

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**

**COURT-IV**

**I.A.(IBC)/4037/2023**  
**IN**  
**C.P.(IB)No.528/ND/2022**

**[Under Section 33 of the Insolvency and Bankruptcy Code, 2016 for initiating liquidation process of Corporate Debtor and to pass other necessary directions]**

**IN THE MATTER OF:**

**Mr. Ashok Kumar Gupta**  
**Resolution Professional**  
**M/s. Vee Ess Jewellers Limited**

**... Applicant**

**IN THE MATTER OF:**

**State Bank of India**

**... Financial Creditor**

**Versus**

**M/s. Vee Ess Jewellers Limited**

**...Corporate Debtor**

**CORAM:**

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,**  
**HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,**  
**HON'BLE MEMBER (TECHNICAL)**

**For the RP** : Mr. Rishi Singhal, Adv. Mr. Anuj Kumar  
Pandey, Adv.

**For SBI** : Ms. Shweta Saini, Adv.

**Order Delivered on: 09.04.2024**

## **ORDER**

**PER: DR.SANJEEV RANJAN, MEMBER (TECHNICAL)**

The instant application i.e., I.A./4037/ND/2023 is filed by Mr. Ashok Kumar Gupta ('Applicant') Resolution Professional of M/s. Vee Ess Jewellers Limited ('Corporate Debtor') seeking liquidation of M/s. Vee Ess Jewellers Limited ('Corporate Debtor') under Section 33 of the Insolvency and Bankruptcy Code, 2016 ('Code') and praying for the following relief(s):-

- a) Allow the present Application;
- b) Pass an order under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 to liquidate the Vee Ess Jewellers Private Limited ('Corporate Debtor') and appoint the Applicant, Ashok Kumar Gupta, Resolution Professional, having Reg. No.: IBBI/IPA-003/IP-N00010/2016-17, as a Liquidator of the Corporate Debtor ; or
- c) Pass such other and further order(s) as deem fit in the facts and circumstances of the case and in the interest of justice.”

2. The brief facts of the case leading to filing of this application as averred by the applicant are as follows:

- i) The applicant submits that the Corporate Insolvency Resolution Process was initiated against M/s. Vee Ess Jewellers Limited ('Corporate Debtor') vide this Adjudicating Authority's order dated 24.01.2023 in an application C.P.(IB)/528/ND/2022 under Section 7 of the Code, 2016 filed by State Bank of India ('Financial Creditor') and Mr. Ashok Kumar Gupta ('applicant') was appointed as the Interim Resolution Professional of the Corporate Debtor and was later confirmed as the Resolution Professional.
- ii) The applicant submits that the public announcement in terms of Regulation 6(1) of the CIRP Regulations, 2016 was made in Form – A

inviting the claims from public, consequent to which, Committee of Creditors constituting two Financial Creditors namely (i) State Bank of India and (ii) ICICI Bank was constituted and the first CoC Meeting was held on 24.02.2023.

- iii) The invitation for expression of Interest in Form-G was published on 09.03.2023 in two newspapers viz. Financial Express (English) and Jansatta (Hindi) New Delhi, Edition. Pursuant to publication in Form-G, no expression of interest had been received till the last date of submission of Expression of Interest.
- iv) The members of CoC in 4<sup>th</sup> CoC Meeting dated 30.05.2023 had noted the following with respect of the Corporate Debtor:-
  - a) SBI/bank has disposed all encumbered Assets of CD in their knowledge and there are no further assets available in account of CD and in their knowledge.
  - b) IRP/RP does not find any assets of CD as well as office/factory of CD.
  - c) CD is not maintaining its office and there has been no operation for many years. Its promoter Ms. Komal Jain is absconded and not accessible traceable who is booked under various cases filed by CBI/ED,
  - d) RP has invited Expression of Interest under but none of PRA has submitted interest.
  - e) Custom does not have any gold in their custody / possession on account of CD. However, they requested DRI to share information of gold and assured RP that they shall share information, comes to their knowledge.
  - f) The Gold is seized by DRI and show cause has been issued by DRI, New Delhi where DRI informed RP that gold does not belong to CD.

- v) Further, the CoC in its 4<sup>th</sup> CoC Meeting dated 30.05.2023, was of the opinion that in absence of any assets or on account of unclear or disputed assets, there is no reason to keep CIRP going on and make any effort to achieve Resolution of CD. The assets can be realized by liquidator and distributed to stakeholders in terms of section 53 of the code. Therefore, SBI, the major CoC members, proposed liquidation of CD. ICICI official seconded the proposal of SBL. The CoC advised RP to keep one more CoC to explore further course of action and for placing of voting agenda as they seek prior permission of their higher authority.
- vi) The CoC in its 5<sup>th</sup> CoC Meeting dated 27.06.2023 had resolved to proceed with the Liquidation of the Corporate Debtor under Section 33 of the Code, 2016. The relevant extract of the said resolution is extracted below:-

Item No. C-2 : To liquidate VEE ESS JEWELLERS PRIVATE LIMITED (corporate debtor) in terms of Section 33 of I & B Code 2016 and to authorize RP to make an appropriate application to the Hon'ble Adjudicating Authority.

Resolution

*" RESOLVED THAT Corporate Debtor, M/s Vee Ess Jewellers Pvt Ltd, be liquidated under provision of Section 33 of I & B code."*

*" RESOLVED FURTHER THAT Resolution Professional is authorize to file application u/s 33 of Insolvency & Bankruptcy code to Hon'ble Adjudicating Authority to allow to liquidate the Corporate Debtor."*

Voting

FC Member	Voting Share	Yes/ No/ Absent	Agree (%)	Disagree (%)
SBI	95.67%	Yes	95.67%	-
ICICI	4.33%	Yes	4.33%	-
Total	100.00%		100.00%	0.00%

Result : Resolution is approved by 100 % voting share.

**(Extract of the Resolution No. C2 passed in the 5<sup>th</sup> CoC Meeting)**

- vii) The Committee of Creditor in 5<sup>th</sup> CoC meeting had resolved to appoint the Resolution Professional of the Corporate Debtor namely

Mr. Ashok Kumar Gupta, Insolvency Professional IBBI Registration No. IBBI/IPA-003/IP-N00010/2016-2017/10072, and having E-Mail id: cmaashokgupt@gmail.com to act as the Liquidator for the purpose of Liquidation proceedings of the Corporate Debtor. In pursuance to the same, Mr. Ashok Kumar Gupta, had given his consent in Form AA to act as the Liquidator of the Corporate Debtor.

3. We have considered the submissions made by the Learned Counsel on behalf of the applicant/Resolution Professional and upon perusing the material available on record, it is observed that the CoC in its commercial wisdom has decided to liquidate the Corporate Debtor. Further, it was noted that in the event of cessation of the Corporate Debtor's operation and in absence of the assets of the Corporate Debtor, the process of inviting the resolution plan and publishing for Form G will not be fruitful and CoC felt the best option is to initiate the liquidation of the Corporate Debtor.
4. From the minutes of the 5<sup>rd</sup> CoC meeting held on 27.06.2023, it is observed that the CoC has unanimously decided to liquidate the Corporate Debtor and further in the 5<sup>th</sup> CoC Meeting decided to appoint Mr. Ashok Kumar Gupta, as the liquidator of the Corporate Debtor.
5. At this juncture, it is relevant to refer the judgment of the Hon'ble NCLAT in the matter of **Sreedhar Tripathy vs. Gujarat State Financial Corporation and ors. [MANU/NL/0788/2022]** wherein at para 7, the Hon'ble NCLAT observed as follows:-

*The Explanation under Section 33(2) has been inserted by Act of 26 of 2019 contains the legislative declaration and intention. **The CoC in the Legislative Scheme has been empowered to take decision to liquidate the Corporate Debtor, any time after its constitution***

**and before confirmation of the resolution plan. The power given to the CoC to take decision for liquidation is very wide power which can be exercised immediately after constitution of the CoC. The reasons which has been given in Agenda Item 1, it is made clear by the CoC that the Corporate Debtor is not functioning for last 19 years and all machinery has become scrap, even the building is in dilapidated condition and the CIRP will involve huge costs. We are not convinced with the submission of learned counsel for the Appellant that the CoC's decision is an arbitrary decision. CoC is empowered to take decision under the statutory scheme and when in the present case the decision of the CoC for liquidation has been approved by the Adjudicating Authority, we see not good ground to interfere at the instance of the Appellant. However, we make it clear that the decision taken by the CoC was in the facts of the present case and it cannot be said that whenever decision is taken for liquidation the same is not open to judicial review by the Adjudicating Authority and this Appellate Tribunal. It depends on the facts of each case as to whether the decision to liquidate the Corporate Debtor is in accordance with the I & B Code or not. With these observations, the Appeal is dismissed.**

6. It also seen from the record that the Mr. Ashok Kumar Gupta, proposed liquidator of the Corporate Debtor has accorded his written consent in Form AA to act as the Liquidator of the Corporate Debtor along with the IBBI registration certificate and Form -FA as Annexure A-10 to the present application. Further, in light of the above submissions, this Adjudicating Authority has not received any application for approval of Resolution Plan within the timeline prescribed under Section 12 of the Code, 2016 and the Resolution Professional under Section 33(2) of the Code, 2016 had intimated this Adjudicating Authority of the decision of the committee of creditors to liquidate the Corporate Debtor being approved with 100% votes in favor in the 5<sup>th</sup> CoC Meeting held on 27.06.2023.

7. Accordingly, the instant application **I.A./4037/ND/2023** is **allowed** and M/s. Vee Ess Jewellers Limited ('Corporate Debtor') is ordered to be liquidated with the following directions:

- a. Mr. Ashok Kumar Gupta, having IBBI Registration No. IBBI/IPA-003/IP-N00010/2016-2017/10072, and having E-Mail id: cmaashokgupt@gmail.com is hereby appointed as the Liquidator as provided under Section 34(1) of the Code, 2016.
- b. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- d. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator appointed under Section 34(1) of the Code, 2016.
- e. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- f. 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.
- g. On having liquidation process initiated, 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 suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority
- h. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- i. 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;

- j. Copy of this order be sent to the Corporate Debtor, CoC members, Liquidator and RoC, NCT of Delhi & Haryana for taking necessary steps.

With the above directions, this application i.e., **I.A./4037/ND/2023 in Company Petition No. (IB)-528/ND/2022** is hereby allowed and disposed of.

**Sd/-**

**(DR. SANJEEV RANJAN)  
MEMBER (T)**

**Sd/-**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)  
MEMBER (J)**