



IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A/6104/2022

IN

Company Petition No. (IB) – 537/(ND)/2020

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

IN THE MATTER OF:

M/S. SHEETAL IMPEX PRIVATE LIMITED

...APPLICANT

Vs.

M/S. RAM LAL KAMAL RAJ JEWELLERS PVT. LTD.

...RESPONDENT

AND IN THE MATTER OF –

MR. DEBASHIS NANDA (Resolution Professional of
M/s. Ram Lal Kamal Raj Jewellers Pvt. Ltd)

...Applicant

CORAM:

SHRI. BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, MEMBER (TECHNICAL)

For the Applicant: Adv. Palash S. Singhai



ORDER

PER- BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

Order Pronounced on: 09.11.2023

1. This is an application filed by the Resolution Professional, under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the “Code”) for issuance of directions for liquidation of Corporate Debtor, M/s. Ram Lal Kamal Raj Jewellers Pvt. Ltd.
2. The facts in brief are that an Application for initiation of the Corporate Insolvency Resolution Process (“CIRP”) was filed by M/s. Sheetal Impex Private Limited, the Financial Creditor against the Corporate Debtor under Section 7 of the Code. The Application was admitted by this Tribunal vide Order dated 06.01.2022 wherein Mr. Dinesh Chandra Agarwal (IP Registration No. IBBI/IPA-001/IP-P00090/2017-2018/10186), was appointed as Interim Resolution Professional (“IRP”).
3. Thereafter, the IRP had issued a public announcement in Form-A, calling on the creditors to submit their claims along with proofs. On receipt of claims and their verification/collation, the



Committee of Creditors (CoC) was constituted by the IRP.

- 4.** That in the 3rd CoC meeting it was decided to replace the IRP and appoint the Applicant as the Resolution Professional. The CoC approved the agenda to replace IRP with 99.53% voting share. The CoC filed IA 3040 of 2022 seeking replacement of IRP and appointment of Applicant as Resolution Professional. This Adjudicating Authority vide its order dated 29.07.2022 allowed the Application of the CoC seeking replacement of IRP and appointed Applicant as Resolution Professional and directed the Applicant to take handover from the IRP.
- 5.** That the Applicant, after due consultation and approval of the CoC, published form G in two newspapers namely Financial Express and Jansatta dated 29.10.2022 in accordance with the provisions of the IBC, 2016 wherein the last date for submission of Expression of Interest (EOI) was 13.11.2022. However, the Applicant did not receive any EOI and the said fact was communicated to the CoC,
- 6.** That the Applicant convened 6th CoC meeting on 19.11.2022 wherein agenda was to discuss and approve the Liquidation



Process as per Section 33(1)(a) of IBC. The CoC in consultation with the Applicant recommended to initiate the liquidation process of the Corporate Debtor in accordance with the provisions of the IBC, 2016 and regulations made there under. The Applicant also accorded his consent to act as Liquidator in the matter. The said agenda was put to vote wherein the CoC approved the same with 99.53% voting share.

- 7.** That the Applicant as well the CoC during the CIRP of Corporate Debtor had made all endeavor for the revival and rehabilitation of the Corporate Debtor in consonance with the legislative intent of IBC, however, owing to the circumstances of the case that the Corporate Debtor was not a going concern at the time of initiation of CIRP and the business of the Corporate Debtor ceased more than 7 years ago and in the absence of any physical asset, it is not feasible to continue CIRP. Further, the erstwhile Directors/Promoters of Corporate Debtor are not traceable and this Tribunal vide order dated 11.07.2022 issued bailable warrants against them in IA. 2623 of 2022.
- 8.** That grave and irreparable harm, loss and prejudice shall be



caused to the stakeholders if the reliefs as prayed for are not granted by this Adjudicating Authority

9. Thus from the facts of the present case, it is seen that the present case is a case where the Resolution Professional is seeking Liquidation of the Company u/s 33(2) of the IBC, 2016 on the ground that the Corporate Debtor has no assets and was not carrying on any business before the initiation of CIRP.

10. The Hon'ble NCLAT vide order dated 25.11.2021 in *Company Appeal (AT) (Insolvency) No.470 of 2019 in the matter of Innovative Construventures Private Limited and Anr. Vs Brainer Trade and Fin-Tech Private Limited and Ors.* held that the IBC empowers the Committee of Creditors to liquidate the Corporate Debtor any time after its constitution under Section 21 and before confirmation of Resolution Plan including any time before the preparation of Information Memorandum.

11. In the matter of *Sreedhar Tripathy vs. Gujarat State Financial Corporation and Ors.*, the Hon'ble NCLAT in para 7 stated as under:

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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 no 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.*

12. It is well settled that decision taken by CoC for liquidation in commercial wisdom of the CoC should not be interfered with by the Adjudicating Authority.

13. In view of the above, the application is allowed by ordering liquidation of the Corporate Debtor, namely M/s. Ram Lal Kamal



Raj Jewellers Pvt. Ltd. with following directions:

- a. That Mr. Debashis Nanda the Resolution Professional of the Corporate Debtor, is relieved from the present assignment as Resolution Professional.
- b. That Mr. Debashis Nanda holding Registration No. *IBBI/IPA-003/IP-N00040/2017-18/10316*, is appointed as the Liquidator in terms of Section 32(1) of the Code and is directed to file his written consent to act as Liquidator within 5 days of date of this order.
- c. Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d. 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;
- e. This order shall be deemed to be notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency



and Bankruptcy Code, 2016;

- f. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- g. 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.
- 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 Financial Creditors,



Corporate Debtor and the Liquidator for taking necessary steps;

- k. I.A. 6104/2022 filed in IB- 537/ND/2020 is disposed off in terms of the aforesaid terms.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)