

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,**  
**HON'BLE TECHNICAL MEMBER**

**IA (IBC) No. 237/JPR/2023**  
**In CP No. (IB)- 26/7/JPR/2020**

**IN THE MATTER OF:**

**P.S. METAL WORKS**

**...Financial Creditor**

**VERSUS**

**M/S JEPH BEV PVT. LTD.**

**...Corporate Debtor**

**MEMO OF PARTIES**

**IA (IBC) No. 237/JPR/2023:**

**ANOOP BHATIA**

*Resolution Professional M/s Jeph Bev Pvt. Ltd.*  
(IBBI/IPA-001/IP-P01142/2018-19/11969)

**...Applicant**

**FOR THE APPLICANT(S)**

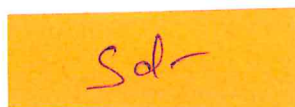
**:** Mr. Nitesh Srivastava, Adv.

**Order Pronounced On: 22.12.2023**

**ORDER**

**Per: Shri Rajeev Mehrotra, Technical Member**


1. The present Application bearing *IA (IBC) No. 574/JPR/2022* has been filed by the *Mr. Anoop Bhatia*, Resolution Professional ('Applicant'/'RP') for *M/s Jeph Bev Pvt. Ltd.* ('Corporate Debtor') under Section 33(2) of the



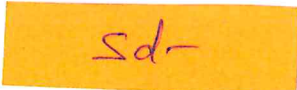
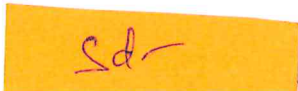


Insolvency and Bankruptcy Code, 2016 (the 'IBC'/'Code') seeking necessary directions for initiation of process of Liquidation of the Corporate Debtor.

2. This Adjudicating Authority *vide* order dated 16.09.2022 had admitted the Application filed by *P.S. Metal Works* ('Financial Creditor') under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and as a consequence thereof, appointed the Applicant as the Interim Resolution Professional ('IRP'), who was later confirmed as the Resolution Professional ('RP') in the 1<sup>st</sup> Committee of Creditors ('CoC') meeting.
3. In the 4<sup>th</sup> meeting of the CoC scheduled on 14.03.2023, which continued on 15.03.2023, the sole CoC member *P.S.Metal Works* (having 100% voting rights), voted for the Liquidation of the Corporate Debtor for the reasons mentioned hereunder:
  - A. Non-receipt of sufficient and appropriate EOI with respect to the Form-G Published;
  - B. Business activities are not carried out including non-cooperation by Suspended Directors of the Corporate Debtor;
  - C. To not further delay in the current ongoing CIRP;



- D. To realise amount from the sale proceeds of the assets of Corporate Debtor in accordance with Regulation 32 of IBBI (Liquidation Process) Regulations, 2016 so that CIRP Cost, Liquidation Cost would meet out and also distribution would be made among stakeholders of the Corporate Debtor against their claims.
4. It has been submitted by the Applicant that the Corporate Debtor is partly conducting its business operations/activities from the office situated at UNA, Himachal Pradesh and the Applicant has been unable to obtain the possession of the registered office of the Corporate Debtor due to continuous non-cooperation of the Erstwhile Directors of the Corporate Debtor, hence, the Applicant is unable to ascertain the financial position of the Corporate Debtor for the purpose of conducting the CIRP.
5. It has further been contended that since the Corporate Debtor is a partly going concern, hence, the Resolution Professional has recommended the Committee of Creditors to liquidate the Corporate Debtor as envisaged under Regulation 32 (e) and (f) of the IBBI (Liquidation Process) Regulations, 2016. However, the CoC has rejected the option to Liquidate the Corporate Debtor in the format of Sale as going concern and voted against the same.

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6. We have heard the learned counsel and perused the averments made in the Application along with the documents enclosed therein. Taking into consideration the above facts concerning the affairs of the Corporate Debtor, the provisions of Section 33 of IBC, 2016 are as follows:

“33. *Initiation of liquidation.* —

(1) *Where the Adjudicating Authority, -*

- (a) *before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast-track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or*
- (b) *rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall -*
- (i) *pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*
- (ii) *issue a public announcement stating that the corporate debtor is in liquidation; and*
- (iii) *require such order to be sent to the authority with which the corporate debtor is registered.*

(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 creditor 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 sub-clause (i), (ii) and (iii) of clause (b) of sub-Section (1).”*

7. The Hon’ble National Company Law Appellate Tribunal (‘NCLAT’), in *Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 308 of 2020* observed as under:

*“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and*

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*liabilities of the corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the CoC which is not amenable to judicial review”.*

However, whether the relevant Application is filed within stipulated timelines as per the applicable procedure is to be seen.

8. ***The prescribed period for filing Application*** – In the present case, the application under Section 7 of the Code was admitted on 16.09.2022. In the 4<sup>th</sup> meeting of the CoC dated 14.03.2023 and 15.03.2023, the CoC approved the resolution to Liquidate the Corporate Debtor. The CIRP period concluded on 15.03.2023 and the CoC approved the Liquidation of the Corporate Debtor in the 4<sup>th</sup> meeting dated 14.03.2023 and 15.03.2023, hence, the RP has filed the present application on 21.04.2023 in accordance with Section 33(1)(a) of the Code. Thus, the present application is filed within the prescribed period. In view, the Application under consideration is taken up under Section 33(1)(a) of the Code.

9. ***Appointment of Liquidator and fee to be paid*** – The CoC decided to replace the Resolution Professional and consent of *Mr. Shreyansh Jain*, Insolvency Professional was submitted to act as Liquidator. However, on 28.10.2023, the Applicant received an e-mail from the Sole CoC member stating that the earlier proposed name is no longer able to act as Liquidator. Hence, the

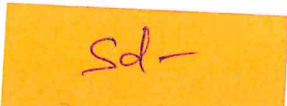
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Applicant on being eligible to be appointed as Liquidator has submitted his consent dated 04.11.2023 vide Diary No. 2669/2023 dated 08.11.2023. Section 34(1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the Corporate Insolvency Resolution Process shall, subject to submission of written consent act as the Liquidator for liquidation. The relevant provisions of Section 34(1) of the Code are as follows:

*“Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4)”*

10. In view of the aforesaid, *Mr. Anoop Bhatia* is eligible to be appointed as Liquidator and by virtue of Section 34(1) of the Code, shall be deemed to be the Liquidator in the present matter. *Mr. Anoop Bhatia* registered with IBBI, holding registration No. IBBI/IPA-001/IP-P01142/2018-19/11969 has already filed his Written Consent to act as Liquidator in the present matter. Thus, *Mr. Anoop Bhatia* is appointed as the Liquidator.



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11. It is also seen that Regulations 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted *via Notification No. IBBI/2019-20/GN/REG/048* dated 25.07.2019 along with Regulation 39BA of the CIRP Regulations, 2016 inserted *vide Notification No. IBBI/2022-23/GN/REG093*, dated 16.09.2022. The relevant aspects in this respect are examined hereunder.
12. ***Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)*** – The estimated liquidation expenses were not presented before the CoC and the same has not been presented before this Adjudicating Authority. The Liquidator is directed to estimate the Liquidation Cost and present the same before the Stakeholder Creditors Committee for due consideration. The Liquidator is directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.
13. ***Assessment of Compromise or Arrangement (Regulation 39BA of CIRP Regulations, 2016)***– As per Regulation 39BA of the CIRP Regulations, 2016 an opportunity to explore the compromise or arrangement may be explored by the Liquidator during the Liquidation of the Corporate Debtor. The CoC while approving the liquidation of the Corporate Debtor was required to examine whether to explore compromise or arrangement as

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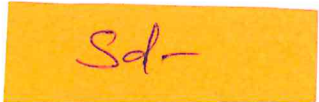
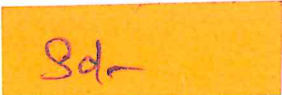
referred to under Regulation 2B (1) of the Liquidation Regulations, 2016 and the RP should submit the CoC's recommendation to the Adjudicating Authority while filing an application under section 33. In this regard, the sole member of the CoC voted against the resolution and it was resolved that the possibility of compromise or arrangement shall not be explored.

14. *Assessment of Sale as a going concern (Regulation 39C of CIRP Regulations, 2016)* – Under Section 35 of the Code, the Liquidator shall have the power and duty to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified. In furtherance to the same, regulation 32A of the Liquidation Regulations, 2016 lays down the mode of sale by the Liquidator and subsequently Regulation 33 of the Liquidation Regulations, 2016 provides that the Liquidator has powers to sell the Corporate Debtor by means of private sale with the prior permission of the Adjudicating Authority. The CoC resolved that the Liquidator shall not endeavour to sell the Corporate Debtor as a going concern under Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016 and steps shall be taken for sale of the assets of the



Corporate Debtor as envisaged under Regulation 32 (a) to (d) of the said Regulations. However, in the interest of the Corporate Debtor, it is directed that the Applicant shall put forth the Resolution for Sale of the Corporate Debtor as going concern in accordance with Regulation 32 (e) and (f) of the IBBI (Liquidation Process) Regulations, 2016 before the Stakeholder Creditors Committee for re-consideration.

15. ***Fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016)***– The committee is required to approve the fee of the proposed Liquidator in terms of Regulation 4 of the Liquidation Process Regulations, 2016. The remuneration of the proposed liquidator has not been finalized yet. Therefore, the fees of the Liquidator shall be in accordance with the limit prescribed under the Regulations.
16. ***Decision for liquidation (Regulation 40D of CIRP Regulations, 2016)***– The committee shall consider the factors, including but not limited to non-operational status for preceding three years, goods produced or service offered or technology employed being obsolete, absence of any assets, lack of any intangible assets or factors which bring value as a going concern over and above the physical assets like brand value, intellectual property, accumulated losses, depreciation, investments that are yet to mature. Since,



the CoC in the 4<sup>th</sup> meeting resolved to Liquidate the Corporate Debtor and the CIRP of the Corporate Debtor concluded on 15.03.2023, therefore, the Order of Liquidation is being passed as per the mandate of law.

17. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor, *M/s Jeph Bev Pvt. Ltd.* is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include:

17.1. As per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor;

Provided that a suit or other legal proceedings may be instituted by Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;

17.2. The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings concerning such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

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- 17.3. This order of liquidation under Section 33 of the Code shall be deemed as notice of discharge to the officers, employees and workmen of the Corporate Debtor;
- 17.4. All the powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have an effect and shall be vested in the Liquidator;
- 17.5. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor, and provisions of Section 19 of the Code shall apply concerning the liquidation process as they apply with Corporate Insolvency Resolution process with the substitution of references to the Resolution Professional for the Liquidator;
- 17.6. The Liquidator shall publish a public announcement per Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stakeholders to submit their claims as on liquidation commencement date and provide the last date for

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submission of claim which shall be 30 days from the liquidation commencement date;

17.7. Under Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and regular progress reports according to Regulation 15.

18. In view of the foregoing, *IA No. 237/JPR/2023* is disposed of. Copy of this order be supplied to the Liquidator as well as to the Registrar of Companies forthwith.

19. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.



**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,  
TECHNICAL MEMBER**