



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III (SPECIAL BENCH)**

IA-119/2024

In

IB -550(ND)/2022

Order under Section 33(2) read with Section 34 of the Insolvency and Bankruptcy Code, 2016.

**IN THE MATTER OF IB -550(ND)/2022:**

**M/s. Fun, N, Food Private Limited**

**..... Financial Creditor**

**VERSUS**

**M/s. Pansy Construction Private Limited**

**..... Corporate Debtor**

**AND IN THE MATTER OF IA-119/2024:**

**Mr. Virender Kumar Jain,**

Resolution Professional of M/s. Pansy Construction Private Limited

**..... Applicant**

**VERSUS**

**Mr. Varun Sharma & Ors.**

**..... Respondents**

**Order Pronounced On: 28.05.2024**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant : Mr. Nibruti Samal, Mr. Sohaib Khan, Advs.

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. This Application has been filed by Mr. Virender Kumar Jain, the Resolution Professional of M/s. Pansy Construction Private Limited, the Corporate Debtor before this Adjudicating Authority under

**IA-119/2024 In IB - 550(ND)/2022**

**Date of Order: 28.05.2024**



Section 33(2) read with Section 34 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") seeking initiation of liquidation proceedings of the Corporate Debtor on the basis of the decision taken by the Committee of Creditor ("CoC") in the 3<sup>rd</sup> CoC meeting held on 05.12.2023 with 100% voting shares. The Applicant seeks the following relief:

*"A. Allow the present application and pass necessary orders to initiate liquidation of the Corporate Debtor;*


*B. Appoint the Applicant, Mr. Vijender Kumar Jain, having registration number IBBI/IPA-001/IP-P-01581/2022-23/14151 as the Liquidator to conduct liquidation proceedings of the Corporate Debtor;*

*C. Pass such other further order/order(s) as may be deemed fit and proper in the facts and circumstances of the case."*

2. **Brief Background of the Case**

An Application was filed by M/s. Fun, N, Food Private Limited ("Financial Creditor") to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. Pansy Construction Private Limited ("Corporate Debtor") under Section 7 of the Code filed before this Adjudicating Authority (Court-III). This Adjudicating Authority (Court-III) vide order dated 27.09.2023 ("Admission Order") was pleased to admit the application and a moratorium was declared including the appointment of Mr. Vijender Kumar Jain as an Interim Resolution Professional. Subsequently, the present Applicant herein was confirmed as the Resolution Professional by the CoC and approved by this Adjudicating Authority.

3. The IRP in compliance of Section 13 of the Code read with Regulation 6(1) of IBBI (CIRP) Regulations, 2016, made the public announcement in the prescribed Form A dated 04.10.2023 within the specified time, to call upon the creditors to submit their claims as on the Insolvency Commencement Date on or before 18.10.2023 (last date of submission of claim by the Creditors), in two



newspapers in Delhi i.e. Financial Express (English edition) and Jansatta (Hindi edition).

4. Pursuant to publication of Form A, the IRP/Applicant received only one claim from the Operational Creditor and after verification of the claim, the Applicant constituted the Committee of Creditors ("CoC") on 26.10.2023. Hence, the Operational Creditor is the sole member of the CoC having 100% voting share.
5. It is submitted that the first meeting of the CoC was convened on 26.10.2023. The CoC appointed IRP as the RP with 100% voting in favour. Accordingly, the CoC filed an application under Section 22 of the Code, being I. A. No. IA 6288 of 2023 seeking confirmation and appointment of the Applicant as the Resolution Professional of the Corporate Debtor. This Adjudicating Authority vide Order dated 29.11.2023 was pleased to allow the said application and appointed the Applicant as the Resolution Professional of the Corporate Debtor.
6. The Second Meeting of CoC was convened on 09.11 .2023 in which the RP/Applicant apprised the members that based on the lowest quote, he has appointed valuers for different asset classes, as per Regulation 27 of CIRP Regulations, 2016. Further, the Applicant apprised the members of the CoC about the progress of CIRP and tabled the Form-G, Request for Resolution Plan and Evaluation Matrix for consideration of the members of the CoC.
7. The Invitation to submit an Expression of Interest ("EOI") for submission of the resolution plan was published by the Resolution Professional in the prescribed Form G on 11.11.2023 in two newspapers namely Financial Express (English edition) and Jansatta (Hindi edition) in Delhi/NCR.
8. The Third Meeting of CoC was convened on 05.12.2023 wherein the RP/Applicant apprised the CoC that no EOI was received thus far and proposed that Form-G can be published for the second time. The members of the CoC rejected the proposal of publishing Form-G for the second time. Accordingly, the Applicant informed the CoC



that the CoC can decide to liquidate the Corporate Debtor. The RP/Applicant gave his consent to act as Liquidator and after deliberation the CoC unanimously resolved to initiate liquidation of the Corporate Debtor and to appoint the Applicant as the liquidator.

9. It is submitted by the Resolution Professional that the present Application is being filed in the interest of justice and the same is bona fide in nature.
10. We have heard the arguments of the Ld. Counsel appearing for the Applicant and perused the records carefully.
11. The Hon'ble Supreme Court in the matter of **K. Sashidhar Versus Indian Overseas Bank & Ors.** in Civil Appeal No. 10673 of 2018 has held that the commercial decision of CoC is non-justiciable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.
12. In light of the above-quoted judgement, it is clear that the "Commercial wisdom of CoC" is given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC.
13. The members of the CoC are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by this Adjudicating Authority for the reason that it is not a part of the judicial function to examine their commercial decisions.
14. We are of the considered view that there is no chance of receiving any resolution plan as the Corporate Debtor does not have any assets or property. Hence, the RP has moved an application before this adjudicating authority seeking liquidation of the Corporate Debtor along with a plea to appoint him as the Liquidator.
15. In light of the above facts and circumstances, it is hereby ordered as follows:
  - i. The **IA-119/2024** filed by Mr. Virender Kumar Jain, the Resolution Professional of M/s. Pansy Construction Private



Limited, the Corporate Debtor is **allowed** and the Corporate Debtor is ordered to be liquidated in terms of Section 33(2) of the Code read with sub-clause (i) of clause (b) thereof;

- ii.** 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 had 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.** Therefore, this Adjudicating Authority appoints Ms. Sunita Umesh as the Liquidator of the Corporate Debtor from the available list of panel of Resolution Professionals/Liquidators as maintained by the IBBI. The Registration number of the Liquidator is IBBI/IPA-001/IP-P00080/2017-18/10165, the address of the Liquidator is M/s. UCC & Associates LLP, Chartered Accountants, 1315, Ansal Tower, 38 Nehru Place, Delhi-110019 and the e-mail id of the Liquidator is sunita.umesh@uccglobal.in.  
Therefore, the Liquidator shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.
- iv.** Mr. Virender Kumar Jain, 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.
- v.** The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the Liquidation estate assets as specified by the IBBI and the



same shall be paid to the Liquidator from the proceeds of the Liquidation estate under Section 53 of the Code.

- vi.** The Liquidator shall initiate the Liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- vii.** The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the Liquidation order timely.
- viii.** All the powers of the Board of Directors, and key managerial personnel, shall cease to exist in accordance with Section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- ix.** 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.
- x.** 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.
- xi.** 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.



- xii.** The Liquidator shall also follow up on the pending applications for disposal during the process of Liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- xiii.** The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- xiv.** 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.
- xv.** The Registry is directed to send a copy of this order to the IBBI for their record.
- xvi.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- No order as to costs.

Sd/-

**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**