

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

MS. KAVITA BHATNAGAR,
HON'BLE TECHNICAL MEMBER

IA (IBC)(Liq.) No. 01/JPR/2024
In CP No. (IB)- 64/7/JPR/2019

IN THE MATTER OF:

NEIL INDUSTRIES LTD.

...Financial Creditor

VERSUS

JAWAN MINING & CONSTRUCTION EQUIPMENTS PVT. LTD.

...Corporate Debtor

MEMO OF PARTIES

IA (IBC)(Liq.) No. 01/JPR/2024:

Satyendra Prasad Khorania
RP of M/s Jawan Mining &
Construction Equipments Pvt. Ltd.
Office at: 402, OK Plus, D.P. Metro Opp.
Pillar No. 94, New Sanganer Road, Jaipur-
302019.

...Applicant

VERSUS

1. Mr. Shyam Singh Katewa,
Director (Suspended) Jawan Mining
and Construction Equipments Pvt. Ltd.
Plot No. 212, Opposite Panchdev
Mandir, Surya Vihar-II Road No. 3,
Jhunjhunu- 333001, Rajasthan

...Respondent No. 1

2. Ms. Sunita Katewa,
Director (Suspended) Jawan Mining
and Construction Equipments Pvt. Ltd.

Sd/-

Sd/-

Plot No. 212, Opposite Panchdev
Mandir, Surya Vihar-II Road No. 3,
Jhunjhunu- 333001, Rajasthan

...Respondent No. 2

FOR THE APPLICANT : Anubha Singh, Adv.
Satyendra prasad khorania, RP

Order Pronounced On: 25.07.2025

ORDER

Per: Ms. Reeta Kohli, Judicial Member

1. The present Application bearing *IA (IBC)(Liq) No. 1/JPR/2024* has been filed by the *Mr. Satyendra P. Khorania*, Resolution Professional ('Applicant'/'RP') for *M/s Jawan Mining and Construction Equipments Pvt. Ltd.* ('Corporate Debtor') under Section 33 and 34 of the Insolvency and Bankruptcy Code, 2016 (the 'IBC / Code') seeking approval for Liquidation of the Corporate Debtor.
2. This Adjudicating Authority *vide* order dated 08.12.2023 had admitted the Application filed by *M/s Neil Industries Limited* under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and as a consequence thereof, appointed *Mr. Satyendra P. Khorania* as Interim Resolution Professional ('IRP').
3. It is seen that the CIRP of the Corporate Debtor commenced *vide* Order dated 08.12.2023 and the statutory period of 180 days had expired on




06.06.2024. It is noted that despite the expiry of statutory time period, the Resolution Professional had never sought extension of the time period. Further, the resolution for liquidation was approved by the CoC in its 4th meeting which was held on 24.06.2024 and the instant Application seeking Liquidation of the Corporate Debtor has been filed on 09.07.2024.

4. Subsequent to the initiation of the CIRP *vide* Order dated 08.12.2023, the IRP constituted the Committee of Creditors under Regulation 13(2) (d) and 17 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the same was also recorded in the Order dated 05.01.2024. Thereafter, in the 1st meeting of the Committee of Creditors ('CoC') held on 06.01.2024, the CoC appointed the Applicant as the Resolution Professional in terms of Section 22(3)(a) of the Code.
5. In the Second CoC meeting dated 19.02.2024, the Resolution Professional notified the CoC about the requirement of issuance of Form-G and in the same meeting, the CoC approved the agenda concerning the appointment of registered valuers as provided under Regulation 27 and 35 of the IBBI (Insolvency Resolution Process for Corporate Persons). Subsequently, in compliance of Section 36A of the CIRP Regulations, the Applicant published Form-G for seeking Expression of Interest ('EOI') on

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05.02.2024. In response, no expression of interest had been received till the last date i.e., 06.03.2024.

6. In the Third CoC meeting dated 01.04.2024, the Applicant proposed an agenda concerning re-issuance of Form-G for inviting EoI for resolution of the Corporate Debtor. However, the CoC informed the Applicant that it is not feasible to re-issue Form-G as CIRP is a time bound process. Further, the CoC also discussed about the status of the assets and requested to liquidate the Company. It is pertinent to mention that despite the discussions, the CoC did not passed the resolution for liquidation of the Corporate Debtor in the Third CoC meeting.
7. Thereafter, in the 4th CoC meeting dated 24.06.2024, an agenda item concerning liquidation of the Corporate Debtor was put forward along with the agenda to consider the liquidation cost, assessment of compromise or arrangement, assessment of sale as a going concern, fee of the liquidator in compliance with Regulation 39B, 39BA, 39C and 39D of the CIRP Regulations, 2016.
8. Upon declaration of result, it was found that the resolution for Liquidation of the Corporate Debtor along with other related resolutions including appointment of Liquidator, Remuneration of Liquidator, etc., have been



passed with cent percent majority. Further, the CoC directed the Applicant to file the necessary Application for liquidation of the Corporate Debtor.

9. Further, in compliance of the directions of this Adjudicating Authority dated 10.03.2025, the Applicant has placed on record all the CoC proceedings and the valuation reports of the Registered Valuers appointed under the Code.
10. 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:

“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*

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Authority shall pass a liquidation order as referred to in sub-clause (i), (ii) and (iii) of clause (b) of sub-Section (1)."

11. 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".

12. Thus, Section 33(2) of the Code empowers the resolution professional to file an Application seeking liquidation of a Corporate Debtor at any time during CIRP but before approval of the Resolution Plan, if liquidation has been approved by the CoC with at least sixty-six percent voting share. In the present case, the application under Section 7 of the Code was admitted on 08.12.2023. Thereafter, after issuance of the form G on 05.02.2024, the Applicant did not receive any response. Consequently, the CoC in its fourth CoC meeting dated 24.06.2024 approved the agenda item qua liquidation of the Corporate Debtor with 100% majority and has stated that the available land of the Corporate Debtor is not sufficient to restart the operation of the Corporate Debtor and the plant and machinery are not in the position to be re-used or restart the business. The instant Application has been filed on 09.07.2024 in compliance of the decision taken by the

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CoC in its fourth meeting. Thus, we are of the opinion that the instant Application has been filed in accordance with Section 33(2) if the Code.

13. ***Appointment of Liquidator and fee to be paid*** –The RP in the 4th meeting of the CoC dated 24.06.2024 presented the said agenda before the Committee for appointment as Liquidator. In the said meeting it is noted that the Applicant i.e., *Mr. Satyendra P. Khorania*, has not given its consent to act as the liquidator of the Corporate Debtor. Consequently, the CoC in its meeting resolved to appoint another Resolution Profession i.e., *Ms. Gunjan Jain*, having registration no. IBBI/IPA-001/IP-P-02876/2024-2025/14409, as the Liquidator of the Corporate Debtor. Further, the Applicant has also filed the consent certificate of the Resolution Professional proposed as the Liquidator by the CoC. Moreover, the CoC has also passed the requisite resolution qua the fees of the liquidator as per Regulation 39D of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
14. In view of the consent affidavit filed with the Application and the approval of the CoC, *Ms. Gunjan Jain*, having registration no. IBBI/IPA-001/IP-P-02876/2024-2025/14409 is appointed as the liquidator for carrying out the liquidation process of the Corporate Debtor. Moreover, the CoC has resolved that the fees of the liquidator i.e., *Ms. Gunjan Jain*, shall for the

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period, if any, used for compromise or arrangement under Section 230 of the Companies Act, 2013; and the period, if any, used for sale under clauses (e) and (f) of Regulation 32 of IBBI (Liquidation Process) Regulation, 2016 be same as the fee of Resolution Professional and for the period thereafter, as per Regulation 4(2)(b) of IBBI (Liquidation Process) Regulations, 2016.

15. 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.
16. ***Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)*** – The CoC in its fourth meeting has agreed that the liquidation cost will be taken on actual basis while will be approved by the Stakeholders Committee formed during the liquidation of the Corporate Debtor and the same shall be paid by the COC members in proportion to their voting shares. Further, the Liquidator is directed to take necessary actions under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.
17. ***Assessment of Compromise or Arrangement (Regulation 39BA of CIRP Regulations, 2016)***- As per Regulation 39BA of the CIRP Regulations,



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2016 an opportunity to explore the compromise or arrangement may be explored by the Liquidator during the Liquidation of the Corporate Debtor.

In this regard, in the fourth CoC meeting, the committee had approved the agenda directing the liquidator to first explore for compromise or arrangement as referred to under sub-regulation (1) of Regulation 2B of the IBBI (Liquidation Process) Regulation, 2016.

18. *Assessment of Sale as a going concern (Regulation 39C of CIRP Regulations, 2016)* – Under Section 35 of the Code, the Liquidator has 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. 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. In its meeting, the CoC has directed the Liquidator to sell the Corporate Debtor as a going concern, as first option, and sell the business(s) of the Corporate Debtor as a going concern as the second option before exploring other options.



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19. In view of the satisfaction of the conditions provided under Section 33(2) of the Code, the Corporate Debtor, *M/s Jawan Mining and Construction Equipments Pvt. 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;

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;

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- 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;
- 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 according to Regulation 15.
20. In view of the foregoing, *IA (IBC) (Liq) No. 01/JPR/2024* is disposed of. Copy of this order be supplied to the Liquidator as well as to the Registrar of Companies forthwith.

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

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**REETA KOHLI
JUDICIAL MEMBER**

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**KAVITA BHATNAGAR
TECHNICAL MEMBER**