

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V
(Item No. 8)

(IB)2165 (ND)/2019

IA/1579/2021

IN THE MATTER OF:

Laxmi Dia Jewel Private Limited
having its registered officer at
Plot No. 4, BMC Industrial Area,
Sai Nagar, Kandiwali (W)
Mumbai – 400 067, Maharashtra

... OPERATIONAL CREDITOR

VERSUS

Shree Ashtvinayak Gems & Stones Pvt Ltd
Balaji Plaza, IInd Floor,
Kucha Mahajani, Chandni Chowk,
New Delhi 110006

....CORPORATE DEBTOR

And In the matter of:

Ashok Kumar Juneja
(Interim Resolution Professional of
Shree Ashtvinayak Gems and Stones Pvt. Ltd.

....Applicant/IRP

SECTION: U/S 9 of IBC, 2016

Order delivered on:- 16.11.2021

V

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

For the Applicant/Operational Creditor:

For the Respondent/Corporate Debtor:

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

Order dictated in open Court

1. By filing this application the applicant has made the following prayers:-
 - a. To consider, pass an order and issuance of directions for liquidation of the Corporate Debtor- Shree Ashtvinayak Gems and Stones Private Limited under Section 33(2) of the Insolvency and Bankruptcy Code, 2016.*
 - b. To pass an order for appointment of the liquidator of the CD,*
 - c. To pass such other order/directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*
2. Matter was earlier heard and order was reserved and today case is listed for some clarification.
3. Heard. Mr. Ashok Juneja, RP appears in person and perused the averments made in the application.
4. It is contended by the applicant that the CIRP in this matter was initiated on 10th December, 2019 and the 180 days period of CIRP comes to end on 07.06.2020. It is further contended that the applicant had filed an application being IA/1355/2021 and prayed for exclusion of period of CIRP on the ground of lockdown imposed by the Central Government as well as extension of 90 days + 60 days respectively.

5. It is further contended that after considering the prayer, the Adjudicating Authority has excluded the period of 98 days while calculating the total period of 180 days of the CIRP and further extended the period of CIRP by 90 days + 60 days respectively and it is further contended that after exclusion and extension, the CIRP period has comes to end on 10.02.2021.
6. It is further contended that in view of the directions given by the Adjudicating Authority, on 13.02.2021, second meeting of CoC was convened in which the CoC has passed the Resolution (which is at page 63 of the paper book).
7. It is further contended that the CoC by 100 per cent voting shares has resolved to file an application before the Hon'ble NCLT for initiation of the liquidation of the Corporate Debtor.
8. It is further contended that the present RP has not given his consent to continue as the Liquidator. It is further contended that in pursuance of the order dated 20.05.2021, the applicant has filed an affidavit giving details about the pending investigation of the Ex-director of the Corporate Debtor.
9. Now, in the light of the submissions, we consider the prayers of the applicant but before considering the prayer, we would like to refer to the scanned copy of the affidavit filed on 21.07.2021. The scanned copy of the same are reproduced below:-



BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V
I.A. NO. 1579 OF 2021

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IN

COMPANY PETITION NO. IB-2165/ND/2019

IN THE MATTER OF:

Laxmi Dia Jewel Private Limited

...Operational Creditor

Versus

Shree Ashtvinayak Gems and Stones Private Limited

...Corporate Debtor

AND IN THE MATTER OF:

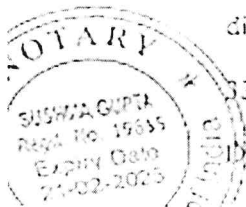
Mr. Ashok Kumar Juneja

...Applicant/IRP

Affidavit of service in compliance to the order dated 20.05.2021.

I, Ashok Kumar Juneja S/o. Late Shri. Gobind Ram Juneja, aged about 66 years, resident of 14/33, 2nd Floor, East Patel Nagar, New Delhi- 11008 do solemnly affirm and state as follows:

1. That I am the Applicant/IRP in the present matter and well conversant with the facts of the present case and therefore, in a position to swear and file this affidavit.
2. That this Hon'ble Tribunal vide its order dated 20.05.2021 directed to serve notice of the application filed under section 33 (2) of the IBC, 2016 upon the Suspended Board of Directors of the CD intimating the next date of hearing. The

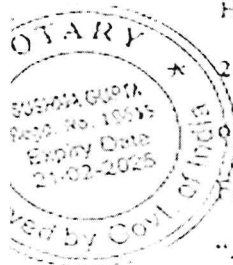


A handwritten signature in black ink, appearing to be 'A.K. Juneja'.

copy of order dated 20.05.2021 of this Hon'ble Tribunal is
annexed as Annexure-1.

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3. That as per the master data of Ministry of Corporate Affairs (MCA) there are two directors of the CD i.e., (i) Mr. Sanjay Singla (ii) Mr. Sandeep Kumar. The copy of the Master data is annexed as Annexure-2.
4. That in compliance to the aforesaid order I have sent the copy of Application filed under Section 33 (2) of the IBC, 2016 through speed post to Mr. Sanjay Singla (Director of the Suspended Board of Director of the Corporate Debtor) at House No. 618, Sector-8, Faridabad, Haryana-121006 vide speed post Consignment No. ED661327586IN and also to Mr. Sandeep Kumar (Suspended Director of the Corporate Debtor) at House No. 1871, Sector-9, Faridabad, Haryana-121006 vide speed post Consignment No. ED661327705IN. The speed post receipts is attached herewith and marked as Annexure-3.
5. That as per the tracking report obtained from the website of the Indian Speed post the speed post consignment sent to Mr. Sanjay Singla at House No. 618, Sector-8, Faridabad, Haryana-121006 marked as "DELIVERED" on 17th June, 2021 and also to Mr. Sandeep Kumar (Suspended Director of the Corporate Debtor) at House No. 1871, Sector-9, Faridabad, Haryana-121006 was returned back with remark "ADDRESSE LEFT". The copy of the tracking report of the



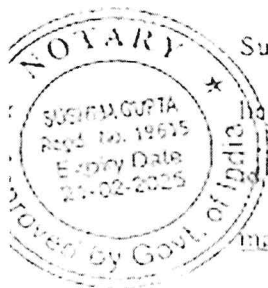
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speed post is attached herewith and marked as Annexure-4
(Colly). 7

6 That I have also sent the copy of Application filed under Section 33 (2) of the IBC, 2016 through Courier to Mr. Sanjay Singla (Suspended Director of the Corporate Debtor) at House No. 618, Sector-3, Faridabad, Haryana-121006 vide Courier Consignment No. Z64007918 and also to Mr. Sandeep Kumar (Suspended Director of the Corporate Debtor) at House No. 1871, Sector-9, Faridabad, Haryana-121006 vide speed post Consignment No. Z64007919. The courier receipt is attached herewith and is marked as Annexure-5.

7. That as per the Courier tracking report obtained the courier consignment sent to Mr. Sanjay Singla (Suspended Director of the Corporate Debtor) "DELIVERED" on 16th June, 2021 and the courier sent to Mr. Sandeep Kumar (Suspended Director of the Corporate Debtor) was returned back with remark "ADDRESSE LEFT". The copy of the tracking report of the courier is attached herewith and marked as Annexure-6 (Colly).

8. That I have also sent an email dated 18.06.2021 to the Suspended Directors of the CD intimating the next date of hearing in IA No. 1579/2021 at email sanjaysingla1995@gmail.com, resch@sandeep.kumar01@gmail.com and also to the members of the COC at email id



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gaurav.vora@laxmidiajewel.com.

accountrambhajo@gmail.com. The copy of the email dated 18.06.2021 is annexed as Annexure-7.

9. The last audited balance sheet available on the MCA portal is for the Financial Year 2015-2016 wherein the turnover of CD was more than Rs 1359 Crores. The copy of last audited balance sheet for the Financial Year 2015-2016 attached herewith and marked as Annexure-8. It is pertinent to mention that the applicant/IRP had meetings with Mr. Sanjay Singla Director of the Suspended Board of Director in which the Mr. Sanjay Singla informed the Applicant that the Mr. Sanjay Singla is only a matriculate by educational qualification and has a close personal relationship (brother-in-law i.e. brother of the wife of Mr. Vinod Jindal) with Mr. Vinod Jindal (one of the promoter director of SRS group Companies who is as on date behind the bars) and that the Mr. Sanjay Singla in good faith signed blank cheques and all the documents of the Corporate Debtor as directed by Mr. Jindal and has further intimated that the Corporate debtor does not possess any asset whether movable or immovable, or any document with respect to the Corporate Debtor.

10. The Applicant/IRP inspite of making his sincerely continuous efforts to comply with all the relevant provisions of the Code and Regulations i) could not prepare Information Memorandum (IM) as required under Section 29 of the I & B

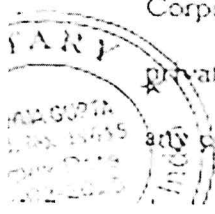


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Code and Regulation 36(1) of the CIRP, ii) could not get published Form-G for inviting EOI as per regulation 36A, iii) could not prepare and issue a Request For Resolution Plan (RFRP) and Evaluation Matrix (EM) as per regulation 36B or v) any other compliances as stipulated under the I & B Code as no COC could be held after the first COC meeting due to the non-cooperation of the COC members, Suspended Directors of the CD and absence of accounts and Financial Statements after the Financial Year 31st March, 2016.

11. That I have also sent a letter dated 18.05.2021 to the Suspended Directors of the Corporate Debtor asking them about the details about any pending investigation against the Ex-Directors of the Corporate debtor or Shree Ashtvinayak gems and stones private limited (CD) by the Enforcement Directorate or CBI, any other Agency, Departments, Authority or Person(s). The copy of the letter dated 18.06.2021 is attached herewith and marked as Annexure-9 (Colly).

12. That in response to the aforesaid letter dated 18.06.2021, a reply was received from both the Directors giving the details about pending investigation against the Ex-Directors of the Corporate debtor or Shree Ashtvinayak gems and stones private limited (CD) by the Enforcement Directorate or CBI, any other Agency, Departments, Authority or Person(s). The



copy of the reply is attached herewith and marked as
Annexure-10.

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13. That, I, therefore, in the facts and circumstances of the case, craves leave of this Hon'ble Tribunal to consider the present affidavit, as sufficient compliances of section 65B of the Evidence Act, 1872.
14. That said details are true, valid and genuine to the best of my knowledge, information and belief.

[Signature]
DEPONENT

VERIFICATION

Verified at New Delhi on this 21 July, 2021 that the contents of the above paragraphs of the Affidavit are true and correct to my knowledge and that nothing material has been concealed there from.

[Signature]
DEPONENT
ATTESTED
[Signature]
NOTARY PUBLIC



10. On perusal of the affidavit, we notice that from page no. 47 to 50 annexed as Annexure-10, the RP has enclosed the reply, which he has received from the promoters and Suspended Board of Directors of the Corporate Debtor, which relates to pending investigation and other proceedings against the Ex Director.
11. Now, coming to the merit of the application, before considering the prayer, we would like to refer the Section 33 of the IBC and the same is reproduced below:-

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Section 33: Initiation of liquidation.

*33. (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 creditors 1[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-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

2[Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

(3) Where the resolution plan approved by the Adjudicating Authority 3[under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of



the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

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

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

12. A bare perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

i. **before the expiry of the insolvency resolution process period;**



- fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- iv. This Order shall be deemed to be a 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;
 - v. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
 - vi. The Registry is directed to communicate a copy of the Order to the the Corporate Debtor immediately;
 - vii. A copy of this Order be sent by the Registry to the Registrar of Companies (RoC), NCT of Delhi & Haryana for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT within a period of 30 days;
 - viii. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

16. Since, the RP has not given his consent to Act as a liquidator. Therefore, list the matter on **24.11.2021** for appointment of liquidator.


(AVINASH K. SRIVASTAVA)
MEMBER (T)


(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

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