

5 26

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH-I, CHENNAI**

IA/451/CHE/2021 in IBA/920/2019

*(Filed under Section 12(2) of the Insolvency and
Bankruptcy Code, 2016 Read with Rule 11 of the NCLT Rules, 2016.)*

In the matter of **KANISHK GOLD PVT. LTD.**

Ebenazar Inbaraj,

RP of M/s Kanishk Gold Pvt. Ltd.
397, Precision Plaza, 3rd Floor,
23, Teynampet,
Chennai- 600 018.

...Applicant/Resolution Professional

IA/401/CHE/2021 in IBA/920/2019

*(Filed under Sections 33(2) and 34(1) of the Insolvency and
Bankruptcy Code, 2016 Read with Rule 11 of the NCLT Rules, 2016.)*

Ebenazar Inbaraj,

RP of M/s Kanishk Gold Pvt. Ltd.
397, Precision Plaza, 3rd Floor,
23, Teynampet,
Chennai- 600 018.

...Applicant/Resolution Professional

Order pronounced 17th December, 2021

CORAM:

R.SUCHARITHA, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

Advocate for Applicant / RP : A.G.Sathyannarayana.

COMMON ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

IA/451/CHE/2021 is an Application preferred by the Resolution Applicant under section 12(2) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the NCLT Rules, 2016 seeking the following reliefs:-

- a) *"To Confirm the CoC recommendation by ordering the extension of CIRP timeline for a period of 90 days from 20.07.2020;*
- b) *To exclude the Covid-19 lockdown imposed between 25.03.2021 to 31.03.2021 i.e.221 days; and*
- c) *To pass such other orders or further orders which may be deem to be fit and proper in the interest of justice."*

2. IA/401/CHE/2021 is an Application preferred by the Resolution Professional under Section 33 (2) and Section 34(1) of the IBC, 2016 Rule 11 of the NCLT Rules, 2016 seeking the following reliefs:-

- a) *"That this Hon'ble Adjudicating Authority may be pleased to order liquidation of the Corporate Debtor, Kanishk Gold Private Limited;*
- b) *That this Hon'ble Adjudicating Authority may be pleased to pass an order that the Resolution Professional D.Ebenezar Inbaraj, having Registration No: IBBI/IPA-001/IP-P00754/2017-18/11286 be appointed as the Liquidator of the Corporate Debtor; and*
- c) *Pass such other order and further orders which may deem fit and proper int he interest of justice."*

3. The CIRP was initiated against the Corporate Debtor under Section 7 of the IBC, 2016 by the State Bank of India, the Financial creditor in IBA/920/2019 vide order dated 22.01.2020. The Applicant herein was appointed as the Interim Resolution Professional.

4. The Applicant submitted that, the public announcement as mandated under law, announcing the initiation of CIRP and calling of claims was published in the English Daily "Times of India" and "Dinamani" on 24.10.2020.

5. Subsequently, the Applicant submitted that, 14 Financial creditors filed the claims and the RP submitted the consolidated list of creditors with this Tribunal and further constituted the claims based on the claims constituted the CoC.

6. It was submitted by the Applicant that, the 1st COC meeting was conducted on 24.02.2020, in which the IRP was confirmed as the RP, with the voting rights of 80.45% to carry out the duties of the RP as mandated under section 25 of the Code. Pursuant, to which Applicant submitted that valuation of the properties from IBBI registered valuers and further the RP met with DSP Subramaniam of CBI and sought cooperation in the investigation during CIRP. Further it was submitted that, due to COVID-19 lockdown progress of the CIRP was stalled.

7. It was submitted by the Applicant that, the 2nd COC meeting was held through Video Conferencing on 22.07.2020 and the COC approved the publication of EOI in accordance to Section 25(2) (h) of the Code and also approved the expenses for the publication charges of the EOI and Valuers.

8. It was submitted by the Applicant that, subsequent to the 2nd COC meeting, EOI viz Form-G for inviting the prospective Resolution Applicants was published in the "Dinamani" and "Indian Express" on 10.08.2020. Following the same, the RP received EOI, from CFM ARC on 18.09.2020.

9. Further the Applicant RP submitted that, in the 3rd COC meeting held on 05.10.2020 it was resolved to reissue FORM-G and the same was published on 20.10.2020. It was further submitted that, in the 4th COC meeting held on 20.11.2020, it was decided to reissue FORM-G by strictly adhering to the statutory timelines prescribed in the code. The EOI was reissued on 01.12.2020 for a period of 7 days.

10. The Applicant RP submitted that, in the 5th COC meeting conducted on 16.12.2020, the Information memorandum was updated and the Evaluation matrix and the list of prospective



Resolution Applicants was received against the issue of EOI was added.

11. In the 6th COC meeting held on 04.02.2021, it was submitted by the Applicant, that two prospective resolution applicants participated in the COC meeting and requested time extension of the resolution plan and it was resolved to extend the timeline for submission of the Resolution plan to 19.02.2021. Further, it was submitted by the Applicant RP, that the COC unanimously resolved to seek 90 days extension of the CIRP from 25.03.2020 to 31.10.2020 taking into account the COVID lockdown.

12. It was submitted by the Applicant that, in 7th COC meeting held on 01.03.2021, the COC authorized the Applicant to liquidate the Corporate Debtor as no Resolution plan was received from the Prospective Resolution Applicants.

13. It was submitted by the Applicant that, in the 8th COC meeting held on 10.03.2021, Where COC resolved to file for liquidation under section 33(2) of the IBC, 2016. It was further submitted by the Applicant RP, that as the Corporate Debtor Unit remained closed for more than 2 years, the COC resolved to file for liquidation of the corporate debtor as any further delay would result in losses. The COC resolved to appoint the Applicant, as the Liquidator of the Corporate

Debtor in terms of Section 34(1) of the code. The COC in the 8th meeting fixed the remuneration of Liquidator at 65% of fee as per Regulation 4 (2) (b) of the IBC (Liquidation Process) Regulation, 2016.

14. Heard the submissions made by the Learned Counsel for the Applicant. IA/451/CHE/2021 is an Application filed for extension and exclusion of CIRP period. Since the Applicant has also filed an Application under Section 33 of IBC, 2016 seeking liquidation of the Corporate Debtor, the IA/451/CHE/2021 seeking extension and exclusion of CIRP period stands **allowed**.

15. In relation to IA/401/CHE/2021, the Applicant has given consent in Form AA and also produced the Authorization for Assignment (AFA) issued by the Indian Institute of Insolvency Professionals of ICAI till **24/03/2022**, and as it was submitted by the Applicant that corporate debtor unit has been shut for two years now and any further delay would cause damages and losses to the stakeholders. Accordingly, this Tribunal hereby orders the liquidation of the Corporate Debtor, by appointing **Ebenazar Inbaraj** with ICAI Registration No: **IBBI/IPA-001/IP-POO754/2017-2018/11286** (*E-mail: ebiadvocate@gmail.com*) as the Liquidator of the Corporate



Debtor and to carryout the liquidation process subject to the following terms of the directions.

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon him.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.
- d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;
- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and

regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.

- i) The Liquidator shall submit a Preliminary report to this Tribunal within such time period prescribed from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.
- j) Copy of this order be sent to the Operational Creditor, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Vinita Varshini.K