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. 571/JPR/2023
In IB-612(ND)/2018; TA No. 86/2018

IN THE MATTER OF:

M/S KRISHNA SALES CORPORATION & ORS.

...Operational Creditor

VERSUS

THE RAJASTHAN INDUSTRIAL GASES LTD.

...Corporate Debtor

MEMO OF PARTIES

IA (IBC) No. 571/JPR/2023

THE RAJASTHAN INDUSTRIAL GASES LTD.
Through its RP Mr. Mahendra Prakash Khandelwal
R/o: 202, Prism Tower, Opp. Rajasthan
Police Mukhaliya, Gate No. 2,
Lalkothi, Jaipur, Rajasthan- 302015

...Applicant

FOR THE APPLICANT: Prateek Kedawat, Adv.

Order Pronounced On: 31.10.2023

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

1. This present Application bearing *IA No. 571/JPR/2023* is filed by the Resolution Professional ('Applicant'/'RP') for *The Rajasthan Industrial*

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Gases Ltd ('Corporate Debtor') under Section 33(2) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (the 'IBC / Code') seeking approval for Liquidation of the Corporate Debtor as approved by the Committee of Creditors ('CoC').

2. This Adjudicating Authority *vide* order dated 16.08.2022 had admitted the Application filed by *M/s Krishna Sales Corporation & Ors.* under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and as a consequence thereof, appointed *Mr. Mahendra Prakash Khandelwal* as Interim Resolution Professional ('IRP'); who was later confirmed as the Resolution Professional ('RP') by the Committee of Creditors in the 1st meeting.

3. In compliance with provisions of the Code, the Applicant issued a public announcement, under Form-A in *Indian Express* and *Jaipur Mahanagar Times* on 20.08.2022, for inviting claims from the creditors of the Corporate Debtor on or before 01.09.2022. Later, in compliance with provisions of the Code, the IRP constituted the CoC under Regulation 17(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 ('CIRP Regulations') and called for the first meeting of the CoC on 20.09.2022.

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4. It is also seen that during CIRP, the Applicant had appointed two registered valuers in compliance with Regulation 27 of the CIRP Regulations to determine the fair value and liquidation value of the assets of the Corporate Debtor in accordance with Regulation 35 of the CIRP Regulations. However, due to non-availability of records by the suspended directors, the valuation could not be completed. It is also mentioned that on account of non-corporation, the Applicant has preferred an application under Section 19(2) and 19(3) of the Code numbered as *IA No. 609/JPR/2022* which is pending adjudication. Due to non-availability of the books of accounts and other statutory records pertaining to the Corporate Debtor, the Applicant could not prepare the Information Memorandum in terms of Regulation 36 of CIRP Regulations.

5. Pursuant to approval of CoC, in compliance of Regulation 36A, the Applicant published the Invitation for Expression of Interest ('EoI') in prescribed format i.e. Form G on 05.01.2023 and invited the EoI for submission of resolution plan for the Corporate Debtor. The publication was carried out in two newspapers i.e. *The Indian Express* (in English) and *Dainik Kanchan Kesari* (in Hindi). No EoI was received by prospective resolution applicant and the same has been recorded in the minutes of the 5th CoC meeting dated 08.08.2023.

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6. In the 5th meeting of the CoC held on 08.08.2023 (primarily scheduled to be held on 07.08.2023), the CoC approved the resolution for Liquidation of the Corporate Debtor with 100% votes in favour of the Resolution. The CoC member namely, *M/s Suraksha Asset Reconstruction Ltd.* having 54.25% voting share, proposed the name of the Liquidator to be appointed for the Liquidation process of the Corporate Debtor. The other CoC member namely, *Tirupati Udyog,* having 45.75% voting share, confirmed the same via e-mail dated 09.10.2023. The copy of the minutes of the 5th meeting dated 08.08.2023 has been placed on record.

7. The Applicant has submitted that various fees and expenses which were earlier ratified and approved by the CoC have not been paid to the Applicant. The current application has been filed seeking Liquidation of the Corporate Debtor under Section 33(2) of the Code, hence, the prayer of the Applicant regarding payment of CIRP Cost does not fall within the purview of this Application. The Applicant is at liberty to move an appropriate application for the same before this Adjudicating Authority.

8. We have heard the parties 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:

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"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)."

9. 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 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.

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10. ***The prescribed period for filing Application*** – In the present case, the application under Section 9 of the Code was admitted on 16.08.2022. An extension of 90 days was granted vide Order dated 16.05.2023. The RP apprised in the 5th Meeting dated 08.08.2023 that since no resolution plan has been received, till the last date as mentioned in the EoI, therefore, the resolution for alternative resolution for liquidation of the Corporate Debtor was proposed. Subsequently, the RP filed the present application on 13.10.2023 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.

11. ***Appointment of Liquidator and fee to be paid*** – In the 5th meeting of CoC, it was resolved that the name of the proposed Liquidator will be finalised in the next CoC meeting. The CoC member namely, *M/s Suraksha Asset Reconstruction Ltd.* having 54.25% voting share, proposed the name of the Liquidator to be appointed for the Liquidation process of the Corporate Debtor. The other CoC member namely, *Tirupati Udyog* having 45.75% voting share, confirmed the same via e-mail dated 09.10.2023. The name of *Mr. Anurag Nirbhaya* having registration No. IBBI/IPA-001/IP-P00870/2017-2018/11468 has been proposed. Section 34(1) of the Code

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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. In the current scenario, the CoC has proposed the name of a Liquidator, and the same has been supported unanimously.

12. *Mr. Anurag Nirbhaya* is eligible to be appointed as Liquidator. *Mr. Anurag Nirbhaya* having IBBI registration No. IBBI/IPA-001/IP-P00870/2017-2018/11468 has filed his written consent in format/ Form-AA dated 23.08.2023. The credentials of the proposed Liquidator have been checked from IBBI website (www.ibbi.gov.in) and nothing adverse is found on record. Thus, *Mr. Anurag Nirbhaya* is appointed as the Liquidator.

13. 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.

14. ***Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)*** – The CoC resolved that the liquidation cost to be incurred at actuals upon

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commencement of liquidation process will be shared by every member of Stakeholders Consultation Committee ('SCC') in their respective voting share. Moreover, it was noted in the minutes of the 5th CoC meeting that the estimated Liquidation Cost in the present matter along with fixation of fee of liquidator will be decided in the 1st meeting of the SCC. The Liquidator is directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.

15. ***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. However, the CoC does not wish to explore the compromise or arrangement as referred to under sub-regulation (1) of Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016.

16. ***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.

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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 members have resolved that the Liquidator appointed shall endeavour to sell the Corporate Debtor as a going concern or sell the business of the Corporate Debtor as a going concern under clause (e) or clause (f) of regulation 32 of IBBI (Liquidation Process) Regulations, 2016 as the case may be till 1st Auction and else, steps to be taken for sale of the assets of the Corporate Debtor in the mode stipulated under Clause (a) to (d) of the said Regulations.

17. ***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. It has been resolved that the fee to be paid to the Liquidator will be decided in the 1st meeting of SCC post commencement of Liquidation and appointment of Liquidation; and such decided fee will be shared by every SCC member in their respective voting share which shall form part of Liquidation Cost.

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18. ***Decision for liquidation (Regulation 40D of CIRP Regulations, 2016)*** – The committee to 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. The CoC in its fifth meeting dated 08.08.2023 considered that since no expression of interest was received in response to publication of Form-G, the Resolution Professional should proceed with the agenda in respect of the liquidation of the Corporate Debtor.

19. In view of the satisfaction of the conditions provided under Section 33(2) of the Code, the Corporate Debtor, *The Rajasthan Industrial Gases Ltd.* 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 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 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;

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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 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 in accordance with Regulation 15 of the IBBI (Liquidation Process) Regulations.

20. In view of the foregoing, *IA No. 571/JPR/2023* is disposed of. Copy of this order be supplied to the Liquidator as well as to the Registrar of Companies forthwith.

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

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DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

Sd/-

RAJEEV MEHROTRA,
TECHNICAL MEMBER