IN THE NATIONAL COMPANY LAW TRIBUNAL
AT JAIPUR

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

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 509/JPR/2023
In CP No. (IB)-328/9/JPR/2019

(Under Sections 33 & 34 Of The Insolvency And Bankruptcy Code, 2016)

IN THE MATTER OF:
M/s Garg Granites Private Limited

...Operational Creditor/Applicant

VERSUS

M/s Radharani Exports Private Limited

...Corporate Debtor/Respondent

MEMO OF PARTIES

IA (IBC) No. 509/JPR/2023
Prashant Agrawal, RP
(M/s Radharani Exports Pvt. Ltd.)
R/o F–106, Sumer Complex, Gautam Marg, B/H Bagadia Bhawan, Jaipur, Rajasthan – 302001

... Applicant

FOR THE APPLICANT(S): Prashant Agrawal, RP

Order Pronounced On: 22.11.2023

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

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1. This Interim Application ('IA') bearing IA No. 509/JPR/2023 is filed by the Resolution Professional ('Applicant' / 'RP') for M/s Radharani Exports Private Limited ('Corporate Debtor') under Section 33 and Section 34 of the Insolvency and Bankruptcy Code, 2016 (the 'IBC / Code') for passing an order of Liquidation.

2. The Adjudicating Authority *vide* Order dated 12.04.2023 had admitted the Application filed by M/s Garg Granites Private Limited under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of Corporate Debtor and as a consequence thereof appointed Mr. Prashant Agrawal as Interim Resolution Professional ('IRP'). In compliance with provisions of the Code, the IRP constituted the Committee of Creditors ('COC') under Regulation 17 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 ('CIRP Regulations') and same was taken on record *vide* Order dated 11.05.2023.

3. The first meeting of the CoC was held in two phases on 10.05.2023 and 15.05.2023, respectively, wherein the CoC deliberated on the agenda of appointing 'IRP' as the Resolution Professional of the Corporate Debtor. The CoC exercising its right under Section 22(2) of the Code unanimously appointed Mr. Prashant Agrawal as the Resolution Professional ('RP') and the same was confirmed by this Adjudicating Authority *vide* Order dated 06.06.2023. In the second phase of the first CoC meeting, the CoC

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approved the eligibility criteria for the Prospective Resolution Applicants ('PRAs') along with the Information Memorandum ('IM'), Evaluation Matrix, and Request for Resolution Plans ('RFRP').

4. In the second meeting of the CoC held on 26.06.2023, the RP appointed the registered valuers to determine the fair and liquidation values under Regulation 35 of the CIRP Regulations, 2016 on 16.05.2022. Consequently, the RP issued the invitation of the Resolution Plan in Form G under Regulation 36A of the CIRP Regulations on 11.06.2023 wherein the last date for receipt of Expression of Interest ('EOI') was 16.06.2023. The RP received seven EOIs from the PRAs which was duly informed to the PRAs on 26.06.2023.

5. In the third meeting of the CoC held on 31.07.2023, the RP issued the IM, Evaluation Matrix, and RFRP in compliance with Regulation 36B of the CIRP Regulations. Subsequently, in the fourth CoC meeting, the RP informed that the last date for submission of the Resolution Plan was 10.08.2023. However, the RP did not receive any resolution plan(s) under the Code's prescribed time.

6. Hence, the RP suggested the CoC either to extend the period of the CIRP under Section 12 (2) of the Code or to liquidate the Corporate Debtor as per Section 33 of the Code. By a majority vote of not less than 66% voting, the CoC has resolved to liquidate the Corporate Debtor in the fourth CoC meeting. A copy of the minutes of the fourth meeting of the CoC is annexed

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as Annexure – 1 of the IA. Moreover, the CoC has appointed the RP to act as the liquidator and has been accepted by the RP. However, the RP has not filed his written consent to act as the liquidator of the Corporate Debtor.

7. We have carefully heard and considered the arguments of the learned counsel for the RP and perused the records. 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, if 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 (l)".*

8. 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:

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

9. **The prescribed period for filing Application - -** In the present case, the Application under Section 9 of the Code was admitted on 12.04.2023, and the date for completion of CIRP was 09.10.2023, within the 180 days of the timeline prescribed under the Code, and no extension was sought. Accordingly, the RP filed the present Application on 08.09.2023 in accordance with Section 33(2) of the Code. Hence, the present application is filed within the prescribed period. In view, the Application under consideration is taken up under Section 33(2) of the Code.

10. **Appointment of Liquidator and fee to be paid –** 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*

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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)"

11. The present RP, Mr. Prashant Agrawal, is eligible as a Liquidator. It is noted that liquidation proceedings herein, at the instance of the CoC, have given the consensus to liquidate the Corporate Debtor and are automatically initiated due to the prescription of the statute. We do not find any reason to replace the existing RP. Mr. Prashant Agrawal, Resolution Professional with IBBI Registration No. IBBI/IPA-001/IP-P00053/2017-18/10127, to act as the Liquidator provided that Mr. Prashant Agrawal files his written consent to act as the Liquidator of the Corporate Debtor within ten days of this Order.

12. 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.

13. ***Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)*** — The CoC has decided on the estimated liquidation cost and decided that the liquidation costs to be Rs. 14,50,000/- (Rupees Fourteen Lakhs Fifty Thousand Only). Further, the CoC has also consented to contribute the excess of the liquidation cost over the liquid assets of the Corporate Debtor.

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The necessary action following IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs have been followed.

14. ***Assessment of Compromise or Arrangement (Regulation 39BA of CIRP Regulations, 2016)*** — The CoC while approving the liquidation of the Corporate Debtor was required to examine whether to explore compromise or arrangement as 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 IndusInd bank, the sole member of the CoC and the Financial Creditor of the Corporate Debtor, gave their assent to explore the possibility of compromise and arrangement in respect of the Corporate Debtor.

15. ***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 powers to sell

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the corporate debtor by means of private sale with the prior permission of the Adjudicating Authority.

16. The COC in its fourth meeting has discussed selling the Corporate Debtor as a going concern, as the first option or selling the business(s) of the Corporate Debtor as a going concern, as the second option, before exploring other options as per Regulations 32 & 32A of IBBI (Liquidation Process) Regulations, 2016 and Regulation 39C of CIRP Regulations, if the Adjudicating Authority passes an order of liquidation. It has been resolved to sell the Corporate Debtor as a going concern. However, if the Liquidator is unable to sell the Corporate Debtor or its business under clause (e) or (f) of Regulation 32 of the Liquidation Regulations, 2016 within a reasonable time from the Liquidation commencement date, the Liquidator shall proceed to sell the assets of the Corporate Debtor under Clause (a) to (d) of Regulation 32 of the Liquidation Regulations, 2016.

17. ***Fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016)*** — It is seen that the CoC, in consultation with the resolution professional, has resolved the fee payable to the liquidator as per the following resolution:

'RESOLVED THAT the members of Committee of Creditors hereby approved that the remuneration payable to the Liquidator shall be Rs. 1,00,000/- (plus GST) per month in the liquidation process of the Radharani Exports Private Limited.'

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Thus, the ***Liquidator*** shall be entitled to a fee in such manner as prescribed under Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016 read with the aforementioned resolution passed by the CoC.

18. ***Decision for liquidation (Regulation 40D of CIRP Regulations, 2016)*** – The RP submitted that the status of the Corporate Debtor is non-operational for the preceding three years with the technology employed being obsolete for the continuation of the operations. Further, there are no proper financial records of the tangible or intangible assets of the Corporate Debtor currently available which could maximise the value of the Corporate Debtor as a going concern or standalone basis. Therefore, the sale of assets first as a going concern; and upon failure, on a standalone basis will be the best option for an effective and efficient option for the liquidation of the Corporate Debtor as it is not in operation for the last three years.

19. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor, M/s Radharani Exports Private Limited is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include:

    19.1. 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;

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

19.2. 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;

19.3. 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;

19.4. 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;

19.5. The personnel of the Corporate Debtor shall extend all assistance and cooperation 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 CIR process with the substitution of references to the Resolution Professional for the Liquidator;

19.6. 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

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of this order calling upon the stakeholders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date;

19.7. 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.

20. ***Pending Applications, if any, and its / their effect*** – The learned counsel for the Applicant has stated that there are no pending applications which have any bearing on the order of liquidation.

21. In view of the foregoing, IA No. 509/JPR/2023 is disposed of. A copy of this order is supplied to the counsel for the Liquidator and the Registrar of Companies forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

Sd/-

DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

Sd/-

RAJEEV MEHROTRA,
TECHNICAL MEMBER