

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT-IV  
I.A.(IBC)/6036/2022  
IN  
C.P.(IB) No.720/ND/2021**

**Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for initiating liquidation process of Corporate Debtor and to pass other necessary directions**

**IN THE MATTER OF:**

**Shrill Investment Limited**

**...Financial Creditor**

**Versus**

**Indo International Tobacco Limited**

**...Corporate Debtor**

**AND IN THE MATTER OF:**

**Mr. Harish Kumar Gupta  
Resolution Professional**

**...Applicant/Resolution Professional**

**Order Pronounced on: 14.12.2023**

**CORAM:**

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER  
(JUDICIAL)**

**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant  
For the RP

: Mr. Harish Kumar Gupta, Adv.  
: Mr. Abhishek Anand & Mr. Karan Kohli,  
Adv.

## **ORDER**

**PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)**

1. The instant application i.e., I.A./6036/ND/2022 is filed by Mr. Harish Kumar Gupta ('Applicant') Resolution Professional of M/s Indo International Tobacco Limited seeking liquidation of M/s Indo International Tobacco Limited ('Corporate Debtor') under Section 33 of the Insolvency and Bankruptcy Code, 2016 ('Code') praying for the following relief(s): -
  - a. Allow the present application and pass an order for Liquidation of the Corporate Debtor under Section 33(2) of the IBC, 2016.
  - b. Appoint Sh. Harish Kumar Gupta as Liquidator of the Corporate Debtor for the Liquidation Process of the Corporate Debtor.
  - c. Pass an order that the order of Liquidation is a notice of discharge to employees, workmen etc.
  - d. Pass an order in terms of provisions of Section 33(5) that subject to section 52, no suit or other legal proceeding shall be instituted by or against the corporate debtor, though a suit or other legal proceeding may be instituted by the liquidator on behalf of the corporate debtor with the prior approval of the Hon'ble Adjudicating Authority.
  - e. Pass an order in terms of provisions of Section 34(2) that all powers of the board of directors, key managerial personnel shall cease to have effect and shall be vested in the liquidator.

- f. Pass an order in terms of provisions of Section 34(2) that all the personnel of the corporate debtor shall extend all assistance and cooperation to the liquidator as may be required by him in discharging his duties as Liquidator.
- g. Pass any such other order/directions as may be deemed fit and proper in interest of justice.

### **SUBMISSIONS OF THE APPLICANT**

2. The brief facts of the case leading to filing of this application as averred by the applicant are as follows:
  - a. The Corporate Insolvency Resolution Process against M/s Indo International Tobacco Limited ('Corporate Debtor') was initiated vide this Adjudicating Authority order dated 20.06.2022 in C.P. (IB) 720/2021 on an application filed under section 7 of the Code, 2016 thereby appointing Mr. Harish Kumar Gupta as the IRP of the Corporate Debtor having registration no. IBA/IPA-001/IP-P01678/2019-2020/12644.
  - b. The Public Announcement was published in newspapers in Business Standard (English and Hindi New Delhi Edition and Lucknow Edition) on 23.06.2022, wherein the last date of submission of claims was 06.07.2022. In pursuant to the public announcement, the Applicant had received four (4) claims from Financial Creditors.

- c. That the applicant had prepared a list of creditors as on 13.07.2022 and on the basis of list of creditors, the Committee of Creditors was duly constituted by the applicant/RP which is extracted below: -

**Composition of CoC as on 13<sup>th</sup> July, 2022 is as under :**

Sr. No.	Name of claimant	Amount Claimed (Rs.)	Amount Admitted (Rs)	Total %
1	Shrill Investment Ltd.	87,862,917/-	87,665,657/-	32.51%
2	Kapil Exports Pvt. Ltd.	56,994,274/-	56,873,178 /-	21.09%
3	Bilz Investment Ltd.	87,250,513/-	87,058,733/-	32.29%
4	Shivpriya Trading & Finance Co. Ltd.	38,135,616/-	38,051,712 /-	14.11%
	<b>Total Financial Creditors</b>	<b>27,02,43,320/-</b>	<b>26,96,49,280 /-</b>	<b>100.00%</b>

- d. That the list of creditors as well as constitution of COC were filed before this Adjudicating Authority vide application bearing no. IA 3318/2022 which was taken on record vide order dated 20.07.2022.
- e. The COC in its 1<sup>st</sup> CoC meeting held on 20.07.2022, wherein the IRP was confirmed as the RP by the COC and the same was allowed by the Adjudicating Authority vide order dated 27.07.2022.
- f. The Form G for invitation of Expression of Interest (“EOI”) was published on 24.09.2022 in Business Standard (English & Hindi) Delhi & NCR and Lucknow Edition, wherein the last date of submission of Expression of Interest was 24<sup>th</sup> October, 2022. In pursuant to the EOI,

two EOI were received but none of EOIs provided EMD along with application which was mandatory condition of EOI.

- g. That the applicant during his visit to the godown of the corporate debtor at Firozabad has found that stock of finished goods (cigarettes) and smoking mixtures is lying in packed boxes in godown. Out of which, smoking mixtures were under siege of GST Department. After valuation of the stock, the auction notice was published for sale of inventory items (finished goods i.e., cigarettes) in newspapers namely Business Standard- Delhi and Lucknow Edition wherein the last date of submission of EOI for participation in e-auction was fixed for 14.10.2022. As no EOI was received the said e-auction failed. The 2<sup>nd</sup> auction notice has been published in newspapers namely Business Standard, Delhi and Lucknow Edition wherein the last date of submission of EOI for participation in e-auction was fixed for 3<sup>rd</sup> December.
- h. That in accordance with regulation 27 of the CIRP Regulations, the RP appointed two valuers each for (a) plant & machinery and (b) security & financial assets, as under:

S. No.	Particulars	Class of Asset	Average Fair Value (in Rs.)	Average Liquidation Value (in Rs.)
1.	Mr. Brahampal Bhardwaj	Plant & Machinery	55,97,385/-	50,47,622/-
2.	Mr. Mahesh Kumar Teotia	Plant & Machinery		
3.	Mr. Sunil Kumar Gupta	Securities & Financial Assets	24,37,619/-	17,30,664/-
4.	Mr. Manish Chandra	Securities & Financial Assets		
		<b>TOTAL</b>	<b>80,35,004/-</b>	<b>67,78,286/-</b>

Thus, the corporate debtor does not have any land and building and therefore no valuer was appointed for the valuation of the same.

- i. The COC in its 2<sup>nd</sup> CoC meeting held on 20.09.2022, wherein the applicant placed draft of Form G and eligibility criteria for inviting Prospective Resolution Applicant and the same was approved by the 2<sup>nd</sup> CoC and was published on 24.09.2022 in Business Standard (English & Hindi) Delhi & NCR and Lucknow Edition, wherein the last date of submission of Expression of Interest was 24<sup>th</sup> October, 2022. In pursuant to the EOI, two EOI were received but none of EOIs provided EMD along with application which was mandatory condition of EOI.

<b>Sr. No.</b>	<b>Name of EOI Applicant</b>	<b>Remarks</b>
1.	Mr. Amit Kumar Aggarwal	EMI not provided
2.	M/s Nakshatra Corporate Advisors Ltd.	EMD not provided

Communications were sent to the aforesaid EOI applicants for submission of EMD, however none of them responded as such till last date of submission of EMD, no valid EOI was received.

- j. The COC in its 3<sup>rd</sup> COC meeting held on 17.11.2022, COC keeping in view that, there is no plant & machinery, no valid licenses and no manufacturing facility, decided that selling the Corporate Debtor as going concern under clauses (e) and (f) of Regulation 32 of IBBI

(Liquidation Process) Regulations, 2016 will not be sustainable. The relevant para extracted from 3<sup>rd</sup> COC is as under: -

*The Chairman further updated the COC with regard to provisions of Regulations 32 of IBBI (Liquidation Process) Regulations, 2016 wherein in case of COC/Liquidator decide so the assets can be sold as going concern in terms of provisions of clause (e) and (f) of Regulation 32 else COC may also decide to sell the assets in terms of provisions of clause (a) and (d) of Regulation 32 wherein assets can be sold on standalone basis, in a slump sale, set of assets collectively and in parcels without even trying for sale as going concern whatsoever COC decides.*

*Chairman requested the COC to deliberate the matter.*

*COC deliberated the matter and after deliberations on mode of sale of assets COC took following further decisions:*

*-COC decided to liquidate the CD*

*-While keeping in view there is no plant & machinery, no valid licenses along with no manufacturing facilities sale of CD as a going concern will not help out in any manner. Also, there are no material findings in Transaction Audit, as such COC were of view that sale as going concern/trying for another form G does not appears to be a prospective via media and decided that RP Mr. Harish Kumar Gupta who will be Liquidator of the CD will move ahead with the sale of assets of CD on standalone basis.*

- k. It is submitted that by 100% of the voting the CoC has passed the resolution for initiation of liquidation proceedings under section 33(2) of the IB Code, 2016. The relevant extract of the resolution passed by the CoC members is reproduced below:

*“RESOLVED THAT CoC be and is hereby decided and approved that, as no Expression of Interest could be found during the Corporate Insolvency Resolution Process, Corporate Debtor M/s Indo International Tobacco Limited having CIN: U16000DL2017PTC317682 be liquidated in terms of provisions of Section 33(2) of the Insolvency and Bankruptcy Code, 2016 and the regulations made thereunder.*

*RESOLVED FURTHER THAT pursuant to provisions of section 34(1) of Insolvency and Bankruptcy Code, 2016 and the applicable regulations*

*made thereunder Mr. Harish Kumar Gupta RP in the matter having IBBI Registration No. IBBI/IPA-001/IP-P01678/2019-2020/12644 who is eligible to be appointed as Liquidator and has placed his consent to act as Liquidator before COC his request to act as Liquidator be is hereby taken on record.*

*RESOLVED FURTHER THAT Mr. Harish Kumar Gupta, as Liquidator will be paid fee as prescribed under Regulation 4 of Liquidation Regulations or monthly fee payable to him as RP, whichever turns out to be higher be and hereby is approved.*

*RESOLVED FURTHER THAT the Resolution Professional Harish Kumar Gupta be and hereby authorized to submit an application before the Hon'ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto.*

*RESOLVED FURTHER THAT the Resolution Professional be and hereby authorized to hire services of Advocate for filing said application and fix his remuneration and such expenses will become part of the approved CIRP Cost.”*

The aforesaid Resolution for Liquidation of the Corporate Debtor was passed by the CoC in its commercial wisdom with 100% voting share vide e-voting, which is as under:

Sr. No.	Name of CoC Member	Total %	Approved	Reject	Abstained	Did Not Vote
1.	Shrill Investment Ltd.	32.51	32.51	Nil	Nil	Nil
2.	Bilz Investment Ltd.	32.29	32.29	Nil	Nil	Nil
3.	Kapil Exports Pvt. Ltd.	21.09	21.09	Nil	Nil	Nil
4.	Shivpriya Trading & Finance Co. Ltd.	14.11	14.11	Nil	Nil	Nil
	Total	100.00	100.00	Nil	Nil	Nil

3. There has been no objection by the Corporate Debtor who was present in the 3<sup>rd</sup> CoC meeting held on 17.11.2022 wherein CoC took the decision in its commercial wisdom that in the absence of any resolution plan, it approved initiation of liquidation of the Corporate Debtor u/s 33 of the IBC, 2016. It also observed from the submissions that the Corporate Debtor was present in all the meetings of the CoC convened by the RP on various dates.
4. An additional affidavit dated 11.09.2023 has been filed by the Mr. Harish Kumar Gupta acting as RP for M/s Indo International Tobacco Limited, wherein it is stated that one of the CoC member namely M/s Shrill Investment Limited having voting share of 32.51%, vide an email dated 28.08.2023 apprised that it has come to their notice that IBBI has issued a recommendation that in case CD goes into Liquidation, this Adjudicating Authority should consider to appoint the Liquidator other than the IRP/RP and therefore, the COC member requested the RP to put this matter before the COC.
5. In pursuant to the email received on 28.08.2023, the RP convened 7<sup>th</sup> COC meeting on 01.09.2023, wherein the CoC unanimously decided and reconfirmed the decision of the CoC members for appointment of the RP as the Liquidator. Further, in their 7<sup>th</sup> CoC meeting, had passed the resolution for if this Adjudicating Authority decides to appoint different Insolvency Professional as the Liquidator, one of the CoC member namely Bilz Investments Ltd proposed the name of Mr. Umesh Garg having IBBI

Registration No. IBBI/IPA-001/IP-P00135/2017-2018/10277 as the Liquidator of the Corporate Debtor, and the said resolution was duly approved by 100% voting. The relevant extract of the resolution passed by the CoC members is reproduced below:

*“RESOLVED THAT pursuant to provisions of Section 34(1) of Insolvency and Bankruptcy Code, 2016 and the applicable regulations made thereunder, CoC be is hereby again reiterate and reconfirm and decided that RP Mr. Harish Kumar Gupta having IBBI Registration No. IBBI/IPA-001/IP-P01678/2019-2020/12644 is eligible to be appointed as Liquidator and has already placed his consent to act as Liquidator before CoC and his request to act as liquidator be is hereby taken on record and whose name has already been recommended for appointment as Liquidator in IA/6036/2022 (IA filed for Liquidation of Corporate Debtor and appointment of Liquidator) be appointed as Liquidator of the Corporate Debtor.”*

*“RESOLVED FURTHER THAT in order to meet the eventuality wherein Hon’ble Adjudicating Authority decides not to appoint RP Mr. Harish Gupta as Liquidator, in such scenario pursuant to provisions of Section 34(1) of Insolvency and Bankruptcy Code, 2016 and the applicable regulations made thereunder, CoC be and is hereby decided that IP Mr. Umesh Garg having IBBI Registration No. IBBI/IA-001/IP-P00135/2017-2018/10277 who is eligible to be appointed as Liquidator and has place his consent to act as liquidator before CoC his request to act as Liquidator be is hereby taken on record, be appointed as Liquidator.”*

*“RESOLVED FURTHER THAT Liquidator will be paid fee as prescribed under Regulation 4 of Liquidation Regulations OR monthly fee payable to him as RP, whichever turns out to be higher be and is hereby approved.”*

*“RESOLVED FURTHER THAT the RP be and is hereby authorized to make further submissions in this regard before the Hon’ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto.”*

6. Heard the learned counsel for the applicant in IA 6036 of 2022. The provisions of Section 33(2) of the Code are reproduced below:

*“..(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 [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).*

*[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.]”.*

7. Considering the documents and submission made, since the COC in its commercial wisdom has decided to take the Corporate Debtor in liquidation, we are of the opinion that the decision of the COC should not be interfered with. The present application seeking liquidation of the Corporate Debtor M/s Indo International Tobacco Limited, in the manner laid down in Chapter III of Part II of the Code, is deserved to be allowed.
8. In terms of the above, we hereby order for liquidation of the M/s Indo International Tobacco Limited ('Corporate Debtor') with the following directions:
  - a. Mr. Umesh Garg, having registration no. IBBI/IPA-001/IP-P00135/2017-2018/10277, is hereby appointed as proposed in the application. Mr. Umesh Garg shall file a valid AFA, consent form and disclosure about non-initiation of any disciplinary proceedings against him, within five (5) days of pronouncement of this order.
  - b. 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.
- c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence.
  - d. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter cease to exist. All these powers henceforth vest with the Liquidator appointed under Section 34(1) of the Code, 2016.
  - e. 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.
  - f. 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.
  - g. 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.

- h. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- i. The Liquidator shall submit 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.
- j. Copy of this order be sent to the Corporate Debtor, CoC members, Liquidator, IBBI and RoC, NCT of Delhi & Haryana for taking necessary steps.

With the above directions, this application i.e., **I.A./6036/ND/2022 in Company Petition No. (IB)-720/ND/2021** is hereby allowed and disposed of.

**Sd/-**  
**DR. SANJEEV RANJAN**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**MANNI SANKARIAH SHANMUGA SUNDARAM**  
**MEMBER (JUDICIAL)**