

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI, COURT-III**

IA-5747/2022

In

IB -3398(ND)/2019

Order under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

**IN THE MATTER OF IB -3398(ND)/2019:**

**M/s. SHRIJI DIAMONDS**

**..... OPERATIONAL CREDITOR**

**VERSUS**

**M/s. BADRI SARRAF JEWELS PRIVATE LIMITED**

**..... CORPORATE DEBTOR**

**AND IN THE MATTER OF IA-5747/2022:**

**Mr. RAJESH KUMAR GOEL,**

Resolution Professional of M/s. Badri Sarraf Jewels Private Limited

**..... APPLICANT**

**Order Pronounced On: 03.05.2024**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant : Adv. Muskaan Garg & Adv. Himanshu Goyal

**ORDER**

**PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. This Application has been filed by Mr. Rajesh Kumar Goel, the Resolution Professional of M/s. Badri Sarraf Jewels Private Limited, the Corporate Debtor

before this Adjudicating Authority under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking initiation of liquidation proceedings of the Corporate Debtor on the basis of the decision taken by the Committee of Creditor ("CoC") in the 5<sup>th</sup> CoC meeting held on 04.11.2022 with 100% voting shares. The Applicant seeks the following reliefs:

*"a. Allow the present Application and pass an order directing the Corporate Debtor to be liquidated as per the provisions of the Code and in accordance with the decision of the CoC;*

*b. Absolve Applicant-RP from the captioned case.*

*c. Direct the Operational Creditor at whose instance, the CIRP against Corporate Debtor was initiated to pay a balance sum of Rs. 5,56,850/-*

*d. Pass such other order/directions as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case."*

## **2. Brief Background of the Case**

- i. An Application was filed by M/s. Shriji Diamonds ("Operational Creditor") to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. Badri Sarraf Jewels Private Limited ("Corporate Debtor") under Section 9 of the Code filed before this Adjudicating Authority (Court-III) in (IB)- 3398/ND/2019. This Adjudicating Authority (Court-III) vide order dated 20.05.2022 ("Admission Order") was pleased to admit the application and a moratorium was declared including the appointment of Mr. Rajesh Kumar Goel as an Interim Resolution Professional. Subsequently, the present Applicant herein was confirmed as the Resolution Professional by the CoC in its 1<sup>st</sup> CoC meeting held on 24.08.2022 and approved by this Adjudicating Authority vide order dated 14.10.2022.
- ii. The Suspended Directors of the Corporate Debtor filed an Appeal before the Hon'ble NCLAT against the order of the Hon'ble Adjudicating Authority dated 20.05.2022 in Appeal bearing no. CA(AT)(Ins) 828 of 2022. The appeal was dismissed upholding the order of this Adjudicating Authority vide Order dated 29.07.2022.
- iii. The IRP in compliance of Section 13 of the Code read with Regulation 6 of IBBI (CIRP) Regulations, 2016, made the public announcement in the prescribed Form A within the specified time i.e. on 24.05.2022, to call upon the creditors

to submit their claims as on the Insolvency Commencement Date on or before 06.06.2022, in two newspapers in Delhi i.e. Business Standard (English edition) and Business Standard (Hindi edition).

- iv. The Applicant was informed about Corporate Debtor maintaining bank account with Axis Bank, Lajpat Nagar Branch. Therefore, he visited the Axis bank, Lajpat Nagar Branch on 17.08.2022 and intimated the Branch Manager about the ongoing CIRP against the Corporate Debtor. Further, the Applicant submitted a letter to the bank manager of the concerned branch for debit freezing where the Applicant was apprised that the account had Zero Balance.
- v. On 17.08.2022, the Operational Creditor filed its claim before the Applicant the same was incomplete, hence the applicant rejected the claim. Thereafter on 18.08.2022 the Operational Creditor filed Form B, self-declaration, GST certificate and Pan Card, and accordingly the claim filed by the Operational Creditor was accepted by the Applicant.
- vi. Pursuant on receiving the claim of the Operational Creditor on the 90th Day of CIRP, the Applicant constituted Committee of Creditors [hereinafter referred to as "CoC"] in discharge of his mandatory duties as laid down Section 18 (c) of the Code. Hence, the Applicant constituted CoC of One person (Operational Creditor) with 100% voting rights and filed report I.A. 4024 of 2022 dated 18.08.2022 Certifying the constitution of Committee of Creditors under Regulation 17(1) along with list of Creditors under Regulation 13(2)(d) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, before this Hon'ble Adjudicating Authority.

<b>S.No,</b>	<b>Name of the Operational Creditor</b>	<b>Amount Claimed (Rs.)</b>	<b>Amount Admitted (Rs.)</b>
	Shriji Diamonds	46,64,927.19	26,89,715.18
	<b>Total</b>	<b>46,64,927.19</b>	<b>26,89,715.18</b>

- vii. During the Second CoC meeting, the representatives of the suspended board Mr. Rajesh Kesarwani (holding 86% share in Corporate Debtor as per Audited Financial) approached the sole member of CoC, for settlement of their claim. In

reference to the same, the CoC inquired the time period by which the payment shall be settled. In response to which, the representatives of the suspended board of management sought a week's time for an internal discussion and settlement of the same i.e., upto 19.09.2022. The RP took note of the same. After a brief discussion, the CoC member was of the view to defer the said agenda item to a subsequent meeting of the CoC and accordingly the same was not put for voting.

- viii. During the third CoC meeting held on 28.09.2022 it was resolved with 100% voting for Publication of Expression of Interest ("EOI") and publication of Form G inviting prospective resolution applicants ("PRA"), fixation of criteria under Section 25(2)(h) of the Code, 2016 and Regulations thereto and having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, the Committee of Creditors resolved to fix the minimum eligibility criteria of the prospective resolution applicants for submission of the Expression of Interest and to initiate the process of Expression of Interest immediately, and thereafter the process of Request for Resolution Plan to be initiated, adhering, as far as possible and practicable, to the timeline of Form G and other provisions contained in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- ix. The Invitation to submit an Expression of Interest ("EOI") for submission of the resolution plan was published by the Resolution Professional in the prescribed Form G in two newspapers namely Financial Express (English edition) and Jansatta (Hindi edition) in Delhi/NCR on 30.09.2022 with the last date 15.10.2022 for receipt of Expression along with Refundable Earnest Money Deposit of Rs. 10,000/- (Rupees Ten Thousand Only) from PRA having Minimum Net worth of Rs. 5,00,000 (Rupees Five Lakh only). Subsequently, the Applicant received seven enquiry emails and some telephone calls for further information which was provided to PRAs via email. None of the EOI was submitted with Refundable Earnest Money Deposit of Rs. 10000/-. Hence, no EOI could be considered.
- x. During the Fifth meeting of the CoC held on 04.11.2022, in accordance with the CIRP Regulation, the CoC considered the agenda for Initiation of Liquidation

Process. For this, Google Form E-voting process was initiated. The voting period was from 12 PM of 07.11.2022 till 12 PM of 09.11.2022 which was further extended to 5 PM of 11.11.2022 on the request of the CoC member. CoC took the decision for Initiation of Liquidation Process of the corporate debtor with 100% voting.

- xi. Ld. Counsel for the Resolution Professional has submitted that various emails were sent to the Operational Creditor for the payment of the CIRP cost but the Operational Creditor never responded to any email or telephonic conversation made by the Resolution Professional. The Operational Creditor has failed to pay the balance CIRP cost amounting to Rs 5,56,850/- (Rupees Five Lakhs Fifty-six Thousand Eight Hundred and Fifty Rupees) including fee of the RP i.e., Rs. 1 lakh per month, calculated from 23.05.2022 till 11.11.2022. The detailed calculation chart is as follows:-

**Detailed TOTAL CIRP COST SHEET and Calculation of balance of Rs. 5,56,850/- towards CIRP Expenses is as given below:**

*{RP Fee charged till Liquidation application as Liquidation resolution approved by CoC on 11.11 2022}*

Sr. No	Particulars	Amount (Rs.)	Amount Including GST												
1	IRP Fee for 3 months- 23.05.22 to 24.08.2022 @ Rs. 1 lac p.m. (as approved in 1 <sup>st</sup> CoC)	3,00,000	3,54,000												
2	RP Fee for 3 months: 24.08.2022 to 11.11.2022 (79 days) @ Rs. 1 lac p.m. (as approved in 1 <sup>st</sup> CoC)	2,63,000	3,10,340												
3	NCLT Filing fee @ Rs. 1000 each IA no. 2883, 4073,4024, 2887, 4993	5,000	5,000												
4	<b>Advocate fee: Approved in CoC</b>		95,000												
	<b>List of IA and work by Advocate</b>	<b>Each @Rs</b>	<b>Amount Rs.</b>												
	For Drafting filing of IA no. 2883, 4703, 4024	5,000	15,000												
	For Representation at Hon'ble NCLAT in the matter of- Company Appeal (AT) (Insolvency) No. 828 of 2022	5,000	5,000												
	Drafting and Filing applications & appearance 19(2), 66(1), 33(1) of 2022	25,000	75,000												
	<b>Advocate Fee -TOTAL</b>		<b>95,000</b>												
5	<b>Publication of Form A &amp; G</b>		24,510												
	<table border="1"> <thead> <tr> <th>Form</th> <th>Bill</th> <th>GST</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>10,240</td> <td>512</td> </tr> <tr> <td>G</td> <td>13,103</td> <td>655</td> </tr> <tr> <td><b>TOTAL</b></td> <td><b>23,343</b></td> <td><b>1,167</b></td> </tr> </tbody> </table>	Form	Bill	GST	A	10,240	512	G	13,103	655	<b>TOTAL</b>	<b>23,343</b>	<b>1,167</b>		
Form	Bill	GST													
A	10,240	512													
G	13,103	655													
<b>TOTAL</b>	<b>23,343</b>	<b>1,167</b>													
6	Miscellaneous ROC, Postage & stationery etc.	-	4,000												
	<b>TOTAL CIRP Cost (including Liquidation application filing)</b>		<b>7,92,850</b>												
	Less: Received on 11.08.2022		-												
			<b>2,36,000</b>												
	<b>NET RECEIVABLE (Rs.)</b>		<b>5,56,850</b>												

- xii. It is submitted by the Resolution Professional that the present Application is being filed before the expiry of 180 days of CIRP and under Section 33(1) of the code for initiating liquidation of the Corporate Debtor in accordance with the decision of the CoC of the Corporate Debtor.
- xiii. The present application is filed in the interest of justice and the same is bona fide in nature.

### **3. Analysis and Finding**

- i. We have heard the arguments of the Ld. Counsel appearing for the Applicant and perused the records carefully.
- ii. This Adjudicating Authority vide order dated 09.01.2024 passed the following order which is extracted below:

*“We have heard the submissions made Ms. Muskan Garg, Ld. Counsel appearing for the Resolution Professional. The Resolution Professional has submitted that the assets of the Company are not traceable and there is no response from the Erstwhile Directors of the Corporate Debtor and also by the Operational Creditor. Further the Operational Creditor is not interested in pursuing the litigation. The Resolution Professional is directed to file an affidavit stating the present status of OC, CD as well as w.r.t. the assets of the CD within one week.”*

- iii. In compliance of the order dated 09.01.2024, the Applicant/RP filed an affidavit stating that the financial statements were procured from the website of Ministry of Corporate Affairs and from the erstwhile Statutory Auditor of the Corporate Debtor, Mr. Hitesh Goyal for Financial Year 2019-20 which state:

*a. Company's 98% assets amounting to Rs 2,03,53,927/- (Rupees Two Crores three lakh fifty- three lakh thousand twenty-seven) in the form of Diamond, Gold and Silver metal. Management was not able to get physical verification of the inventory at the time of audit. In absence of these records, we are unable to comment upon the physical existence of the inventory.*

*b. Note 23: Contingent Liabilities:*

*Contingent Liability against the Company not acknowledged as debt amounting to Rs 3,23,96,690/-.*

The financial statements of the CD for the year 2019-2020 and 2020-21 enlist the following assets and liabilities:

Financial Year	2020-21 (INR)	2019-20 (INR)
Assets:		
(1) Non-Current Assets:		
(a) Fixed Assets- Tangible Assets	79,456	99,937
(b) Deferred Tax Assets	51,868	57,644
(2) Current Assets:		
(a) Inventories	2,03,53,927	2,05,01,613
(b) Trade Receivable	NIL	2000
(c) Cash and Cash Equivalents	1,76,967	2,61,456
(d) Other Current Assets	1,45,882	1,20,504
<b>TOTAL ASSETS</b>	<b>2,08,08,100</b>	<b>2,10,43,154</b>

**Balance Sheet as at 31<sup>st</sup> March, 2021**

(Amount in Rs.)			
Particulars	Notes	Figures as at the end of the current reporting period	Figures as at the end of the previous reporting period
1	2	3	4
<b>I. EQUITY AND LIABILITIES</b>			
<b>(1) Shareholders' Funds</b>			
(a) Share Capital	2	20,00,000	20,00,000
(b) Reserves and Surplus	3	(89,75,056)	(85,24,562)
		(69,75,056)	(65,24,562)
<b>(2) Non-Current liabilities</b>			
(a) Long Term Borrowings	4	1,51,89,446	1,50,38,623
		1,51,89,446	1,50,38,623
<b>(3) Current liabilities</b>			
(a) Trade Payables	5	90,18,850	91,80,735
(b) Other Current Liabilities	6	35,24,860	32,86,362
(c) Short Term Provisions	7	50,000	61,997
		1,25,93,710	1,25,29,094
<b>Total</b>		<b>2,08,08,100</b>	<b>2,10,43,154</b>
<b>II. ASSETS</b>			
<b>(1) Non-Current Assets</b>			
(a) Fixed Assets			
-Tangible Assets	8	79,456	99,937
(b) Deferred Tax Assets	9	51,868	57,644
		1,31,324	1,57,581
<b>(2) Current Assets</b>			
(a) Inventories	10	2,03,53,927	2,05,01,613
(b) Trade Receivables		-	2,000
(c) Cash and Cash Equivalents	11	1,76,967	2,61,456
(d) Other Current Assets	12	1,45,882	1,20,504
		2,06,76,776	2,08,85,573
<b>Total</b>		<b>2,08,08,100</b>	<b>2,10,43,154</b>

**Statement of Profit & Loss for the year ended 31<sup>st</sup> March, 2021**

(Amount in Rs.)

<i>Particulars</i>	<i>Notes</i>	<i>Figures as at the end of the current reporting period</i>	<i>Figures as at the end of the previous reporting period</i>
1	2	3	4
<b>Income</b>			
Revenue from Operations (Net)	13	7,45,785	62,62,218
Other income	14	3,38,307	28,65,557
<b>(I.) Total Revenue</b>		<b>10,84,092</b>	<b>91,27,775</b>
<b>Expenses</b>			
Purchases stock-in-Trade	15	2,69,885	35,51,681
(Increase)/Decrease in Inventories	16	1,47,685	25,18,517
Employee Benefit Expenses	17	6,62,293	15,93,720
Finance Cost	18	16,221	20,535
Depreciation & Amortization Expense	19	20,487	31,670
Other Expenses	20	4,53,329	12,03,666
<b>(II) Total Expenses</b>		<b>15,69,899</b>	<b>89,19,789</b>
<b>(III) Profit before tax (I-II)</b>		<b>(4,85,807)</b>	<b>2,07,986</b>
<b>(IV) Tax Expenses of Discontinuing Operations</b>			
- Provision for Current Tax		-	36,997
- MAT Credit Entitlement for earlier years		(41,089)	-
- Provision for Deferred Tax (Asset)/Liability		5,776	4,474
- Previous Year Excess Provision		-	-
<b>(V) Profit for the current year(III-IV)</b>		<b>(4,50,494)</b>	<b>1,66,515</b>
Earnings per equity share of face value of Rs.10/- each Basic and diluted (in Rs.)	21	(2.25)	0.83

- iv. Ld. Counsel for the Resolution Professional has submitted that from the inception of the CIRP and till date, no assets of the Corporate Debtor have been handed over to the Resolution Professional.
- v. The Hon'ble Supreme Court in the matter of **K. Sashidhar Versus Indian Overseas Bank & Ors.** in Civil Appeal No. 10673 of 2018 has held that the commercial decision of CoC is non-justiciable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.
- vi. In light of the above-quoted judgement, it is clear that the "Commercial wisdom of CoC" is given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC.
- vii. The members of the CoC are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by this Adjudicating Authority for the reason that it is not a part of the judicial function to examine their commercial decisions.

viii. We are of the considered view that there is no chance of receiving any resolution plan as the Corporate Debtor does not have any assets or property and the books of the corporate debtor show no fixed asset apart from financial assets which do not bear much realizable value. Hence, the RP has moved an application before this adjudicating authority seeking liquidation of the Corporate Debtor along with a plea to absolve him from the above captioned case.

**4.** In light of the above facts and circumstances, it is hereby ordered as follows:

- i.** The **IA-5747/2022** filed by Mr. Rajesh Kumar Goel, the Resolution Professional of M/s. Badri Sarraf Jewels Private Limited, the Corporate Debtor is **allowed** and the Corporate Debtor is ordered to be liquidated in terms of Section 33(2) of the Code read with sub-clause (i) of clause (b) thereof;
- ii.** In terms of the prayer (c) of the present Application regarding the payment of a balance sum of Rs. 5,56,850/- to the Applicant. The CoC is directed to ratify the same and be included as the CIRP Cost as per the provisions of the Code.
- iii.** The Insolvency and Bankruptcy Board of India (“IBBI”) vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in the exercise of its powers conferred under Section 34(4)(b) of the Code had recommended that an IP other than the RP/IRP may be appointed as Liquidator in all the cases where Liquidation order is passed henceforth and the Liquidator can be appointed from the panel list of the IBBI.
- iv.** Therefore, this Adjudicating Authority appoints Mr. Bikram Singh Gusain as the Liquidator of the Corporate Debtor from the available list of panel of Resolution Professionals/Liquidators as maintained by the IBBI. The Registration number of the Liquidator is IBBI/IPA-002/IP-N00011/2016-17/10015, the address of the Liquidator is A-1003, Spring Valley Apartments, Plot No. 3-C, Sector - 11, Dwarka, New Delhi-110075 and the e- mail id of the Liquidator is bikramgusain@gmail.com and the contact no. of the Liquidator is 9650619066.

Therefore, the Liquidator shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

- v.** Mr. Rajesh Kumar Goel, the Resolution Professional of the Corporate Debtor is relieved from the present assignment as the Resolution Professional. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed Liquidator forthwith.
- vi.** The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the Liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceed of the Liquidation estate under Section 53 of the Code.
- vii.** The Liquidator shall initiate the Liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- viii.** The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the Liquidation order timely.
- ix.** All the powers of the Board of Directors, and key managerial personnel, shall cease to exist in accordance with Section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- x.** The personnel of the Corporate Debtor is directed to extend all assistance and cooperation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.
- xi.** The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Code shall commence. On initiation of the Liquidation process but 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 the suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.
- xii.** 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.

- xiii.** The Liquidator shall also follow up on the pending applications for disposal during the process of Liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- xiv.** The Liquidator shall submit a 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;
- xv.** The Liquidator and the Registry are hereby directed to send a copy of this order within 3 days from the date of this order to the Registrar of Companies, NCT of Delhi & Haryana. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.
- xvi.** The Registry is directed to send a copy of this order to the IBBI for their record.
- xvii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

**-Sd-**  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

**-Sd-**  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**