



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
IA(IBC)(LIQ.)/29(ND)2024  
AND  
IA(IBC)-5972/2024  
IN  
CP (IB) – 1680/ND/2019**

**Order under Section 33(2) of the Insolvency and Bankruptcy Code,  
2016.**

**IN THE MATTER OF:**

**AMD Industries Limited**

**... Financial Creditor**

**Versus**

**M/S VHV Beverages Private Limited**

**...Corporate Debtor**

**&**

**IN THE MATTER OF:**

**IA(IBC)(LIQ.)/29(ND)2024**

**Pankaj Mahajan**

Resolution Professional,

M/S VHV Beverages Private Limited (Under CIRP)

**...Applicant**

**Versus**

**1. Mr. Vishnoo Mittal**

7140, Sector-D, Pocket -7,

Vasant Kunj , New Delhi- 110070

Email: vishnoo.mittal@gmail.com

**...Respondent No.1**

**2. Mr. Anuj Sharma**

217, G Block, Qutub Vihar, Ph- 1, Goyla Diary,

New Delhi- 110071

Email: [sharma.anuj013@gmail.com](mailto:sharma.anuj013@gmail.com)

**...Respondent No.2**

**&**

**IN THE MATTER OF:**

**IA(IBC)-5972/2024**

**Pankaj Mahajan**

Resolution Professional .

M/S VHV Beverages Private Limited (Under CIRP)

**...Applicant**

**Versus**

**1. Mr. Vishnoo Mittal**

7140, Sector-D, Pocket -7,

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Email: vishnoo.mittal@gmail.com

**...Respondent No.1**

**2. Mr. Anuj Sharma**

217, G Block, Qutub Vihar, Ph- 1, Goyla Diary,

New Delhi- 110071

Email: [sharma.anuj013@gmail.com](mailto:sharma.anuj013@gmail.com)

**...Respondent No.2**

**Order Reserved On: 17.11.2025**

**Order Pronounced On: 02.12.2025**

**CORAM:**

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR  
HON'BLE PRESIDENT**

**SHRI RAVINDRA CHATURVEDI  
HON'BLE MEMBER (TECHNICAL)**

**Appearances:**

For the RP : Mr. Sumit Shukla, Mr. Sanjeev Panda, Mr.  
Pankaj Mahajan, Advs.

For the SBOD : Mr. Abhishek Anand, Mr. Karan Kohli, Ms.  
Vashnavi, Advs.




For the SBI : Mr. Harshit Khare, Mr. Prafful Saini, Mr. Ayuj Agrawal, Advs.  
For the Crystal Beverages : Mr. Milan Negi, Mr. Nikhil Kumar Jha, Advs.

## ORDER

### IA(IBC)(LIQ.)/29(ND)2024

1. This is an application filed on 18.06.2024 by Mr. Pankaj Mahajan, the Resolution Professional of M/S VHV Beverages Private Limited, the Corporate Debtor (CIN: U15494DL2012PTC242587) before this Adjudicating Authority under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (“**IBC**” or “**Code**”) seeking initiation of liquidation proceedings of the Corporate Debtor based on the decision taken by the Committee of Creditor (“**CoC**”) in its 31<sup>st</sup> Meeting held on 27.05.2024. The prayers made in the application read as below:
  - A. *To consider the present application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (Code) for liquidation of the Corporate Debtor; and/or;*
  - B. *To appoint the liquidator of the Corporate Debtor in terms of the provisions of Section 34 of the code; and/or;*
  - C. *To direct the Registry to communicate this order to the concerned registrar of the Companies and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi; and/or;*
  - D. *To consider declaring under Section 31(3) (a) of the Code that the moratorium passed u/s 14 of the Code shall cease to have effect and fresh moratorium under Section 33 (5) of the Code shall commence; and/or;*
  - E. *To consider that this order is deemed to be a notice of discharge to the officer, employees and the workmen of the Corporate Debtor as per Section 33 (7) of the Code; and/or;*
  - F. *To consider that no suit, prosecution or other legal proceeding shall lie against the Insolvency Professional for anything done or intended to be done in good faith under Section 233 of the Code; and/or;*



G. Pass such other or further order(s) / direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case in the interest of justice.

**Brief background of the case as mentioned in the application:**

2. Before delving into the issue raised, it would be relevant to mention brief facts of the case that resulted into filing of the present application. An application was filed under Section 9 of the Code by AMD Industries Limited (**Operational Creditor**) numbered as CP IB 1680/2019 to initiate Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor. Court IV-NCLT Delhi vide order dated 09.12.2021 (**Admission Order**) admitted the Corporate Debtor into CIRP, and a moratorium was declared. Consequently, Mr. Rahul Khanna was appointed as the Interim Resolution Professional (**IRP**).
3. Pursuant thereto, as per Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person), 2016 ("**CIRP Regulations**"), the IRP made the Public Announcement in FORM-A dated 11.12.2021 through publication in Financial Express Delhi NCR and Jansatta Delhi NCR newspapers on 12.12.2021, and invited the creditors for the submission of their claims against the Corporate Debtor. It is stated that in the 1<sup>st</sup> Committee of Creditors (**CoC**) held on 07.01.2022, the COC replaced Mr Rahul Khanna as the IRP and decided to appoint Mr Umesh Chand Goyal as the Resolution Professional (**erstwhile RP**). It is stated that the agenda was placed before the creditors, and the agenda was approved by 76.03% share. Consequently, an application bearing no IA-350/ND/2022 was also filed for appointing Mr. Umesh Chand Goyal as the RP, and this Adjudicating Authority, vide order dated 24.01.2022, allowed the application.
4. That the Resolution Professional performed its duties as per the provisions of the code and in furtherance of the same, the erstwhile RP issued a Form G inviting Expression of Interest (**EOI**), which was published in the newspapers



on 20.02.2022. In response to the publication of the EOI, it is stated that 6 EOIs were received and thereafter, the 5<sup>th</sup> CoC was convened on 02.05.2022, wherein the erstwhile RP informed the CoC that only two resolution plans were received before the stipulated last date, i.e., 25.04.2022, i.e. from:

- (i) Mr. Anuj Sharma, one of the suspended directors of the Corporate Debtor
- (ii) Mr. Piyush Agarwal of Crystal Beverages

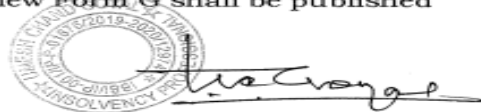
5. That the 6<sup>th</sup> CoC was held on 19.05.2022, wherein the Prospective Resolution Applicants (**PRAs**) presented their plans before the CoC, and consequently thereupon in the 7<sup>th</sup> CoC held on 26.05.2022, negotiations happened, and time was given to the PRAs to submit their revised plans before 02.06.2022, which was extended further till 17.06.2022. The PRAs submitted their resolution plan and the same were considered by the creditor in their 9<sup>th</sup> meeting held on 22.06.2022. It is stated that the agendas were put before the members for the approval of the resolution plan. However, no member voted for the resolution approving the plans, and two members with 32.92% voting shares voted against it, and the others abstained from voting.

6. Thus, the 10<sup>th</sup> CoC was convened on 06.07.2022, wherein the below three agendas were put for voting, and it was resolved as follows:

Resolution No.1 was placed for 60 days extension beyond 210 days in CIRP period and was approved with 100% voting share.

Resolution No.2 to vote on replacement of current incumbent Resolution Professional with a new RP Mr. Pankaj Mahajan was placed for voting and was approved with 6 members (unsecured Financial Creditors holding 80.84% voting share) voted 'Yes' and 1 member (secured Financial Creditor holding 19.16% voting share) voted 'Abstained from voting'

Resolution No.3 to vote on scrapping / recalling of the existing Form G process, by directing the present RP not to release the Expression of Interest and that new Form G shall be published



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by new incumbent Mr. Pankaj Mahajan was REJECTED with 4 members holding 47.60% voting share voted for "Yes", one member with 19.90% voting share voted for "NO" and two members with 32.50% voting share abstained from voting.

7. It is pertinent to mention herein that pursuant to 10<sup>th</sup> COC meeting held on 06.07.2022, apart from seeking extension of the CIRP period it was also voted to replace Mr. Umesh Chand Goyal with Mr. Pankaj Mahajan and the resolution was passed with a Voting share of 80.84%. That an application bearing no. IA-3590/2022 was filed before this Adjudicating Authority seeking appointment of the new Resolution Professional Shri Pankaj Mahajan in place of Shri Umesh Chand Goyal which was allowed vide order dated 21.11.2023. It is pertinent to mention herein that Resolution No. 3 (as extracted above) was rejected. Pursuant thereto 11<sup>th</sup> CoC was convened on 12.07.2022, wherein the resolution for approval of eligibility criteria and timelines for EOI pursuant to publication of new Form G were placed.



8. In view of the same, the erstwhile RP issued the new Form G on 17.07.2022 and received 3 EOIs from (i) Nakshatra Corporate Advisors Limited, (ii) Rupex Mineral Water Pvt. Ltd., and (iii) Crystal Beverage and Mr. Piyush Agarwal (jointly). The Request for Resolution Plan (**RFRP**), Bid Evaluation Matrix (**BEM**), etc., had to be finalised as the RFRP and BEM were to be issued within the stipulated timeline of 04.08.2022. Pertinently, since resolution for replacement of the erstwhile RP was approved certain members of the CoC directed the erstwhile RP to maintain the status quo (based on Resolution No. 2 passed in the 10<sup>th</sup> CoC on 06.07.2022) and not to proceed further with the CIRP process. Accordingly, a resolution was placed for voting, which was rejected. The extract of same is provided below for perusal:

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**"RESOLVED THAT** the present Resolution Professional Mr. Umesh Chand Goyal is hereby directed by the members of COC to stop the process of Expression of Interest in response to Form G published on 17.07.2022 in compliance of the authorization granted by the CoC in its 11<sup>th</sup> meeting held on 12.07.2022, absolving him of all his duties & responsibilities under the Insolvency and Bankruptcy Code 2016, the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations 2016, the IBBI (Insolvency Professionals) Regulations 2016 and any other related provisions and that any responsibility in this regards shall lie with the members of the CoC jointly and severally."

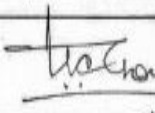

**"FURTHER RESOLVED THAT** in the event of this resolution not getting approval from the requisite voting share, the Request For Resolution Plan (RFRP) and Bid Evaluation Matrix (BEM) earlier approved in 4<sup>th</sup> CoC meeting held on 14.03.2022, shall stand approved for this ongoing process and the present RP will be authorized to issue the same on 04.08.2022 as per the timeline for Form G approved by the CoC in its 11<sup>th</sup> meeting on 12.07.2022."

The above Resolution was rejected with no vote in 'Yes', 2 members with 28.50 % voting share selected option "Abstained from Voting" and remaining 5 members (71.50%) did not vote. Accordingly, the Applicant issued the RFRP and BEM earlier approved in 4<sup>th</sup> CoC meeting held on 14.03.2022.

Thus, the erstwhile RP issued RFRP and BEM, which were earlier approved in the 4th CoC held on 14.03.2022.



9. On 03.09.2022, the erstwhile RP received a resolution plan from Crystal Beverages and Mr. Piyush Aggarwal (jointly), which was put before the CoC in the 14<sup>th</sup> CoC held on 12.09.2022 and further the PRA was asked to submit an improved resolution plan by 10.10.2022. It is stated that the revised plan was received on 10.10.2022 and the agenda for approval of plan was put before the CoC in the 16<sup>th</sup> CoC meeting on 15.10.2022. E-voting on the plan started on 17.10.2022 and was supposed to conclude on 27.10.2022. The erstwhile RP received various requests for extending the voting timeline, which after multiple extensions ultimately got concluded on 01.12.2022. The resolution for approval of the resolution plan received 'NIL' votes for approval. The voting results are as follows:

VHV BEVERAGES PRIVATE LIMITED (Undergoing Corporate Insolvency Resolution Process under IBC, 2016) E- voting results of the 16th COC Meeting held on 15.10.2022						
Sl. No.	Name of the Member of CoC	Voting Share for this meeting	Resolution No. 1 To approve the Resolution Plan submitted by Mr. Piyush Aggarwal and Crystal Beverages (Jointly)			
			APPROVED	REJECTED	NOT VOTED	CLICKED ON ABSTAINED FROM VOTING
1	Indian Bank	24.32%	-	-	24.32%	-
2	Punjab National Bank	19.90%	-	-	-	19.90%
3	State Bank of India	19.16%	-	19.16%	-	-
4	Tamilnad Mercantile Bank Limited	13.34%	-	-	13.34%	-
5	Bank of Baroda	13.75%	-	-	13.75%	-
6	The Karur Vysya Bank Limited	8.60%	-	-	8.60%	-
7	TATA Capital Financial Services Ltd	0.93%	-	-	0.93%	-
<b>TOTAL</b>		<b>100.00%</b>	<b>0.00%</b>	<b>19.16%</b>	<b>60.94%</b>	<b>19.90%</b>
<b>REJECTED</b>						
 						
Umesh Chand Goyal						
Resolution Professional in the matter of VHV Beverages Private Limited						
Email: vhbeverages@aaainsolvency.com						
IP Registration No. - IBBI/TPA-001/IP-P01876/2019-2020/12974						
AFA NO. AA1/12974/01/270321/101228 VALID UPTO 26.01.2023						
Date: 02.12.2022						
Place: New Delhi						



10. The 18th CoC was held on 03.12.2022, wherein the erstwhile RP apprised the CoC that the resolution plan had been rejected. Since no other resolution plan was received till 04.12.2022, an application for liquidation was also filed by the erstwhile RP bearing no IA-6134/2022. This adjudicating authority on 21.11.2023 passed the following order:

The relevant portion of the order is extracted below:

**IA-6134/2022**

This is an application filed for seeking the Liquidation Process. Ld. Counsel for the CoC states this application is not filed with the approval of the CoC.

He seeks to place the matter before the CoC for further consideration as to how to proceed with the matter.

In view of the above, IA-6134/2022 is closed and **stands disposed of.**

At the request and with the consent of both parties, list the matter for a physical hearing **on 09.01.2024** along with the pending applications.

11. Further, as per the Resolution No. 2 passed in the 10<sup>th</sup> COC, held on 06.07.2022, the present Applicant/RP, Mr. Pankaj Mahajan, was appointed as the RP replacing the erstwhile RP, Sh. Umesh Chand Goyal. This decision was communicated to this Adjudicating Authority through vide 3590/ND/2022, and the same was allowed vide order dated 21.11.2023. The relevant portion of the order is extracted below:

*“Ld. Counsel Mr. Pramod Dalela appeared on behalf of the CoC. In view of the submission made by the Ld. Counsel and reasons quoted above, we allow the application as prayed for and appoint Mr. Pankaj Mahajan as a new Resolution Professional in place of Shri Umesh Chand Goyal.*

*The RP, Mr. Umesh Chand Goyal is directed to hand over all the records to the new RP, Mr. Pankaj Mahajan on proper acknowledgement and the CoC is also directed to pay the pending dues of the RP.*

*In view of above IA-3590/2023 is **allowed & stands disposed of.**”*

12. The Applicant/RP informed the CoC that the CIRP has already runover a period of 721 days as on 30.11.2023 when his appointment was notified. However, the order dated 21.11.2023, while appointing the Applicant as the new RP, was silent on the additional period permitted for continuation of the CIRP. In light of this, the CoC in the 25<sup>th</sup> CoC held on 16.12.2023 resolved that an application seeking an extension of the CIRP period needs to be filed and further exclusion needs to be requested for the intervening period of 512



days. Accordingly, the Applicant filed IA-342/2024, which was allowed by the Adjudicating Authority on 30.01.2024 granting an extension of 90 days from 30.11.2023. Further extensions were also sought in order to complete the process.

13. It is stated that in the 26<sup>th</sup> CoC was held on 07.02.2024 the applicant also apprised the COC members that he has prepared the Process Memorandum mentioning proposed eligibility criteria, RFRP, detailed Evaluation Matrix, and brief particulars of the invitation for EOI in Form G of the Schedule in terms of Regulation 36 A of the CIRP Regulations, 2016 which needs to be published for inviting EOIs from interested and eligible PRAs to submit resolution plans. The CoC, in this meeting, passed the resolution approving the eligibility criteria, RFRP document, Evaluation matrix and the resolution for publication of FORM G. That the applicant in terms of the resolution passed in the 26<sup>th</sup> COC meeting published the FORM G dated 15.02.2024. However, the said FORM G was published mentioning the rider that the timelines as mentioned in the FORM G are subject to the approval of this Adjudicating Authority.
14. In response to the publication of the aforesaid Form G (Revised-II), the applicant received EOI from PRAs and the provisional list was released on 06 03.2024. The Applicant/RP convened the 28<sup>th</sup> CoC on 21.03.2024 and EoIs received in response to Form G were discussed, and 10 PRAs were declared eligible. The relevant portion of the meeting is provided below:

*ITEM NO.5*

*TO DISCUSS AND TAKE NOTE OF THE ACTIONS TAKEN BY THE RP*

- i. RP apprised the members that he had issued the final list of Potential Resolution Applicants (PRA's) on the 16th of March, 2024, and had revised the final list on 18th of March, 2024 where the two directors of the company (suspended powers) were declared ineligible after the COC did not approve the exemption proposed to them from various eligibility criteria conditions in the voting on the resolution proposed in the 27th COC meeting. The voting was ended on 18th of March, 2024 and the voting results were shared in this regard on the same day. There are now ten PRAs as listed below:*
- 1. M/s. United Biotech Private Limited and M/s. Sabrimala Industries India Limited (in*



Consortium)

2. Nalwa Steel & Power Ltd
3. Dickey Alternative Investment Trust
4. Resurgent Property Ventures Private Limited
5. Ruptex Mineral Water Pvt. Ltd.
6. Sagacious Capital Private Limited
7. Metro Waste Handling Private Limited
8. Masatya Technologies Private Limited
9. Anuj Goyal
10. Pooja Aggarwal

The last date for submission of the resolution plan was 10.04.2024, which was further extended by 15 days till 25.04.2024, 05:00 p.m. in the 29<sup>th</sup> CoC held on 12<sup>th</sup> April, 2024.

It is stated by the applicant that he received only one resolution plan from the Resolution Applicant, namely Ms. Pooja Aggarwal, partner of Crystal Beverages, who is also providing operation and maintenance (**O&M**) services to the Corporate Debtor. The same is recorded in the 30<sup>th</sup> CoC held on 30.04.2024. The resolution plan was put up for consideration before the CoC meeting, and queries were raised with the representative of the Resolution Applicant. The RP apprised the members that he and his team shall analyse the plan and prepare a report which shall be presented to the next meeting. The relevant portion of the 30<sup>th</sup> CoC is extracted below for ready reference:

**ITEM NO. 6**

**TO OPEN THE RESOLUTION PLAN RECEIVED IN FRONT OF COC, IN THE PRESENCE OF RA**

The RP brought to the notice of the COC members that 25.04.2024 being the last date for the submission of Resolution Plan, RP had received only one resolution plan (in password protected PDF via mail and in sealed envelope). The RA, Ms. Pooja Aggarwal, had initially authorized her husband, Mr. Piyush Aggarwal, to attend the COC meeting on her behalf, but due to demise of some close relative (as per her mail), Mr. Piyush Aggarwal could not attend the meeting too. The RP, subsequently, received the mail from the RA authorizing Ms. Sunita to attend the meeting. RP requested for and received Ms. Sunita's identity proof on mail.

Ms Sunita had joined the meeting at 3 PM but was requested to leave and was advised that she shall be called upon to join the meeting when the agenda related to the plan is taken up. The RP's team, after

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apprising the members regarding the authorization, invited her to join the meeting. Post joining, RP established her credentials based on the identity proof. RP, thereafter, displayed the sealed envelope containing the resolution plan and opened it in the front of all the participants. Thereafter, Ms. Sunita was requested to provide the password for opening the copy of the plan received on mail. The password was obtained, and the mail was opened in the presence of all the participants via share screen option. The plan was displayed on the screen and the financial bid by the RA was read out to the members. Ms. Sunita was asked about the basis of providing for an amount for provident fund liability when no claim has been received from the said department. She replied that such provision has been made based on the financials of the CD. She was further asked about the CIRP cost amount provided in the plan, as to whether the increase in CIRP cost shall entail an increase in the plan value to which she asserted that the resolution plan value shall not change, and any incremental CIRP cost shall be adjusted in the payment proposed to the creditors. *It was confirmed from her that the plan sent via mail is same as the plan submitted physically.* The representative of the RA was, thereafter, requested to leave the meeting.

RP apprised the members that he and his team shall analyse the plan and prepare a report on compliance with the IBC code and applicable regulations which shall be presented to the COC in the next meeting. The RP assured to complete the said activity within a week's time.

RP also brought to the notice of the members that no expenses had been incurred since last COC. Therefore, the no agenda related to CIRP cost approval was kept in this meeting.

At this stage, RP requested Mr. Vishnoo Mittal to leave the meeting as the summary of the valuation reports was to be presented to the members of the COC. Mr Mittal left the meeting. The RP displayed the summary of the average fair value and liquidation value on the screen and the value of each component of the valuations (land and building, Plant and machinery and SFA) was read out to the members. The members took note of the same.

15. The Applicant/RP apprised the COC that M/s K G Somani and Co LLP was appointed to conduct due diligence of the plan and after conducting the due diligence of the plan received from Ms Pooja Aggarwal, the RP informed the CoC the resolution plan received from the resolution applicant does not pass the test of section 30 (2) (d) of the Code in terms of implementation and the same is not feasible and viable under Regulation 38(3)(b) of the CIRP Regulations, 2016. The plan, thus, not being compliant with the provisions of the Code, was not put forward before the COC for its approval.
16. In view of the circumstances, as noted above the following resolution for initiation of Liquidation as per Section 33 of the Code was proposed and passed in the 31<sup>st</sup> CoC itself with 85.73% voting share:

**ITEM NO. 6**

**TO CONSIDER AND APPROVE THE RESOLUTION FOR THE LIQUIDATION OF THE CD AND APPOINTMENT OF LIQUIDATOR:**



As mentioned supra, M/s K G Somani & Co. LLP (KGS) have carried out the due diligence of the plan received from Ms Pooja Aggarwal, partner of Crystal Beverages who is the O&M operator at the plant of the CD. RP had appointed KGS on 01/05/2024 and they had shared the required information and documents with the RA on 03/05/2024. On 04/05/2024 and 06/05/2024 KGS sought additional information. After a substantial delay and a lot of follow up, the RA provided some information 14/05/2024 and on the basis such information KGS sought some additional information. On 17/05/2024, KGS summarized all pending points and mailed to RA. RP also constantly followed up with RA for the information vide mails dated 06/05/2024, 07/05/2024, 09/05/2024, 10/05/2024, 14/05/2024, 18/05/2024 & 20/05/2024. The flow of information from RA has been sketchy and delayed.

The chairman opened both the reports and read out the contents in a summarized way for the benefit of the members. The members were also informed about the developments that took place after the issue of the notice and agenda. Foremost among that was the mail sent by the RA where an individual had committed to lend an amount of one million dollars to the RA and an extract of the funds available have been shared too. The Chairman apprised that the said communication was received on 24th of May, 2024 ie well beyond the extended timeframe provided to the RA. Also, to allay the concerns of the funds' availability, it would not be prudent to rely on a commitment by an individual. He further expressed his opinion that a term sheet from a Bank/ FI/ NBFC would carry weight/ credibility in such a case.

Chairman apprised the COC members that the resolution plan received from the resolution applicant is not passing the test of section 30 (2) (d) of the code in terms of implementation and is not feasible and viable under Regulation 38(3)(b) of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (Regulations). In terms of Section 30 (3) of the Code, RP shall present only those plans to the COC for approval which confirm to the conditions of Section 30 (2). This plan, not being compliant, is not being put forward to the COC for their approval.

The Chairman apprised the members of the COC that there is no way forward as the CIRP period will end on 27.05.2024 (being the 900th day from the date of initiation of CIRP) and there is no plan in hand to consider as stated above.

In view of the foregoing, the liquidation of the Corporate Debtor is the only option. Therefore, the Corporate Debtor may be liquidated in accordance with Section 33 of the Insolvency & Bankruptcy Code, 2016.

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**Accordingly, the following resolutions were put to vote**



**“RESOLVED THAT** in pursuant to Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the consent of members of the CoC be and is hereby accorded to approve the liquidation of CD.


**RESOLVED FURTHER THAT** pursuant to the provisions of Section 33(2) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under, the Resolution Professional be and is hereby authorized to file an application as approved by the Committee of Creditors to the Hon’ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto.”

Hence, in light of the above discussions, which the CoC had taken in its commercial wisdom to liquidate the Corporate Debtor, the present liquidation application has been filed.

**Objections raised by the respondent:**

17. Notice in the application was issued on 01.07.2024, and the respondent, i.e. Mr Anuj Sharma, one of the ex-directors of the Corporate Debtor, filed its reply, objecting to the present application, citing mainly two reasons:

- (i) Firstly, it is stated that the approach of the applicant is not in the spirit of the Code. The Resolution Professional did not adopt a judicious approach for exploring the possibility of resolution, as can be observed from the minutes of the 30th and 31st CoC wherein the Applicant did not even put the Resolution plan submitted by the Resolution Applicant for voting before the CoC and has itself rather given a finding that the Resolution Plan is neither viable nor feasible.
- (ii) Further, it is stated that the Resolution Professional is a facilitator in the process and cannot take any decision on the resolution Plan. It is the duty of the Applicant to evaluate the Plan and form an opinion and then place it before the CoC, which in its commercial wisdom, will decide



whether the Resolution Plan is feasible and viable or not for the revival of the Corporate Debtor.

In the present scenario the Resolution Professional has not put the plan before the COC and has himself made the decision. Reliance is placed on *Swiss Ribbons Pvt Ltd & Anr v. Union of India & Ors Writ Petition (Civil) No. 99 of 2018*, *K. Sashidhar V. Indian Overseas Bank and others (vide Civil Appeal No.10673 of 2018)*, *Arcelor Mittal India Pvt Ltd V. Satish Kumar Gupta and others Civil Appeal No. 9402-9405 of 2018*.

To further strengthen its argument, the respondent placed reliance on section 30 (2) (e) and Section 25 (i) of the Code and stated that all the plans must be put before the COC and that the RP is not empowered to decide the feasibility of the plan. The respondent relies upon *Canara Bank versus Ms. Mamta Binani and Ors. Company Appeal (AT) (INS) No. 1117 of 2019*, *Sharavan Kumar Vishnoi v. Upma Jaiswal and Ors. Company Appeal (AT) (INS) No. 371 of 2022*, *Greater Noida Industrial Development Authority Versus Prabhjit Singh Soni & Anr. Civil Appeal Nos.7590-7591 Of 2023*, *IMR Metallurgical Resources AG Vs. Ferro Alloys Corporation Limited Company Appeal (AT) (Insolvency) No. 272 of 2020* and *M/S Venus Recruiter Private Limited vs Union Of India*

- (iii) Thirdly, it is also submitted by the respondents that all the documents are to be provided to the suspended board of director and in the present circumstances, a copy of the resolution plan was not provided to the suspended board of directors. The Ld. Counsel for the respondent relies upon *Vijay Kumar Jain v. Standard Chartered Bank & Ors. Civil Appeal No.8430 OF 2018* for this issue.

A Rejoinder was filed by the Applicant in response to these objections. We have considered the issues raised by the respondent. It would be appropriate to deal with the same issue wise.

## Findings and analysis:



### Issue-1

18. Whether the Resolution Professional was correct in not putting the resolution plan before the COC.

The Relevant Sections of the Code are extracted below;

#### **Section 15.**

##### **Public announcement of CIRP:**

(1) *The public announcement of the corporate insolvency resolution process under the order referred to in section 13 shall contain the following information, namely:—*

*(a) name and address of the corporate debtor under the corporate insolvency resolution process;*

*(b) name of the authority with which the corporate debtor is incorporated or registered;*

*(c) the last date for submission of claims, as may be specified;*

*(d) details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims;`*

*(e) penalties for false or misleading claims; and*

*(f) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.*

*(2) The public announcement under this section shall be made in such manner as may be specified.*

#### **Section 17.**

##### **Management of affairs of corporate debtor by interim resolution professional.**

*(1) From the date of appointment of the interim resolution professional,—*

*(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;*

*(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended<sup>J1</sup> and be exercised by the interim resolution professional;*

*(c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such*



*documents and records of the corporate debtor as may be required by the interim resolution professional;*

*(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.*

*(2) The interim resolution professional vested with the management of the corporate debtor shall—*

*(a) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;*

*(b) take such actions, in the manner and subject to such restrictions, as may be specified by the Board;*

*(c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;*

*(d) have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified; and*

*(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.*

## **Section 20:**

### **Management of operations of corporate debtor as going concern.**

*(1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern<sup>J1</sup>.*

*(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority—*

*(a) to appoint accountants, legal or other professionals as may be necessary;*

*(b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;*

*(c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property:*

*Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.*



- (d) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and*
- (e) to take all such actions as are necessary to keep the corporate debtor as a going concern.*

## **Section 25.**

### ***Management of operations of corporate debtor as going concern.***

*(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*

*(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:—*

- (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;*
- (b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;*
- (c) raise interim finances subject to the approval of the committee of creditors under section 28;*
- (d) appoint accountants, legal or other professionals in the manner as specified by Board;*
- (e) maintain an updated list of claims;*
- (f) convene and attend all meetings of the committee of creditors;*
- (g) prepare the information memorandum in accordance with section 29;*
- (h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.*
- (i) present all resolution plans at the meetings of the committee of creditors;*
- (j) file application for avoidance of transactions in accordance with Chapter III, if any; and*
- (k) such other actions as may be specified by the Board.*

## **Section 30**

### ***Submission of resolution plan***



(1) A resolution applicant may submit a resolution plan <sup>1</sup>[along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan--

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the <sup>2</sup>[payment] of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than--

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

*Explanation 1.--For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.*

*Explanation 2.-- For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor--*

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;



**(d) the implementation and supervision of the resolution plan;**

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

*[Explanation. -- For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law];*

**(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).**

(4) The committee of creditors may approve a resolution plan by a vote of not less than <sup>6</sup>[sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, <sup>7</sup>[the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board:

*Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017(Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:*

*Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:*

*Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.]*

*[Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]*



*(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered: Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.*

*(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.*

19. It is relevant to mention that once an admission order under Section 7 or 9 of the Code is passed, the Resolution Professional plays an important role in keeping the Corporate Debtor as a going concern. From the bare perusal of the above provisions read with relevant regulations, it is clear that the Resolution Professional is duty bound to invite claims from the committee of creditors, and perform functions as elucidated above. The Resolution Professional after following the process as envisaged under the Code, has to invite submission of the resolution plans from the eligible Resolution Applicants. It is at this stage that once the plans are received by the Resolution Professional, it has to undergo check and balance in terms of the provisions of the Code. In the present facts and circumstances, Ld. Counsel for the Suspended Board of Director has raised an objection to the liquidation application stating that the Resolution Professional has not put the Resolution plan for voting before of the COC and has rather itself given a finding that the Resolution Plan is not viable and feasible.

20. Under Section 30 of the Code as mentioned above, the Resolution Professional has to *examine each resolution plan received by him to confirm that each resolution plan* is compliant with Section 30 (2) of the Code. Further, under Section 30 (3) of the Code the Resolution Professional is to present the plans before the CoC which are compliant as per Section 30(2) of the Code for its approval. In this context, Regulation 38 of CIRP Regulation, 2016 is extracted below:

**38. Mandatory contents of the resolution plan.**

*(1) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.]*  
*(1A) A resolution plan shall include a statement as to how it has dealt*



*with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.*

*(IB) A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.]*

*(2) A resolution plan shall provide:*

*(a) the term of the plan and its implementation schedule;*

*(b) the management and control of the business of the corporate debtor during its term; and*

*(c)adequate means for supervising its implementation.*

*(3) A resolution plan shall demonstrate that –*

*(a) it addresses the cause of default;*

***(b) it is feasible and viable;***

*(c) it has provisions for its effective implementation;*

*(d) it has provisions for approvals required and the timeline for the same; and*

*(e) the resolution applicant has the capability to implement the resolution plan.]*

The question which arises for consideration is that whether the Resolution Professional has to necessarily put the resolution plan before the COC even if the same is not feasible.

21. In the 30<sup>th</sup> CoC held on 30.04.2024, the following agenda was placed before the COC for consideration:

**TO OPEN THE RESOLUTION PLAN RECEIVED IN FRONT OF COC, IN THE PRESENCE OF RA**

The RP brought to the notice of the COC members that 25.04.2024 being the last date for the submission of Resolution Plan, RP had received only one resolution plan (in password protected PDF via mail and in sealed envelope). The RA, Ms. Pooja Aggarwal, had initially authorized her husband, Mr. Piyush Aggarwal, to attend the COC meeting on her behalf, but due to demise of some close relative (as per her mail), Mr. Piyush Aggarwal could not attend the meeting too. The RP, subsequently, received the mail from the RA authorizing Ms. Sunita to attend the meeting. RP requested for and received Ms. Sunita's identity proof on mail.

Ms Sunita had joined the meeting at 3 PM but was requested to leave and was advised that she shall be called upon to join the meeting when the agenda related to the plan is taken up. The RP's team, after



apprising the members regarding the authorization, invited her to join the meeting. Post joining, RP established her credentials based on the identity proof. RP, thereafter, displayed the sealed envelope containing the resolution plan and opened it in the front of all the participants. Thereafter, Ms. Sunita was requested to provide the password for opening the copy of the plan received on mail. The password was obtained, and the mail was opened in the presence of all the participants via share screen option. The plan was displayed on the screen and the financial bid by the RA was read out to the members. Ms. Sunita was asked about the basis of providing for an amount for provident fund liability when no claim has been received from the said department. She replied that such provision has been made based on the financials of the CD. She was further asked about the CIRP cost amount provided in the plan, as to whether the increase in CIRP cost shall entail an increase in the plan value to which she asserted that the resolution plan value shall not change, and any incremental CIRP cost shall be adjusted in the payment proposed to the creditors. *It was confirmed from her that the plan sent via mail is same as the plan submitted physically.* The representative of the RA was, thereafter, requested to leave the meeting.

RP apprised the members that he and his team shall analyse the plan and prepare a report on compliance with the IBC code and applicable regulations which shall be presented to the CoC in the next meeting. The RP assured to complete the said activity within a week's time.

RP also brought to the notice of the members that no expenses had been incurred since last CoC. Therefore, the no agenda related to CIRP cost approval was kept in this meeting.

At this stage, RP requested Mr. Vishnoo Mittal to leave the meeting as the summary of the valuation reports was to be presented to the members of the CoC. Mr Mittal left the meeting. The RP displayed the summary of the average fair value and liquidation value on the screen and the value of each component of the valuations (land and building, Plant and machinery and SFA) was read out to the members. The members took note of the same.

Further, in the 31<sup>st</sup> CoC held on 27.05.2024, the CoC was informed that the Resolution Plan is not passing the test of Section 30(2)(d) of the Code in terms of implementation, and hence was not put forward for voting before the CoC. The relevant portion of the 31<sup>st</sup> meeting of CoC is extracted below:

**TO CONSIDER AND APPROVE THE RESOLUTION FOR THE LIQUIDATION OF THE CD AND APPOINTMENT OF LIQUIDATOR**

As mentioned supra, M/s K G Somani & Co. LLP (KGS) have carried out the due diligence of the plan received from Ms Pooja Aggarwal, partner of Crystal Beverages who is the O&M operator at the plant of the CD. RP had appointed KGS on 01/05/2024 and they had shared the required information and documents with the RA on 03/05/2024. On 04/05/2024 and 06/05/2024 KGS sought additional information. After a substantial delay and a lot of follow up, the RA provided some information 14/05/2024 and on the basis such information KGS sought some additional information. On 17/05/2024, KGS summarized all pending points and mailed to RA. *RP also constantly followed up with RA for the information vide mails dated 06/05/2024, 07/05/2024, 09/05/2024, 10/05/2024, 14/05/2024, 18/05/2024 & 20/05/2024.* The flow of information from RA has been sketchy and delayed.

The chairman opened both the reports and read out the contents in a summarized way for the benefit of the members. The members were also informed about the developments that took place after the issue of notice and agenda. Foremost among that was the mail sent by the RA where an individual had committed to lend an amount of one million dollars to the RA and an extract of the funds available have been shared too. The Chairman apprised that the said communication was received on 24<sup>th</sup> of May, 2024 ie well beyond the extended timeframe provided to the RA. Also, to allay the concerns of the funds' availability, it would not be prudent to rely on a commitment by an individual. He further expressed his opinion that a term sheet from a Bank/ FI/ NBFC would carry weight/ credibility in such a case.

*Chairman apprised the CoC members that the resolution plan received from the resolution applicant is not passing the test of section 30 (2) (d) of the code in terms of implementation and is not feasible and viable under Regulation 38(3)(b) of the IBB (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (Regulations). In terms of Section 30 (3) of the Code, RP shall present only those plans to the CoC for approval which confirm to the conditions of Section 30 (2). This plan, not being compliant, is not being put forward to the CoC for their approval.*

*The Chairman apprised the members of the CoC that there is no way forward as the CIRP period will end on 27.05.2024 (being the 900<sup>th</sup> day from the date of initiation of CIRP) and there is no plan in hand to consider as stated above.*

*In view of the foregoing, the liquidation of the Corporate Debtor is the only option. Therefore, the Corporate Debtor may be liquidated in accordance with Section 33 of the Insolvency & Bankruptcy Code, 2016.*



It is the stand of the applicant that the due diligence report of the plan prepared by M/s K G Somani & Co. LLP was read out by the RP before the COC and the COC was apprised that the resolution plan received from the RA is not passing the test of Section 30(2) (d) of the Code in terms of implementation and is not feasible and viable in terms of the Section 30 (3) of the Code, and that the RP shall present only those plans to the COC for approval which confirm to the conditions of Section 30(2) of the Code.

22. Consequently, during the course of hearing, this adjudicating authority asked the applicant to clarify the position regarding the objection taken by the respondent. On 30.07.2024 it was recorded as follows:

**ORDER**

**IA-29/2024 Liq.**

Heard Mr. Milan Negi, Ld. Counsel for M/s. Crystal Beverages, Mr. Abhishek Anand, Ld. Counsel for Suspended Board and Mr. Sanjeev Panda, Ld. Counsel for the RP. Ld. Counsel for the RP seeks time to get instruction from CoC and report to us. At request, list the matter on **05.08.2024 for reporting.**

**Cont.P-16/2022, IA-2176/2022, IA-2460/2022, IA-3954/2022, IA-4065/2022, IA-4807/2022, IA-4373/2022, IA-6095/2022, IA-1981/2022, IA-3539/2022, IA-4037/2022, IA-4042/2022, IA-4854/2022, IA-5260/2022, IA-5081/2023, IA-2891/2024**

At request, list these IAs on **05.08.2024**

Pursuant thereto, in the 32<sup>nd</sup> CoC held on 02.08.2024, the RP put forth the same before the COC, the relevant portion of which is as follows:



**5. TO TAKE NOTE OF THE PROCEEDINGS HELD IN THE LIQUIDATION APPLICATION FILED BY THE RP AND DELIBERATE UPON THE OBJECTIONS RAISED BY THE RESPONDENTS AND TAKE A COLLECTIVE DECISION THE OPPORTUNITY TO ADDRESS THE CONCERNS OF THE RESPONDENTS**

The Chairman apprised the COC members that this meeting has been called to apprise the members about the proceedings of the hearing held at the Honourable NCLT on 30-07-2024 and take a suitable decision based on the discussions. First and foremost, the background of the matter was provided from the minutes of the 31<sup>st</sup> COC meeting held on 27<sup>th</sup> of May, 2024. It was recalled, for the benefit of the members, that only one plan was received in the process from Ms Pooja Aggarwal, partner of Crystal Beverages who is the O&M operator at the plant of the CD. M/s K G Somani & Co. LLP (KGS) had been appointed for carrying out the due diligence under Section 29 A and vetting the plan in terms of compliance of the various provisions of the IBC code and CIRP regulations before submission of the plan to the COC for voting. It was informed that the consultants had shared the reports which were presented to the COC in the 31<sup>st</sup> meeting. The fact about the flow of information from the PRA being sketchy and delayed was also read out from the last minutes. The chairman, then sought the attention of the members to the following paragraph of the minutes of 31<sup>st</sup> COC.

Quoted Text begins

*Chairman apprised the COC members that the resolution plan received from the resolution applicant is not passing the test of section 30 (2) (d) of the code in terms of implementation and is not feasible and viable under Regulation 38(3)(b) of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (Regulations). In terms of Section 30 (3) of the Code, RP shall present only those plans to the COC for approval which confirm to the conditions of Section 30 (2). This plan, not being compliant, is not being put forward to the COC for their approval.*

End of Quoted Text

The RP went on to explain that the PRA had failed to submit the sources of funds inspite of various opportunities provided to her. The Net worth of the RA, Rs. 10.36 crores, consisted of a factory land worth Rs. 10.32 crores where the RA was holding 75% share. On being questioned about the ways to liquidate the said asset with 25% share being held by another entity, the PRA had categorically stated that the said land was not planned to be sold for the implementation of the plan submitted. On being asked to provide the sources of funds, the PRA had provided a comfort letter from a dry fruit company by the name of Arnav Ansh Private Limited. To establish the credibility and paying capacity of the proposed lender, the Balance Sheet, net worth, liquid fund availability and resolution of the board of the company were asked to be submitted but the same were not provided. On 24<sup>th</sup> of May, 2024, at around 10 PM, a proposal from an individual by the name of Vijay Verma, holding USD 4.14 lacs in his JP Morgan Account was mailed.

The RP mentioned that since the sources were not clear inspite of various opportunities afforded to the PRA, the RP could not submit his certificate regarding the plan being compliant of Section 30 (2) (d) of the code and did not seek the voting of the COC on the plan.



The members were, thereafter, informed that the PRA and the ex-director of the company had filed an application with similar objections questioning the decision of the RP for not taking the plan to the COC for voting. After hearing the arguments, the bench was of the view that the RP could have issued the certificate mentioned above with a disclaimer and left it for the COC to decide on the plan. RP informed the members that the bench was apprised that the complete report on viability and compliance had been submitted to the COC for consideration and the plan too had been shared with the minutes of the 30<sup>th</sup> COC meeting. The counsel of the RP, Mr. Sumit Shukla, explained, in detail, the proceedings that took place in the hearing on 30<sup>th</sup> of July, 2024. He mentioned that the bench was inclined to issue notice to the COC members and had suggested withdrawal of the liquidation application with the other parties too withdrawing the applications. The counsel submitted that he suggested for a short date to enable the RP to convene a COC meeting to take his instructions from the COC in this regard. The COC members asked the counsel as to whether the bench had passed any order to the COC to consider the plan again. It was explained that these were the observations of the bench during the hearing, where RP, his counsel, the counsel for the PRA and the counsel for the ex-director were present.


After a detailed discussion the COC instructed the Resolution professional as under:

- Since the COC already has approved the Liquidation of the CD whereas the application filed by the RP basis such decision is pending before the Hon'ble AA
- As regards to the objections of the RA and the ex- director, the RP may ask the PRA to submit the submit the Revised Resolution Plan to the RP and
- Subject to prior approval of the AA the COC shall consider such revised Resolution Plan as may be submitted by the RA, after vetting by the RP, in terms of above discussions

RP was advised to apprise the bench about the decision of the COC.

The views of Mr. Vishnoo Mittal were also sought on the discussions while bringing to his notice that one of the objections raised in the application by ex-management regarding non sharing of the resolution plan was not factually correct. He acknowledged that the said objection in the application was incorrect. He submitted to the participants that he just wishes to have a successful resolution of the CD.

It is observed from the above minutes, that the RP placed before the COC, the objection taken by the respondent and the COC instructed, that the RP may ask the PRA to submit the revised resolution plan to the RP. Further, it is pertinent to mention herein that, as per the minutes extracted above, the suspended director, acknowledged, that the objection regarding non-submission of resolution plan was factually incorrect.



23. Further, as per the Adjudicating Authority's order dated 30.07.2024, another meeting of the CoC was convened i.e. 35<sup>th</sup> CoC on 29.10.2024, to discuss the plan submitted by Ms. Pooja Agarwal, wherein once again the CoC duly deliberated upon the plan and took a conscious decision to go for liquidation of the Corporate Debtor. The relevant portion of the COC meeting is extracted below for ready reference:

A. The plan was presented to the COC along with the observation by the undersigned that the plan could not be put up for voting on account of the plan being non compliant of the Section 30 (2)(d) of the IBC, there being no clarity/ visibility about the availability of funds for implementation of the plan. The fact was aptly recorded in the 31<sup>st</sup> COC meeting held on 27<sup>th</sup> of May, 2024 where the resolution for the liquidation of the CD was passed.

B. In the 32<sup>nd</sup> COC, on the instructions of the AA, the view of the COC was sought as to whether the COC was ready to consider the existing/ improved plan. The COC decided that in view of the liquidation application being filed, the existing/ improved plan cannot be considered unless there are clear instructions of the bench.

RP apprised the members that the bench has, in the last hearing, specifically enquired as to whether the COC had also considered the plan as non-viable. In view of above RP sought the views of the COC members

In response to the query raised by the RP, representative of SBI stated that, the resolution plan submitted by Ms Pooja Agarwal being the Partner of Crystal Beverages LLP is not acceptable for the following key reasons:

1. The reports on Feasibility and Viability issued by K G Somani and Co LLP. The said report was presented by the RP before the COC and the key aspects were read out for the benefit of the members. The non clarity of sources of funds in the resolution plan makes the



resolution plan non-viable and uncertain;

2. The conduct of Crystal Beverages, the partnership firm of the PRA, Ms Pooja Agarwal, is known to the COC which is marked by constant defaults and non-cooperation. The fact that the outstanding dues under the operations and management agreement has not been paid by the partnership firm even after multiple reminders and filing of application before the Hon'ble NCLT, which has led to eviction notice been issued, further enforces the view of mala fide intent and lack of funds with the PRA;
3. The fact that 27<sup>th</sup> of May, 2024, was the last day of CIRP of the CD after accounting for all the extensions was also recorded in the minutes along with the fact that there is no compliant plan with the COC.
4. Accordingly, the resolution plan is neither feasible nor viable and SBI had taken a conscious decision of voting for liquidation keeping all the above factors in mind and hence the RP should proceed with pressing the liquidation application.

RP sought other members views on and other CoC members agreed with the views expressed by SBI. Accordingly, it was decided that the minutes of this CoC meeting will be placed before the Hon'ble NCLT for expeditious disposal of the applications.

**The summary is tabulated below:**

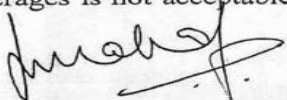
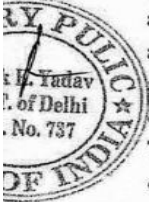
S. No.	Name & Address of the COC Member	Voting Share	Views of the members
1	Indian Bank	24.32%	Supported and echoed the views of SBI and thus in favour of liquidation application being pressed.
2	Punjab National Bank	19.90%	Supported and echoed the views of SBI and thus in favour of liquidation application being pressed.
3	State Bank of India	19.16%	Captured in detail in the para above this table.
4	Tamilnad Mercantile Bank	13.34%	Supported and echoed the views of SBI and thus in favour of liquidation application being pressed.
5	Bank of Baroda	13.75%	Supported and echoed the views of SBI and thus in favour of liquidation application being pressed.
6	The Karur Vysya Bank Limited	8.60%	Supported and echoed the views of SBI and thus in favour of liquidation application being pressed.
7	TATA Capital Financial Services Ltd	0.93%	Did not attend the meeting
	<b>Total</b>	<b>100.00%</b>	

**The members took note of the above.**



An affidavit to this effect was also filed, wherein the applicant has mentioned that the aforesaid query of the bench was put before the COC members regarding the feasibility and viability of the resolution plan submitted by the sole resolution applicant. It is evident from the affidavit that the State Bank of India stated that the resolution plan submitted by Ms Pooja Aggarwal is not acceptable for the reasons extracted below:

3. That I state that the 35<sup>th</sup> COC meeting was convened on 29.10.2024 where the COC inter-alia discussed on the liquidation application pending before this Hon'ble Tribunal and the members of the COC were apprised by the deponent that during the course of discussions on the application, this Hon'ble Tribunal had sought the clarification as to what are the views of the COC with respect to the resolution plan. The deponent also apprised the members of the COC that this Hon'ble Tribunal specifically enquired as to whether the COC had also considered the plan as non-viable to which the representative of the State Bank of India (SBI) stated that, the resolution plan submitted by Ms Pooja Agarwal being the Partner of Crystal Beverages is not acceptable for the following key reasons:



- A. *The reports on Feasibility and Viability issued by K G Somani and Co LLP. The said report was presented by the RP before the COC and the key aspects were read out for the benefit of the members. The non clarity of sources of funds in the resolution plan makes the resolution plan non-viable and uncertain.*
- B. *The conduct of Crystal Beverages, the partnership firm of the PRA, Ms Pooja Agarwal, is known to the COC which is marked by constant defaults and non-cooperation. The fact that the outstanding dues under the operations and management agreement has not been paid by the partnership firm even after multiple reminders and filing of application before the Hon'ble NCLT, which has led to eviction notice been issued, further enforces the view of mala fide intent and lack of funds with the PRA;*
- C. *The fact that 27th of May, 2024, was the last day of CIRP of the CD after accounting for all the extensions was also recorded in the minutes along with the fact that there is no compliant plan with the COC.*
- D. *Accordingly, the resolution plan is neither feasible nor viable and SBI had taken a conscious decision of voting for liquidation keeping all the above factors in mind and hence the RP should proceed with pressing the liquidation application.*

4. That I further state that the deponent sought view of the other members of the COC with respect to the views expressed by the representative of the SBI as stated supra and other COC members agreed with the views expressed by the SBI and it was decided that the minutes of the 35<sup>th</sup> COC meeting will be placed before this Hon'ble Tribunal for expeditious disposal of the applications. The copy of the minutes of the 35<sup>th</sup> COC meeting held on 29.10.2024 is annexed as **Annexure-1**.



The views of the State Bank of India were agreed to by the other members of the COC as well. In view of the same, the respondent's argument cannot be sustained.

The COC members have also rejected the resolution plan basis the reasons as mentioned above. Further, in this context it is to be noticed that, even Ms. Pooja Aggarwal, the resolution applicant was given a fair opportunity to revise its resolution plan, however, the same was not done. Thus, the applicant cannot be at fault. We are thus not inclined to accept this argument of the respondent.

24. The other objection of the respondent with that the resolution plan was not served upon the suspended board of director. In this regard it is relevant to mention the minutes of 32<sup>nd</sup> CoC meeting wherein it is mentioned that the aforesaid objection of the respondent was discussed in the meeting, and it was averred by the respondent that the objection is factually incorrect. Therefore, we do not deem it appropriate to deliberate upon the aforesaid issue.

25. Further, it is to be noted that the respondent raised further objections by way of a short note dated 07.08.2025, and by way of a reply to the affidavit filed by the applicant.

a. Firstly, it is stated by the respondent that the CoC of the Corporate Debtor was misled by the Resolution Professional, as the entire process stood conducted in contravention of the provisions of the Code.

To strengthen its arguments, it is stated by the respondent that the value of assets belonging to SREI which was excluded from the CIRP was nevertheless included in the liquidation value and formed a part of the valuation report. The errors and irregularities in the valuation exercise, coupled with the incorrect inclusion of assets and liabilities which were legally required to be excluded, vitiated the decision-making process of the CoC. It is stated that by including the assets of SREI which were explicitly excluded from the CIRP, the Resolution Professional/Applicant artificially inflated the liquidation value, thereby corrupting and misdirecting the commercial wisdom of the CoC.



- b. The other objection raised by the respondent is that claim received by the EPFO was never disclosed to the members of the CoC. It is stated that the CoC members were made to proceed on the assumption that the liquidation route would yield higher returns than the resolution plan, due to incomplete information supplied by the Applicant, that misrepresented the true financial position of the Corporate Debtor. Reliance was also placed on Regulation 36(l)(4) of the CIRP Regulations by the respondents, that the statutory dues of the EPFO had to be excluded from the liquidation value. Thus, the respondent's have asserted that the Applicant's failure to follow this mandatory provision distorted the valuation exercise, and misled the CoC.
- c. The third objection in this note relates to the valuation report, wherein, it is stated that the valuation report is presented to the CoC members as the sole guiding document for assessing the economic feasibility of the resolution plan vis-a-vis liquidation which in the present case was misrepresented. It is stated that due to the improper valuation report, the commercial wisdom of the CoC has not been properly exercised. Further, the resolution professional has not followed Regulation 35 of the CIRP Regulations 2016 in letter and spirit. To counter these arguments posed by the respondent the applicant filed its reply to the short note and averred as follows:

### **Response by Applicant**

- a. That the aggregate of difference in valuation of all the assets classes between the reports submitted by the two valuers is 12.90 % which is below the specified limit of 25%. However, in case of SFA class of assets, the difference between the two reports is about 61.96%, but the average SFA liquidation value constitutes only 2.45 % of the average liquidation value of all the asset classes, and therefore, the third valuer was not appointed.



- b. Further it is stated that the assets belonging to SREI were not included in the IM/RFRP and the value of these assets was shown as NIL in the Fixed Assets Register (FAR), and it is also stated that the suspended management had been supplied the copy of the IM.
- c. With respect to non-disclosure of EPFO's claim, it is stated by the applicant that it received the claim from EPFO Department on 03.01.2025 and a reply was sent to it on 14.01.2025, intimating the dept. that the liquidation application has been filed and that the said claim cannot be accepted. Further, another reply was sent on 16.07.2025 in reply to the letter dated 04.07.2025, which was against the same query.

It is stated by the applicant that while checking the earlier records he came across the fact that the EPFO had sent the claim vide email dated 12.10.2022 to the erstwhile RP and a reply has also been sent on 13.10.2022 to the respondent seeking the required information from the respondent. Further, it is stated by the applicant that he was unaware of the aforesaid claim before 03.01.2025 and to the converse, the respondent who was well aware of the said claim, attended all the meetings of the COC, and was having the information memorandum never raised an objection against the same.

26. Before dealing with the objection, it is relevant to mention that the aforesaid objections by way of note have been raised by the respondent now, and the same have not been even whispered in the reply filed by them to the liquidation application. The respondent has been part of COC meetings, and is privy to the all the documents he was eligible to receive as per the law. Even then, the respondent has kept quiet and has raised the objections now. Be that as it may, w.r.t objection regarding the appointment of third valuer, it is relevant to extract Regulation 35 of the CIRP Regulations:

*35. Fair value and Liquidation value.*

*(1) Fair value and liquidation value shall be determined in the following manner:-*

*(a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the*



*liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;*

*[Provided that the resolution professional shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at valuation to the members of the committee before computation of estimates.]*

***(b) if the two estimates of a value in an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value computed in the manner provided in clause (a).***

27. It is pertinent to note that valuation is carried out solely to enable the CoC to take an informed decision on the value of resolution plan offers, in accordance with the provisions of the code. Although there was a deviation between the two valuation reports of securities and financial assets, Regulation 35(1)(b) empowers the CoC, after due deliberation, to direct the Resolution Professional *to appoint a third valuer, and the RP may do so if required.* In the present case, the RP placed all valuation reports before the CoC, and considering that, upon taking all three classes of assets together, the deviation was not materially significant being less than 2.5% of the total value the CoC comprising secured and financial creditors, after deliberation, decided not to appoint a third valuer for securities and financial assets. Therefore, the same cannot be said to violate the provision of law. The word used in Regulation 35 is 'may' which cannot be said to mandatory in nature. The valuation report in the present case, was in the knowledge of the COC, so it cannot be said to materially effect the present process. Upon commencement of liquidation, the liquidator would have complete liberty to obtain a fresh valuation report, and no impediment arises from the valuation exercise undertaken during the CIRP. In this regard, reference is made to :

***Central Bank of India v. Bijendra Kumar Jha, 2025 SCC OnLine NCLAT 1283***



**20.** *The valuers appointed in the CIRP process are the registered valuers who are registered valuers and they are expert of the job and valuation given by the valuers are not to be lightly interfered with by the Adjudicating Authority in exercise of judicial review. When the report is based on relevant material, the Court cannot give its own opinion with regard to valuation of the assets. Counsel for the Respondent has rightly relied on the judgment of this Tribunal in “Beacon Trusteeship Ltd. v. Jayesh Sanghrajka, 2024 SCC OnLine NCLAT 667” wherein paragraphs 17, following has been observed:—*

*“17. The argument that Valuation Reports were not correct has no substance. The RP has shared all information regarding the Corporate Debtor available with it to the valuers and valuers after detailed correspondence with the RP had provided the Valuation Report. Valuers who submitted the Reports are expert and it is not open for the Appellant or this Tribunal to sit in Appeal on the Valuation Report. It is submitted that Resolution Plan is fair and equitable to all Creditors, Homebuyers constituted a different category of Financial Creditor in a class and the fact that they are being provided homes without being asked to pay any escalation price is not a ground on which Resolution Plan can be interfered with, CoC in its commercial wisdom has approved the Resolution Plan which does not require any interference at the instance of the Appellant in this Appeal.”*

**21.** *We may also notice the judgment of the Hon'ble Supreme Court in “M.K. Rajagopalan v. Periasamy Palani Gounder - (2024) 1 SCC 42” where the Hon'ble Supreme Court had approved the decision of the Adjudicating Authority and it was found that the process for valuation was undertaken by the Resolution Professional in accordance with law. In paragraphs 134, 135, 136, 137 are as follows:—*

*“134. The Appellate Tribunal has laid great emphasis on the point that commercial wisdom of CoC was materially affected for want of existence of a valid and actual valuation report and sharing of all the relevant facts pertaining to the valuation with the members of CoC leading to violation of Regulations 27 and 35 of the CIRP Regulations. We are unable to agree.*

*135. It has rightly been contended on behalf of the appellants that the members of CoC were provided with fair value and liquidation value after obtaining a confidentiality undertaking. We have reproduced hereinbefore all the material parts of the minutes of the meetings of CoC and it is at once clear that the members of CoC were fully satisfied with and endorsed the process of valuation and even reevaluation as undertaken by the resolution professional. Particularly, the minutes of second, fourth, sixth and seventh CoC*



meetings stand testimony to the fact that the requirements of Regulation were scrupulously followed and complied with and there had not been any doubt in CoC as regards the process of valuation as also supplying of fair and liquidation value to the members of CoC. The detailed findings of the adjudicating authority in this regard (reproduced in para 60 hereinabove) make it clear that the adjudicating authority independently applied its mind to the process of valuation and presentation of the matter to CoC. Rejection of all the objections in that regard by NCLT, called for no interference.

136. The Appellate Tribunal appears to have unnecessarily and rather unjustifiably presumed that there had been blatant statutory violations and irregularities. Even if certain issues were raised in some of the meetings of CoC as regards the process of valuation, the clarifications from the resolution professional and the steps taken by him for valuation and re-valuation had been to the satisfaction of CoC. It has rightly been contended on behalf of the appellants with reference to the decision in Maharashtra Seamless 16 that resolution plan is not required to match the liquidation value as such.

137. The findings of the Appellate Tribunal in regard to the question of valuation and thereby taking the resolution plan to be in contravention of Sections 30(2) and 61(3) of the Code cannot be approved and are required to be set aside.”

The mere fact that Appellant is not satisfied with the valuation report given by third valuer cannot be a ground to interfere with the commercial wisdom of the CoC. Further reference is made to:

***Hemant Shantilal Shah v. Care Office Equipment Ltd., 2024 SCC OnLine NCLAT 494***

21. It is clear from the above-cited CIRP Regulations that Regulation 27 provides for appointment of two registered valuers to determine the fair value and liquidation value of the corporate debtor in accordance with Regulation 35. Further Regulation 35(1)(b) provides that only when the two estimates of a value in an assets class are significantly different, or on the specific proposal of the CoC, that the RP may appoint a third registered valuer. In the present facts of the case, we notice that the CoC after deliberations decided in the 6th CoC meeting that a third valuer would require to be appointed only if there was gulf of a difference in the stock valuation figures estimated by the two appointed valuers, while the 7th CoC meeting after noticing the valuation reports of the two valuers decided against the appointment of the third valuer. This position was later confirmed by the CoC in their affidavit dated 01.09.2022 filed before the Adjudicating Authority.



*24. Given this position, we are of the view that the RP did not violate the CIRP Regulations in the conduct of the valuation exercise. The RP had followed Regulation 27 to disclose the estimated fair and liquidation value of the Corporate Debtor. Further, we find that the CoC had duly considered and deliberated upon the valuation reports before deciding not to have any report from a third valuer. That being the considered business decision of the CoC, the supremacy of the commercial wisdom cannot be questioned by the Appellants. In fine, we do not find any infirmity in the conduct of the valuation exercise.*

In the present case a conscious decision has been taken by the COC, therefore we find no merit in the aforesaid argument.

28. The other issue which pertains to inclusion of assets of SREI as can be seen from documents on record have not been included in the IM. As can be seen, the said IM has already been sent to ex-management vide email dated 08.03.2024 & 11.03.2024, had there been any issue, the same could have been raised then and there, however the ex-management did not object. The aforesaid issue as alleged was within their knowledge, and now cannot be raised at such belated stage that too without any substance. The objection regarding the claims of EPFO, we do not deem it appropriate to delve deeper since, if aggrieved the EPFO department has recourse to the remedy available to them as per law.

29. In this respect it is to be noted that, even otherwise, pursuant to indulgence by this adjudicating authority, opportunities have been given to resolute the Corporate Debtor or otherwise for a revised resolution plan. However, the COC members, have taken a clear and unambiguous decision to liquidate the Corporate Debtor. It is not the case, where opportunities for resolution have not been considered. They have been discussed however all went in vain.

It is to be noted that the IBC proceedings are based on timelines and the process cannot be restarted every now and then defeating the very purpose of the code. The respondent has been pursuing this litigation cautiously and keeps on raising his objections one after the other to halt the process in some or the other way.



30. In the present case, the CoC, in its commercial wisdom, with 99.07% members present and voting, has rejected the resolution plan. The Hon'ble Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank & Ors.** (2019) 12 SCC 150 has held that the commercial decision of CoC is non-justiciable. The relevant portion of this judgment is extracted below:

*“19. .... In the present case, however our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional as being compliant with all the statutory requirements specified in Section 30(2).*

*62. .... In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the resolution professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the “commercial/business decision” of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count.”*

31. The Hon'ble Supreme Court in the case of Committee of Creditors of **Essar Steels v. Satish Gupta & Ors.** in Civil Appeal No. 8766 -67 of 2019 has also held as follows:

*“42. .... Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameter of such review having been clearly laid down in K. Sashidhar (supra).”*

32. Further, Section 33(2) of the Code permits the CoC to liquidate the CD at any point of time during the CIRP. Section 33(2) reads as follows:

*33. Initiation of Liquidation*

*(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 subclauses (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.]*

33. To summarize

- i. We find that at the behest of CoC the CIRP period was extended from time to time, and multiple extensions have already been given and expired. Notably, the CIRP commenced on 09.12.2021. Thereafter, Form-G was issued on 20.02.2022 inviting EOI. In response to it, two resolution plans were received, one from the suspended Board of Directors, which is presently objecting the initiation of liquidation, and another from Mr Piyush Agarwal of Crystal Beverages, an entity currently providing operation and maintenance services to the Corporate Debtor and in occupation of land taken on lease by the Corporate Debtor. The CoC, after evaluating both the plans, was not satisfied with the feasibility and viability of either of the proposals. Accordingly, the plans were placed for voting and were rejected in the 6th CoC meeting.
- ii. Subsequently, a fresh Form-G was issued on 17.07.2022 granting another opportunity for revival. In response, a joint resolution plan was once again submitted by Crystal Beverages and Mr Piyush Agarwal. The plan was deliberated in successive CoC meetings and multiple extensions were granted at the request of the Resolution Applicant. However, even after such indulgence, the revised plan did not secure any vote from the CoC



members and was, therefore, rejected. Consequent thereto, the Resolution Professional filed **I.A. 6134/2022** seeking liquidation. Based on the submissions made at that stage, this Adjudicating Authority granted one more opportunity to explore the revival of the CD and directed the CoC to reconsider its decision vide order dated 21.11.2023 while disposing of the I.A. 6134/2022.

- iii. Pursuant thereto, again Form-G was reissued on 15.02.2024. In response, Ms Pooja Agarwal, partner of Crystal Beverages, submitted a resolution plan. The plan was evaluated in multiple CoC meetings and a detailed analysis was also carried out by an independent evaluation agency, M/s K.G. Somani and Co. LLP. Upon consideration, the CoC concluded that the plan did not satisfy the requirements of Section 30(2)(d) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 38(3)(b) of the CIRP Regulations, 2016. The plan was accordingly not considered fit, and the Resolution Professional was directed to initiate liquidation.
- iv. From the above sequence, it is evident that since the commencement of the CIRP in 2021, adequate and repeated opportunities have been granted for the revival of the Corporate Debtor, and every plan received has been duly examined. Despite ample time and repeated indulgence, no compliant, feasible or viable resolution plan has been submitted. It is also pertinent to observe that in all three attempts, the Resolution Applicants were directly or indirectly linked to the entity occupying the leased land of the Corporate Debtor, where the lease had expired, and the eviction proceedings are pending before this Adjudicating Authority.
- v. The objections now raised by the suspended Board of Directors, despite being fully aware of the process since inception, appear to be dilatory in nature and contrary to the objective of value maximisation under the Code. It is further noted that the suspended management has not extended the cooperation mandated under the Code during the CIRP, compelling the Resolution Professional to file an application under Section 19(2) of the IBC, seeking appropriate directions. This conduct further reinforces the lack of genuine intent towards revival.



34. In view of the above we do not find any reason not to accept the commercial decision of the CoC to liquidate the CD, as the same will only delay the closure of the process prescribed under the IBC, and will erode the value for the CD further, which would not be in conformity with overall object and intent of the IBC.

**Order:**

35. In the light of the above facts and circumstances, it is hereby ordered as follows:

- i. IA(IBC)(LIQ.)/29(ND)2024** filed by Mr. Pankaj Mahajan, the Resolution Professional of M/S VHV Beverages Private Limited, (Corporate Debtor) is **allowed** and the Corporate Debtor is ordered to be liquidated in terms of Section 33(2) of the IBC;
- ii.** The Insolvency and Bankruptcy Board of India (“IBBI”) vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in the exercise of its powers conferred under Section 34(4)(b) of the Code has recommended that an IP other than the RP/IRP may be appointed as Liquidator in all the cases where Liquidation order is passed henceforth and the Liquidator can be appointed from the panel list of the IBBI.
- iii.** In the 36<sup>th</sup> CoC meeting held on 27.11.2024, it was agreed by the creditors to appoint Mr. Vivek Parti as the liquidator. On 07.12.2024, IA-5972/2024 was filed by the applicant with the advance notice , herein to intimate the decision of the CoC and to appoint Mr. Vivek Parti as the liquidator. The prayers made in the application are as follows:


## V. RELIEF(S) SOUGHT

In view of the above facts and circumstances, the RP most respectfully prays that this Hon'ble Tribunal may be most graciously pleased:-

- A. To take on record the copy of the minutes of the 36<sup>th</sup> COC meeting of the Corporate Debtor held on 27.11.2024 along with the E-Voting held from 1100 Hrs on 28.11.2024 to 1800 Hrs on 03.12.2024 along with the written consent of Mr. Vivek Parti to act as liquidator along with AFA Form and same be considered as part and parcel of the liquidation Application bearing IA 29/2024; and/or;
- B. To appoint Mr. Vivek Parti as the liquidator of the Corporate Debtor in terms of the provisions of Section 34 of the code, in case the liquidation Application bearing IA 29/2024 u/s 33(2) of the Code is allowed by this Hon'ble Tribunal; and/or;
- C. Pass such other or further order(s) / direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case in the interest of justice.

The application was listed from time to time. Considering the recommendation of the COC, this Adjudicating Authority appoints **Mr. Vivek Parti** as the Liquidator of the Corporate Debtor. The details of the named Liquidator are as follows:

- 1. IBBI Registration No.:** IBBI/IPA-001/IP-P00813/2017-2018/11376
- 2. Email address:** v\_parti@yahoo.com
- 3. Address:** A 166, 2nd Floor, Defence Colony, New Delhi, National Capital Territory of Delhi, 110024



The Liquidator has filed his Written Consent at Annexure-2 of IA-5972/2024.

- iv.** Mr. Pankaj Mahajan, the Resolution Professional of the Corporate Debtor is relieved from the present assignment as the Resolution Professional. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed Liquidator forthwith. CoC will ensure payment of outgoing RP's fees.
- v.** 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.
- vi.** Public Notice shall be issued in the same newspapers in which advertisements were issued earlier stating that the Corporate Debtor is in Liquidation. 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 timely of the Liquidation order.
- vii.** All the powers of the Board of Directors, and of 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.
- viii.** The personnel of the Corporate Debtor are directed to extend all assistance and cooperation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.
- ix.** 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.



- x.** In accordance with Section 33(7) of the Code, 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.
- xi.** The Liquidator shall manage and govern the affairs of the Corporate Debtor and shall have resort to powers and duties in terms of Section 35(1) of the Code.
- 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 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 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 e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- xvii.** The Registry is further directed to send a copy of this order to the IBBI for their record.
- xviii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

The Application bearing no:



- a. **IA(IBC)(LIQ.)/29(ND)2024** is **allowed** and **stands disposed** of in accordance with the above directions.
- b. **IA(IBC)-5972/2024** stands **disposed** of in terms of the above.

**Sd/-**

**(RAMALINGAM SUDHAKAR)**  
**PRESIDENT**

**Sd/-**

**(RAVINDRA CHATURVEDI)**  
**MEMBER (TECHNICAL)**