ble Karnataka High Court in WP. No. 27043 of 2023**, in which the said notification had been stayed while holding that:

“Heard the learned counsel for the petitioner and the learned Additional Solicitor General of India, Sri. Aravind Kamath representing the Insolvency and Bankruptcy Board of India (‘the Board’ for short).

The petitioner calls in question a Circular dated 18.07.2023 issued by the Board, which directs that the Resolution Professional should not continue as a Resolution Professional in the event the Company is said to be put in to Liquidation or act as a Liquidator for the process of liquidation of the said particular Company.

This the learned counsel for the petitioner submits is a sweeping direction, which disturbs the petitioner to act as Liquidator on the strength of him being appointed as a Resolution Professional and therefore submits that his rights are taken away of acting as a Liquidator. He would further contend that such sweeping directions cannot be given by the Board, invoking its power under Section 34 (4)(b) of the IBC.

The matter would require consideration.

Learned ASGI seeks two weeks’ time to justify the issuance of the general directions by the board.

Till such time, the petitioner insofar as he is appointed as



Resolution Professional/Liquidator in the subject liquidation shall not be precipitated.

Registry to print the name of the learned counsel Smt. Anupama Hegde as appearing for respondent/ Board.”

Further, the counsel for the applicant - resolution professional placed reliance upon the judgment passed by NCLT Bench-II, Chennai in the matter of **Mr. Ravindra Beleyur, Resolution Professional of Reliable Cashew Company Pvt. Ltd. bearing IA(IBC)/2308(CHE)/2023** in which the order of Hon'ble High Court of Karnataka has been duly considered.

The counsel for the applicant has also placed reliance upon the order of liquidation passed by NCLT, Chennai Division Bench-II, in the matter of the corporate debtor **M/s You Seung Sang Sa India Construction Pvt Ltd.**, vide order dated 26.07.2024, whereby the Bench had held that the notification bearing No. Liq-12011/214/2023-IBBI/840 dated 18.07.2023 issued by IBBI provides for appointment of different liquidator where resolution plan has failed, however in the present matter no resolution ever came forward and the matter has been sent directly to liquidation, and keeping in view this fact the same Insolvency Professional can continue as the Liquidator after liquidation order.

8. We have heard the arguments of the Ld. Counsel appearing for the Applicant and perused the records carefully.
9. With respect to the Appointment of same RP as the Liquidator, we are guided by IBBI Circular No. Liq-12011/214/2023-IBBI/840 dated 18.07.2023. The contents of which reads thus:



सत्यमेव जयते

भारतीय दिवाला और शोधन अक्षमता बोर्ड Insolvency and Bankruptcy Board of India



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Liq-12011/214/2023-IBBI / १५०

18th July 2023

To
Secretary,
National Company Law Tribunal
Principal Bench
New Delhi

Subject: Recommendation for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the IBC, 2016 - regarding

The Code envisages time bound resolution of the Corporate Debtor (CD) to maximise the value of the assets. In cases where the CD has not been resolved successfully, Adjudicating Authority (AA) orders for initiation of the liquidation process of the CD and appoints a liquidator. In this regard, Section 34 of the Code provides that where AA passes an order for liquidation of the CD, the resolution professional (RP) appointed for the CIRP shall act as the liquidator unless replaced by the AA under the following three circumstances:

- (i) the resolution plan submitted by the RP under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or
- (ii) the Board recommends the replacement of a RP to the AA for reasons to be recorded in writing; or
- (iii) the RP fails to submit written consent.

2. Section 34(4)(b) inter-alia provides that the AA shall replace the RP if the Board recommends the replacement for reasons to be recorded. During the review of performance of processes under the Code, it has been found that there is a meagre 4% average realisation against the admitted claims during the liquidation process whereas in Corporate Insolvency Resolution Process (CIRP) the average realisation is 32% against the admitted claims during CIRP. This necessitated for fresh perspective in the liquidation process and replacement of RP to act as liquidator. This subject has been considered by the Board and it is considered that AA may appoint a new IP as liquidator due to the following reasons:

- (i) The IBC has been introduced with larger economic goals to revive the distressed viable CDs to convert non-performing assets as performing assets, promote employment, entrepreneurship, and credit by valuing capital invested in the project rather than selling in bits and pieces or recovery mechanism. The prime objective of the Code is resolution. Accordingly, in cases where the CD has not been successfully resolved or resolution plan has been failed, IP who has been assigned to conduct the resolution process of the CD, may not be recommended to continue to act as liquidator.
- (ii) The Code creates an ecosystem for maximisation of the value of assets of a CD. Non-revival of the CD through CIRP adversely impacts on its value. Value is usually dependent on the time



taken to resolve the insolvency since it erodes over time and rapidly once the insolvency proceedings commence. Therefore, any delay in the insolvency resolution process may make reorganisation of the CD difficult and would induce liquidation, thereby destruction of value for the stakeholders. Thus, an independent IP needs to be entrusted to conduct the Liquidation process of the CD for value maximisation while also ensuring the transparency and complete independence in two separate assignments.

(iii) The Code envisages CIRP and liquidation as two distinct processes with distinct roles and responsibilities. Thus, an IP undertakes the two different assignments as RP and Liquidator, separately. Segregating the dual role of an IP in the same CD as RP and liquidator will foster an inbuilt system of check and balance in the process, thereby enhancing the accountability of each job and strengthening stakeholder's trust in the processes under the Code. Further, it would eliminate any perverse incentives, whatsoever, available with RP in deliberately pushing the CD towards liquidation and secure next assignment on ex-ante basis.

3. In view of above justification, the Board in exercise of its powers conferred under section 34(4)(b), recommends that an IP other than the RP/IRP may be appointed as liquidator in all the cases where liquidator order is to be passed henceforth. The liquidator can be appointed from the panel list of IBBI.


(Rajesh Tiwari)
General Manager

Received from my office
To be circulated
in all NCLT Benches
Pils
31.7.23

Mr Kamal Sallam
31/7/23
(JS)



10. From perusal of the notification the same RP cannot continue as the Liquidator. However, it is the contention of the Applicant that the aforesaid notification is stayed by the Hon'ble High Court of Karnataka in **WP. No. 27043 of 2023**, the relevant excerpts of the order are quoted in the order.
11. However, when we visited the contents of the Judgment, we find the reality otherwise what has been portrayed by the Applicant. That the notification per se has not been stayed, which is operating in rem. Rather only the stay is granted in the facts of the own case before WP No. 27043 of 2023, in other words the Liquidation Process which is subject matter of WP no. 27043 of 2023. The relevant excerpts of the order in this regard reads as under:

*“Till such time, the petitioner insofar as he is appointed as Resolution Professional/Liquidator in the **subject liquidation** shall not be precipitated.”*

(Emphasis added)

12. In view of the above, the Argument of the Applicant that entire circular has been stayed is misconceived.
13. The NCLT Principal Bench in **IB-353/PB/2023, IA 12/2024 Bank of Baroda Vs. IBD Universal Pvt Ltd dated 22.05.2024** has taken a similar view in the above issue, the relevant excerpts of the Judgment reads as under:



*“After taking note of the circular issued by the IBBI, the Hon’ble High Court of Karnataka has taken a particular view, may be interim in nature and that order was passed in the facts of that case and it may not be appropriate to apply the same in the facts of this case. Accordingly, in the light of the circular issued by IBBI, we deem it appropriate to replace the RP and appoint **Mr. Rajeev Khurana** as Liquidator.”*

14. Though the Applicant has placed reliance on the Judgment of NCLT Chennai Bench where orders of appointment of Liquidator were recalled on the basis of the interim order passed by Hon’ble High Court of Karnataka, however the Principal Bench presided by Hon’ble President NCLT has held it otherwise. Further the Judgment of NCLT Chennai Bench does not note the findings made by the Principal Bench. Therefore, we are unable to accept the Judgment of NCLT Chennai Bench as a binding precedent.
15. Since neither there is any stay on Circular issued by IBBI (Liq-12011/214/2023-IBBI/840 dated 18.07.2023), nor there is any specific direction of any superior court to continue same RP as Liquidator. Therefore, we are unable to accept the plea of the Applicant to continue Mr. Nipan Bansal - RP as Liquidator and we appoint Mr. Arun Gupta as the Liquidator from the list of the panel of IBBI.
16. The Hon’ble Supreme Court in the matter of **K. Sashidhar Versus Indian Overseas Bank & Ors. in Civil Appeal No. 10673 of 2018** has held that the commercial decision of CoC is non-justiciable. In the case in hand, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.



17. In light of the above-quoted judgment, it is clear that the “Commercial wisdom of Committee of Creditors (CoC)” is given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyze or evaluate the commercial decision of the CoC. The members of the CoC are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by this Adjudicating Authority for the reason that it is not within judicial ambit of Adjudicating Authority to examine commercial decisions of CoC.
18. In interest of justice and proprietary of facts, when CoC has taken decision of liquidation of corporate debtor, we are inclined to order the Liquidation of the Corporate Debtor.
19. In light of the above facts and circumstances, it is hereby ordered as follows:
- i. The IA(IBC)(LIQ.)/18 (CH)2024 filed by Mr. Nipan Bansal, the Resolution Professional of M/s Cheema Spintex Limited, the Corporate Debtor is **allowed** and the Corporate Debtor is ordered to be liquidated in terms of Section 33(2) of the Code read with sub-clause (i) of clause (b) thereof;
 - ii. This Adjudicating Authority appoints Mr. Arun Gupta as the Liquidator of the Corporate Debtor. The Registration number of the Liquidator is IBBI Reg. No. IBBI/IPA-001/IP-P01323/2018-2019/12055.



- iii. The address of the Liquidator is Lane 4 Bhagat Colony, Uttam Nagar, Khalsa School Road, Khanna-141401, Punjab and the email id of the Liquidator is arunsapnaca@gmail.com and the contact no. of the Liquidator is 9878991186.
- iv. Mr. Nipan Bansal, the Resolution Professional of the Corporate Debtor is relieved from the present assignment as the Resolution Professional.
- v. The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the Liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceed of the Liquidation estate under Section 53 of the Code.
- vi. The Liquidator shall initiate the Liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- vii. The liquidator is directed to make a public announcement u/s 33(1)(b)(ii) of the Code, clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- viii. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so



that the authorities concerned are informed of the Liquidation order timely.

- ix. All the powers of the Board of Directors, and key managerial personnel, shall cease to exist in accordance with Section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- x. The personnel of the Corporate Debtor is directed to extend all assistance and cooperation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.
- xi. The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Code shall commence. On initiation of the Liquidation process but 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 the suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.
- xii. 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.



- xiii. The Liquidator shall also follow up on the pending applications for disposal during the process of Liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- xiv. The Liquidator shall submit a 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;
- xv. The Liquidator and the Registry are hereby directed to send a copy of this order within 3 days from the date of this order to the Registrar of Companies, NCT of Delhi & Haryana. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.
- xvi. The Registry is directed to send a copy of this order to the IBBI for their record.
- xvii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- xviii. No order as to costs.

Sd/-

(SHISHIR AGARWAL)
MEMBER (T)

Sd/-

(HARNAM SINGH THAKUR)
MEMBER (J)

May 08, 2025

Japneet