

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

I.A. 3672 OF 2023

IN

CP/(IB)/463/MB/C-III/2022

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

Filed by

Hirachand Nemichand Bafna

Resolution Professional,

Having its registered office at: 21A, 1st
Floor, Soni Bhavan, 47/51, Kalbadevi
Road, Mumbai- 400002

...Applicant

In the matter of

Trau Bros, N.V.

Having its registered office at:
Hoveniersstraat, 53, Box 121, Antwerp
2018, Belgium.

...Operational Creditor

Versus

DRD Gems LLP,

Having registered office at: 137, 4th Floor,
Samrat Ashok CHS-3 7RR Thakkar Marg,
Malabar Hill, Mumbai- 400006

...Corporate Debtor

Order pronounced on 07.02.2024

Coram:

Ms. Lakshmi Gurung, Hon'ble Member (Judicial)

Shri. Charanjeet Singh Gulati, Hon'ble Member (Technical)

Appearance:

For the Resolution Professional: Adv. Sankalp Anantwar

Per coram

ORDER

1. The above application is filed by Resolution Professional, Hirachand Nemichand Bafna under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”) praying for following reliefs:
 - a. *This Hon’ble Tribunal may be pleased to pass an order for Liquidation of the Corporate Debtor under Section 33(2) r/w any other provisions of the Insolvency and Bankruptcy Code, 2016*
 - b. *Any other and further reliefs as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.*
2. Vide order dated 06.12.2022 the Corporate Insolvency Resolution Process (hereinafter referred as “CIRP”) was initiated against Corporate Debtor in Company Petition No. 463 of 2022 filed by Operational Creditor under Section 9 of the Code. The applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor by this Tribunal.
3. In compliance with Section 13, 15 and other applicable sections of the Code, the Applicant made a public announcement dated 10.12.2022 intimating the commencement of CIRP against the Corporate Debtor and calling the creditors of the Corporate Debtor to submit their claims outstanding as on Insolvency date along with proof and published the same in one English and one Marathi newspaper i.e. Business Standard and Pudhari newspapers respectively. As per the public announcement dated 10.12.2022

and publication dated 12.12.2022 last date of filing claims was 23.12.2022.

4. The applicant did not receive any claim against the Corporate Debtor till 23.12.2022. The applicant vide email dated 29.12.2022 submitted a report before this Tribunal certifying non-constitution of CoC with a copy to IBBI.
5. The Applicant states that, since the Applicant had not received any claim till the last date of submitting the claim, i.e. 23 December, 2023, the Applicant filed an Interlocutory Application No. 478 of 2023 on 9th January, 2023 before this Tribunal under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking directions from this Tribunal.
6. Applicant has also filed an Interlocutory Application No. 425 of 2023 on 31 January, 2023 under Section 19(2) of the Code before this Tribunal for non-co-operation by suspended directors of the Corporate Debtor.
7. The Applicant has received claim from only one creditor, i.e., the Operational Creditor. Accordingly, CoC was constituted of only one member, i.e., Trau Bros, N.V. The same was duly intimated by the Applicant to this tribunal and the IBBI vide email dated 8th March, 2023.
8. Thereafter, the Applicant convened the 1st CoC meeting on 17 March, 2023. Further, the Applicant informed the CoC that the Corporate Debtor is not doing any business since the Financial Year 2020-21 and as per the partial details received from the

Corporate Debtor, the Applicant identified that there are no fixed assets. Further, the Applicant had appointed Government Approved Valuer to ascertain the value of stock of the Corporate Debtor and the valuer has valued Rough Diamonds worth INR 60,000/-.

9. The Applicant also consented to be appointed as a Resolution Professional for seamlessly carrying out the CIRP process. The CoC requested the Applicant to take up the subject matter in the next CoC as the same is brought up at the premature stage of the CIRP and further requested the IRP to provide them with the details of expenses that needs to be approved.
10. Thereafter, the 2nd CoC meeting was held on 27th April, 2023 wherein the Applicant informed the CoC that the Applicant is willing to act as the Resolution Professional, however, the CoC neither approved nor rejected the Appointment of the Resolution Professional and therefore the Applicant is conducting the affairs of the Corporate Debtor as Deemed Resolution Professional as per the applicable regulations framed under the Code. Further, the Applicant also informed the CoC that the information memorandum is prepared by the Applicant and the same can be made available to the CoC member after receiving the Non-Disclosure Agreement.
11. The Applicant states that member of the CoC is of the opinion that as per latest Audited Financial Statement there are no fixed Assets available with the Corporate Debtor and as per Report of Government Approved Valuer there is negligible value recoverable

from the Inventory of the Corporate Debtor. Further, the CoC mentioned that there are no business Operations since long back there is no possibility to attract any prospective Resolution Applicant and therefore the CoC is of the opinion that as per Section 33 (2) of the Code, the Corporate Debtor is to be Liquidated and the CoC with 100% voting right approved the Liquidation of the Corporate Debtor. The CoC further appointed the Applicant to act as Liquidator of the Corporate Debtor for which the COC in its second meeting passed the following resolution:

“The IRP Hirachand N Bafna took the note of the same and given his consent to act as a Liquidator of the Corporate Debtor DRD LLP at below stated liquidation fees. IRP has put the same for voting.

<i>Sr. No.</i>	<i>Item</i>	<i>Expenses</i>
1.	<i>Advocate Professional Fees for IA for Liquidation</i>	30,000/-
2.	<i>Paper Publication in Liquidation- Estimated Cost</i>	20,000/-
3.	<i>Liquidators Fees till completion of liquidation</i>	2,50,000/-
4	<i>Any other expenses</i>	25,000/-
Total Cost Expected to be Incurred		3,25,000/-

“It has been Resolved and Approved by the 100% COC members present at this meeting that DRD Gems LLP is to be

liquidated as per Section 33(2) of the Insolvency and Bankruptcy Code, 2016 and Hirachand N Bafna with Registration No. IBBI/IP-001/IP-P-01207/2018-19/11922 is to be appointed as Liquidator of the Corporate Debtor at the aforesaid professional fees and other liquidation charges and expenses as mentioned hereinabove”

12. After hearing the submissions of the Applicant, this bench reserved the order on 21.08.2023. However, during preparation of the order, this court had certain clarification regarding valuation of diamonds and whether valuation report can be obtained from authorised valuer which is registered with Gems & Jewellery council for which the matter was listed on the following dates:

- i. 25.08.2023
- ii. 01.09.2023
- iii. 14.09.2023
- iv. 04.10.2023
- v. 19.10.2023

13. On 19.10.2023, the Applicant submitted two emails written to Gem & Jewellery Export Promotion Council, and Gem & Jewellery Skill Council of India for the valuation of the diamonds but he submits that no response has been received. The counsel is present with liquidator who has brought the side-cuts of the diamonds which are shown as the stock in Corporate Debtor's books of accounts for examination of the Court. However, this court neither has expertise in valuation of the diamonds nor has jurisdiction to do so and therefore the same was returned without any comments. We accept the Valuation Report given by Government approved Valuer. RP

has given the consent to be appointed as Liquidator and his consent form is already attached with the Application. He has agreed for his fees as per the resolution passed by the COC.

14. In view of the resolution passed by the COC for liquidation of the Corporate Debtor under Section 33(2) of the Code and appointment of liquidator, this bench has no option except to allow the above application. Accordingly, the above Application is **allowed** by passing the following:

ORDER

- a. The above I.A. No. 3672/2023 is **allowed** and the Corporate Debtor M/s DRD Gems LLP is ordered to be liquidated.
- b. **Hirachand Nemichand Bafna**, having Registration No. *IBBI/IP-001/IP-P-01207/2018-19/11922* and having office at: 27A, Soni Bhavan, 47/51 Kalbadevi Road, Mumbai 400002, is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as per decision taken by COC.
- d. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- e. The Liquidator appointed under section 34(1) of the Code. Will have all 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 effect and shall be vested with the liquidator.
- f. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- g. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- h. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- i. That on having liquidation process initiated, 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 suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.

- j. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
- k. Registry is directed to send the copy of the order to the IBBI as well as Liquidator.
- l. With the above directions, this application i.e. I.A. No. 3672 of 2023 is hereby **allowed** and disposed of.

Sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)
/rks/

Sd/-

LAKSHMI GURUNG
MEMBER (JUDICIAL)