

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.11- IA/173(AHM)2025
in
CP(IB) 206 of 2017

Proceedings under Section 9 IBC

IN THE MATTER OF:

Nikita Enterprise

.....Applicant

V/s

Kohinoor Diamonds Pvt Ltd

.....Respondent

Order delivered on: 12/02/2025

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

PRESENT:

For the Applicant : Ms. Yhaya Batatawala, Adv.

For the Orig. Liquidator : Mr. Rishabh Shethi, Adv.

ORDER

IA/173(AHM)2025

This is an application filed by the applicant for removal of Mr. Amit Gupta as Liquidator of the Corporate Debtor and for appointment of Mr. Brijendra Kumar Mishra an Insolvency Professional having IBBI Reg No. IBBI/IPA-002/IPN00109/2017-2018/10257 as Liquidator of the Corporate Debtor.

Heard Learned Counsel for the applicant who is one of the member of SCC. It has been brought to the notice of this Tribunal that the licence of Mr. Amit Gupta, Liquidator was cancelled by the IBBI, Disciplinary Committee vide its order dated 26 November 2024 which came in to force after expiry of 30 days i.e. 25.12.2024. This was not brought to our notice till filling of this application by the SCC member, but however, in another IA listed during earlier week this tribunal, one of the respondents had referred to such order having been passed.

The applicant SCC member stated that the SCC members convened its Joint Lender meeting on 16.12.2024 wherein the liquidator informed the SCC members that he would be proceeding for appeal against the order dated 26.12.2024. However, the ex- Liquidator whose registration was cancelled It is stated that the SCC decided to appoint a new liquidator to take up the liquidation process and certain quotation was invited from Insolvency Professionals and certain decisions were taken based on profile submitted and the fees. In the meeting held on 06.01.2025, it approved the appointment of Mr. Brijendra Kumar Mishra with Registration No. IBBI/IPA/IP-N00109/2017-18/10257 as liquidator and certain engagement letter was issued for

PC / MK

Sd/-

Sd/-

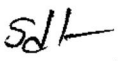


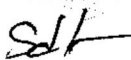
his consent. This application has been filed on 23.01.2025 seeking an order for removal of Mr Amit Gupta as Liquidator and appointment of Mr Brijendra Kumar Mishra, IP having IBBI/IPA-002/IP-N00109/2017-18/10257 as liquidator of the Corporate Debtor.

Heard the Ld counsel for the applicant. We observe two important facts which should have been brought to the notice of this Tribunal which also has certain implications on the other applications and process of liquidation. In an IA filed 59 of 2024 in CP IB 206 of 2017, we were informed by one of the parties(respondents) appearing that certain orders were passed by the Disciplinary Committee on 26 November 2024 by cancelling his registration. We directed the liquidator to be present on next date of hearing and to file the status of liquidation and orders passed by IBBI on next date of hearing as the liquidator had not informed of any such developments till that date, nor the SCC had approached this Tribunal for appropriate orders in the matter and in absence of the same the liquidation process was continuing without appointment of a liquidator with the approval of this Tribunal. When the relevant IA was heard on 4 Feb 2025, the liquidator was not present and we passed certain orders for further consideration of the matter.

The SCC and its role is well defined in Sec 35(2) of IBC 2016. As recorded by Hon'ble NCLAT in the matter of Punjab National Bank v Kiran Shah, Liquidator of ORG Informatics (IBC law.98 Hon'ble NCLAT) after the liquidation order, the COC has no role to play and that they are simply claimants whose matters are to be determined by the liquidator and hence cannot move an application for his removal.

Based on the submissions and hearings we observe that the SCC should have sought necessary instructions in view of the stand taken by the Liquidator and appropriate directions for changing the liquidator. It is also observed that the orders passed by the Disciplinary Committee of IBBI relates to certain fees charged by the liquidator. Therefore, the role of SCC is not to convene meeting with itself and deciding a liquidator and deciding its fees, but should have filed an application for appointment of liquidator immediately after the orders were passed by IBBI cancelling the registration of the Insolvency Professional. The SCC members have ignored the instructions of IBBI contained in Liq 12011/214/2023-IBBI/840 of 18.07.2023 has considered that the Adjudicating Authority may appoint a new IP as liquidator due to certain reasons who also should be from the panel of IPs approved by IBBI. The discretion to appoint the liquidator is left to the Adjudicating Authority for valid reasons to continue the liquidation process for aforesaid reasons. The liquidator to be appointed in this matter, should have been on reference made to us and we also observe that the







SCC delayed the process of filing this application only on 23.01.2025 which was listed for hearing today.

In view of the above, due to the urgency in the matter, we hereby appoint from the IBBI panel Mr Mukesh R Dayani, IBBI/IPA-002/IP-No.1138/2021-2022/13915 (email ID mukeshdayani.ip@gmail.com) to take charge of the liquidation process immediately and file an affidavit on the status of the liquidation process within 7 days of taking charge and convene a meeting of the SCC and perform his duties in terms of Sec 35 of IBC 2016. Further, a quarterly report be filed(pending) after placing the same before SCC within 15 days. The Registry is directed to issue necessary advice to Mr Mukesh R Dayani and also forward a copy to the IBBI. The SCC is directed to abide by this order for ensuring that the liquidation process is conducted further in terms of the provisions of IBC 2016.

With these directions, the IA is disposed of.

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

CHITRA HANKARE
MEMBER (JUDICIAL)