

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI ATUL CHATURVEDI,**  
**HON'BLE TECHNICAL MEMBER**

**IA (IBC) No. 392/JPR/2023**  
**In CP No. (IB)-74/7/JPR/2019**

**UNDER SECTIONS 33 & 34 OF THE INSOLVENCY AND  
BANKRUPTCY CODE, 2016**

**IN THE MATTER OF:**  
**Anand Kumar Gupta**

**...Operational Creditor/Applicant**

**VERSUS**

**M/s Adelson Pharma Private Limited**

**...Corporate Debtor/Respondent**

**MEMO OF PARTIES**

**Anand Kumar Gupta**  
Plot No. 161, Gali No. 7,  
Barkat Nagar, Tonk Phatak,  
Lal Kothi, Jaipur, Rajasthan – 302015

**... Operational Creditor/Applicant**

**VERSUS**

**M/s Adelson Pharma Private Limited**  
Plot No. 84 F/2, Kasturba Nagar, Hirapura,  
Ward No. 14, Jaipur, Rajasthan – 302019

**... Corporate Debtor/Respondent**

*Sd*

*Sd*



**AND IN THE MATTER OF**  
**IA (IBC) No. 392/JPR/2023**

**Mahendra Prakash Khandelwal, RP**  
**(M/s Shreem Prime Foods Pvt. Ltd.)**  
 202, Prism Tower, Opp. Rajasthan Police Mukhaliya,  
 Gate No. 2, Lal Kothi, Jaipur, Rajasthan – 302015

... Applicant

**For the Applicant** : Prateek Kedawat, Adv.

**Order Pronounced On: 12.10.2023**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Interim Application ('IA') bearing IA No. 392/JPR/2023 is filed by the Resolution Professional ('Applicant' / 'RP') for M/s Adelson Pharma Private Limited ('Corporate Debtor') under Section 33 and Section 34 of the Insolvency and Bankruptcy Code, 2016 (the 'IBC / Code') for passing an order of Liquidation.
2. The Adjudicating Authority *vide* Order dated 21.12.2021 had admitted the Application filed by Mr. Anand Kumar Gupta under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of Corporate Debtor and as a consequence thereof appointed Mr. Mahendra Prakash Khandelwal as Interim Resolution Professional ('IRP').
3. In compliance with provisions of the Code, the IRP issued a public announcement, under Form – A in Indian Express and Virat Vibhav on

IA No. 392/JPR/2023

In CP No. (IB)-74/7/JPR/2019

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25.12.2021 and 26.12.2021, respectively, for inviting claims from the creditors of the Corporate Debtor. A copy of the publication of Form – A is annexed as Annexure – A2 of the IA. Consequently, the IRP constituted the Committee of Creditors (‘COC’) under Regulation 17 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 (‘CIRP Regulations’) and same was taken on record *vide* Order dated 27.01.2022.

4. The first meeting of the CoC was held on 27.01.2022, wherein the CoC deliberated on the agenda of appointing ‘IRP’ as the Resolution Professional of the Corporate Debtor. The CoC exercising its right under Section 22(2) of the Code unanimously appointed Mr. Mahendra Prakash Khandelwal as the Resolution Professional (‘RP’) and the same was confirmed by this Adjudicating Authority *vide* Order dated 05.07.2022. It is also seen that in the first CoC meeting dated 27.01.2022, the CoC noted that the IRP will appoint the registered valuers to determine the fair and liquidation values under Regulation 35 of the CIRP Regulations, 2016. A copy of the minutes of first CoC meeting is annexed as Annexure – A3 of the IA.

5. Consequently, the RP issued the Expression of Interest (‘EOI’) of the Resolution Plan in Form G under Regulation 36A of the CIRP Regulations on 18.01.2023 wherein the last date for receipt of the EOI was 02.02.2023. A copy of Form G is annexed as Annexure – A4 of the IA. The RP received neither the

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EOIs nor any resolution plan(s) under the Code's prescribed time. Therefore, in the fourth CoC meeting dated 25.02.2023, the RP proposed the liquidation of the Corporate Debtor. By a majority vote of not less than 66% voting, the CoC has resolved to liquidate the Corporate Debtor. Copy of the minutes of the fourth meeting of CoC is annexed as Annexure – A5 of the Application. Moreover, the CoC has appointed the RP to act as the liquidator and has been accepted by the RP. A copy of the written consent of the RP to act as the liquidator are annexed as Annexure – A6 of the IA.

6. We have carefully heard and considered the arguments of the learned counsel for the RP and perused the records. 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, if 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 (l) ”.*

6. 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.

7. **The prescribed period for filing Application** - In the present case, the Application under Section 7 of the Code was admitted on 21.12.2021. However, given the global pandemic, the timelines could not be complied with by the RP. Therefore, it filed an IA bearing IA No. 354/JPR/2023 seeking exclusion of the period in respect of the CIRP from 21.12.2021 to 28.02.2022 on account of COVID-19 outbreak. This period was excluded in the light of Hon’ble Supreme Court’s Order in *Suo Moto Writ Petition No. 03 of 2022*. Thus, the date for completion of CIRP was 27.08.2022.

8. However, it was not completed within the 180 days of the timeline prescribed under the Code, and no extension was allowed *vide* Order dated 07.07.2023. It was instructed to the RP to move an appropriate application seeking liquidation of the Corporate Debtor in view of the CoC’s resolution. In



addition, the Hon'ble NCLAT in the case of *Dinesh Gupta v. Vikram Bajaj Liquidator, Company Appeal (AT)(Ins) No. 276 of 2021* has upheld the order of liquidation where there was no viable and feasible resolution plan within the expiration of permissible period required for completion of the CIRP. Accordingly, the RP filed the present Application on 13.07.2023. 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.

9. **Appointment of Liquidator and fee to be paid** – Section 34(1) of the Code 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.


The relevant provisions of Section 34(1) of the Code are as follows:

*“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 under Chapter II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4)”*

10. The present RP, Mr. Mahendra Prakash Khandelwal, is eligible as Liquidator. It is noted that liquidation proceedings herein, at the instance of the CoC, have given the consensus to liquidate the Corporate Debtor and are automatically initiated due to the prescription of the statute. We do not find any

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reason to replace the existing RP. Mr. Mahendra Prakash Khandelwal, Resolution Professional with IBBI Registration No. IBBI/IPA-002/IP-N00446/2017-18/11275, who has filed his written consent dated 08.07.2023 to act as the Liquidator as Annexure – A6 of the IA. Thus, Mr. Mahendra Prakash Khandelwal is appointed as the Liquidator.

11. 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.

12. **Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)** — The CoC has not decided on the estimated liquidation cost and decided that the liquidation costs will be taken on an actual basis which will be approved by the stakeholders' committee formed during the liquidation of the Corporate Debtor. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs. Moreover, it is seen that in the reports there is a reference for the appointment of the registered valuers during the CIRP of the Corporate Debtor, however, no documentation has been provided by the RP in this regard. It is directed that Mr. Mahendra Prakash Khandelwal shall appoint two independent valuers for the assets of the Corporate Debtor following the





provisions of the law. The Liquidator is directed to place on record the valuation reports along with the status report as provided under the concerned regulations and rules thereof.

13. *Assessment of Compromise or Arrangement (Regulation 39BA of CIRP Regulations, 2016)* — The CoC while approving the liquidation of the Corporate Debtor was required to examine whether to explore compromise or arrangement as referred to under Regulation 2B (1) of the Liquidation Regulations, 2016 and the RP should submit the CoC's recommendation to the Adjudicating Authority while filing an application under section 33. In this regard, Mr. Anand Kumar Gupta, the sole member of the CoC and the Financial Creditor of the Corporate Debtor, opined that in view of the non-operational status of the business of the Corporate Debtor and such other factors, there was no scope for Compromise & Arrangement in the said matter.

14. *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. In furtherance to the same, regulation 32A of the Liquidation Regulations, 2016 lay 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.

15. The CoC in its fourth meeting has discussed selling the Corporate Debtor as a going concern, as the first option or selling the business(s) of the Corporate Debtor as a going concern, as the second option, before exploring other options as per Regulations 32 & 32A of IBBI (Liquidation Process) Regulations, 2016 and Regulation 39C of CIRP Regulations, if the Adjudicating Authority passes an order of liquidation. The RP explained that the Corporate Debtor has no means to run the business as the unit has already been closed for past three years. With a 100% voting share, the CoC discussed that it is not possible to sell as a going concern, and they passed the resolution.

13. ***Fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016)*** —

It is seen that the CoC, in consultation with the resolution professional, has resolved the fee payable to the liquidator as per following the resolution:

*'RESOLVED THAT the fee to be paid to the liquidator will be decided in the 1<sup>st</sup> SCC meeting post commencement of liquidation in the matter and such decided fee will be shared by every Stakeholders Consultation Committee (SCC) member in their respective voting share.*

*RESOLVED FURTHER THAT the fee to be paid to the liquidator shall form part of liquidation cost.'*



Thus, the Liquidator shall be entitled to a fee in such manner as prescribed under Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016 read with the aforementioned resolution passed by the CoC.

14. ***Decision for liquidation (Regulation 40D of CIRP Regulations, 2016)*** –

The RP submitted that the status of the Corporate Debtor is non-operational for preceding three years with the technology employed being obsolete for the continuation of the operations. Further, there are no tangible or intangible assets of the Corporate Debtor which could maximise the value of the Corporate Debtor as a going concern. Therefore, the sale of assets on a standalone basis will be the best option for an effective and efficient liquidation of the Corporate Debtor as it is not in operation for the last three years.

15. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor, M/s Adelson Pharma Private Limited is directed to be liquidated in the manner as laid down in Chapter III of the Code.


The contextual directions inter-alia include:

- (i) 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;

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- (ii) 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;
  - (iii) 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;
  - (iv) 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;
  - (v) The personnel of the Corporate Debtor shall extend all assistance and cooperation 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 CIR process with the substitution of references to the Resolution Professional for the Liquidator;
  - (vi) 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



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date for submission of claim which shall be 30 days from the liquidation commencement date;

- (vii) 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.

16. *Pending Applications, if any, and its / their effect* – The learned counsel for the Applicant has stated that there are no pending applications which have any bearing on the order of liquidation.

17. In view of the foregoing, IA No. 392/JPR/2023 is disposed of. A copy of this order is supplied to the counsel for the Liquidator and the Registrar of Companies forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.



**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**



**ATUL CHATURVEDI,  
TECHNICAL MEMBER**