

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT II, MUMBAI BENCH
MISCELLANEOUS APPLICATION NO. 1876 OF 2019**

IN

COMPANY PETITION (IB) NO. 3585/MB/2018

*Application u/s 33 of the Insolvency and
Bankruptcy Code, 2016.*

In the matter of:

Mr. Vijay Kumar Garg,

Resolution Professional of Gitanjali Gems Ltd;

Residing at: Flat No. 1402, Tower A, GPL Eden

Heights, Sector 70, Darbaripur Road,

Gurugram, Haryana.

...APPLICANT

In the matter of

ICICI BANK LIMITED

...FINANCIAL CREDITOR

v/s.

GITANJALI GEMS LIMITED

...CORPORATE DEBTOR

Order pronounced on 07.02.2024.

Coram:

Shri. Kuldip Kumar Kareer : Member Judicial.

Shri. Anil Raj Chellan : Member Technical.

Appearance (in Physical Mode)

For the Applicant: Counsel Mr. Rohit Gupta a/w Anant Upadhyay.

ORDER

Per: Shri. Kuldip Kumar Kareer, Member Judicial.

1. This is an application filed by the Applicant, who is the Resolution Professional of the Corporate Debtor for liquidation of the Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”).

Facts of the case (in brief):

2. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (‘CIRP’) vide Order dated 08th October, 2018 passed u/s 7 of the Code in the above-captioned Company Petition and the Applicant herein was appointed as the Interim Resolution Professional (‘IRP’) and thereafter confirmed as the Resolution Professional (‘RP’) by the Committee of Creditors (‘CoC’) in their 01st CoC Meeting dated November 01, 2018.
3. On account of the alleged fraud perpetrated by the Corporate Debtor and its officers, the affairs of the Corporate Debtor are subject to probe by multiple law enforcement agencies such as the CBI and ED. The Directorate of Enforcement have passed several orders attaching the properties and assets of the Corporate

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Debtor. The Applicant, immediately upon his appointment, wrote to various investigation authorities (including the Directorate of Enforcement and the Central Bureau of Investigation) intimating such authorities about his appointment as the IRP and requested the authorities to provide details/particulars and access to such properties, assets, stocks and records of the Corporate Debtor in possession of such authorities, so as to enable the Applicant to proceed further with the CIRP and to appoint valuers, prepare the Information Memorandum and to publish the invitation of Expression of Interest ('EoI') amongst the other steps required under the provisions of the Code as well as under the regulations made thereunder. However, the authorities denied the request of the Applicant and refused to lift the attachment over the properties of the Corporate Debtor in CIRP.

4. Being aggrieved by the Attachment Order and confirmatory orders, appeals were filed by the ICICI Bank Limited and the Applicant before the Hon'ble Appellate Tribunal under the Prevention of Money Laundering Act, 2002 and the Hon'ble Appellate Tribunal was pleased to set aside the confirmatory order dated 16.08.2018 vide its Order dated March 08, 2019. The Hon'ble Appellate Tribunal vide its Interim Order dated February 18, 2018 has stayed the operation of the confirmatory order dated December 21, 2018 till the further orders.

5. For the above-mentioned reasons, the Applicant has thus far been unable to take custody and control of the assets of the Corporate Debtor and therefore has not been able to carry out various activities and actions that are required to be carried out by the IRP/RP during the CIRP of the Corporate Debtor under the Code which, *inter-alia*, include (i) preparation of information memorandum; (ii) appointment of registered valuer; (iii) issuance of invitation of EoI in Form G etc.
6. Accordingly, during the 05th CoC meeting dated March 28, 2019, the Applicant informed the CoC that the time period of 180 days of CIRP would expire on April 06, 2019 and in the absence of an extension of the duration of CIRP, the chances of insolvency resolution of the Corporate Debtor may be affected. Therefore, in terms of Section 12 of the Code and in accordance with Regulation 40 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the extension of CIRP period by 90 days was discussed by the CoC and the same was put to e-voting for approval of the CoC. As per the results of e-voting declared on April 02, 2019, the proposal for extension of CIRP was rejected with 54.14% votes.
7. Accordingly, a 06th CoC meeting dated April 05, 2019 was called upon by the Applicant to discuss and deliberate upon the further course of action with respect to the CIRP of the Corporate Debtor. Upon deliberation by the members

of the CoC, it was decided that as the Corporate Debtor does not have a running business and all the assets of the Company are seized/attached by various governmental agencies such as the ED, the possibility of getting a resolution plan in the said case would be bleak. Therefore, it was decided by the CoC that the RP shall not file an application for extension of CIRP period in terms of the provisions of the Code.

8. In view of the aforesaid, the time period of CIRP has expired and in the absence of any approval from the CoC for extension, the present application for liquidation is being filed by the RP in terms of Section 33 of the Code.

FINDINGS

9. We have heard the learned Counsel for the Applicant and perused the material available on record.
10. The extract of the relevant resolution by the CoC in its 06th Meeting held on 05th April, 2019 is reproduced hereinbelow:

AGENDA ITEM NO.04:

"The members were of the view that there was little possibility of getting a Resolution Plan or a Resolution Applicant to take over this Company as the Company does not have running business, all the assets of the Company are seized/attached by various governmental agencies such as Enforcement Directorate, the Company has been involved in a huge fraud, various agencies are investigating its affairs, and a number of cases are

pending against it. Therefore, it may not be appropriate to the approach the Hon'ble NCLT for extension in the CIRP period.

The CoC also discussed the issues relating to assets monetization, in the wake of attachment over assets and expressed their views in favour liquidation instead of seeking extension. Accordingly, the CoC authorized the Resolution Professional to file a suitable application/intimation with the Hon'ble NCLT for permitting liquidation of the Company.” (Emphasis Supplied)

11. On perusal of records, it is evident that the assets of the Corporate Debtor were under attachment by the Directorate of Enforcement under the provisions of the PMLA, 2002 and considering the bleak chances of insolvency resolution amid the ongoing investigations and attachment of assets, the CoC had resolved in its 06th Meeting held on 05th April, 2019 to liquidate the Corporate Debtor by a majority of 90.16% voting in favour.

12. The Applicant has filed an Additional Affidavit dated 10th June, 2019 on record stating that he will not be able to act as a liquidator of the Corporate Debtor for the reason that the Applicant's mother-in-law, aged 76 years, had fractured her spine due to which she is bedridden and therefore, she needs the attention, care and company of the Applicant. Hence, the Applicant submits

that he will no longer be able to find time to carry out his functions as Liquidator, if appointed. The Applicant informed the CoC about his personal difficulty to act as a Liquidator and it was thus decided by the members of CoC in the 7th Meeting that if the Resolution Professional did not provide his consent, then the appointment of liquidator will be in the manner as envisaged u/s 34 of the Code. Accordingly, in the Eighth CoC Meeting held on August 01, 2019, the committee resolved to appoint Mr. Santanu T. Ray to act as the Liquidator of the Corporate Debtor and the written consent of Mr. Santanu T. Ray to act as the Liquidator of the Corporate Debtor has also been placed on record. The Financial Creditor has also filed M.A. No. 2740 of 2019 before this Tribunal proposing the name of Mr. Santanu T. Ray in place of Mr. Vijay Kumar Garg, to act as Liquidator of the Corporate Debtor.

13. The Hon'ble Supreme Court in the matter of *K. Sashidhar Versus Indian Overseas Bank & Ors* (Neutral Citation: **2019 INSC 148**, Vide **Judgment dated February 05, 2019** in **Civil Appeal No. 10673 of 2018**) has held that the decisions of CoC based on its commercial wisdom are non-justiciable. The CoC with requisite voting as given under Section 33(2) has approved the liquidation of Corporate Debtor in view of bleak chances of receiving any resolution plan

for the reasons discussed hereinbefore. This Tribunal has very limited powers of judicial review in such matters of commercial wisdom.

14. In view of the above discussions and findings, this Bench is of the opinion that the Corporate Debtor is required to be liquidated in the manner as laid down under the Insolvency & Bankruptcy Code, 2016. Hence, we pass the following orders:

ORDER

- i. The above **M.A. No. 1876 of 2019** is allowed;
- ii. The Corporate Debtor “**GITANJALI GEMS LIMITED**” is ordered to **be liquidated** in terms of Section 33(2) of the Code read with the Regulations made thereunder;
- iii. This Bench hereby appoints **Mr. Santanu T. Ray** having **Registration No. IBBI/IPA-002/IP-N00360/2017-2018/11055** (having Email: santanutr@aaainsolvency.com) as the Liquidator of the Corporate Debtor. The Liquidator so appointed shall complete the Liquidation process as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Liquidation process) Regulation, 2016. The Liquidator for conduct of the liquidation

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proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.

- iv. The Liquidation of Corporate Debtor is effective from the date of this order, and the Moratorium declared vide order dated 08.10.2018 in CP(IB) No.3585/NCLT/MB/2018, henceforth ceases to exist from the date of the order of liquidation;
- v. 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;
- vi. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor, as the case may be, hereafter cease to exist. All these powers henceforth vest with the Liquidator. 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.
- vii. The CoC is directed to contribute to the liquidation cost, if any short fall occurs from the liquidation value of the Corporate Debtor.

- viii. The Liquidator shall make a public announcement stating that the Corporate Debtor is in liquidation, in the manner laid down under Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. This Adjudicating Authority also directs the Liquidator to serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the liquidation order timely. The Liquidator will also provide a copy of this order to the trade unions/employee associations, if any, of the Corporate Debtor so that the workman/employees could also be informed of this liquidation order through their association.
- ix. This liquidation order u/s 33(7) 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.
- x. The liquidator shall be at liberty to pursue pending the Interlocutory Application pertaining to avoidance transactions, if any.

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- xi. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.
- xii. The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the Corporate Debtor, IBBI, the Resolution Professional, and the Liquidator by speed post as well as e-mail within one week from the date of this order, after completion of all the formalities.
15. With the above directions, this **M.A. No. 1876** of 2019 filed u/s 33 of the Code is hereby **allowed** and stands disposed of.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)