

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH
KOLKATA**

**C.A.(I.B.). No.839/KB/2018
Connected with
C.P. (I.B) No.579/KB/2017**

Coram: Mr. Jinan K.R., Member (Judicial)

In the matter of:

An application under Section 33 (1) of the Insolvency & Bankruptcy Code, 2016;

In the matter of:

ABHISHEK STOCK BROKING SERVICES PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956 and having its registered office at 9, Lal Bazar Street, Block-A, Room No.1, Kolkata 700 001 in the state of West Bengal within the above jurisdiction;

... Financial Creditor

Versus

In the matter of:

SHREE GANESH JEWELLERY HOUSE (I) LIMITED, a Company incorporated under the Companies Act, 1956 and having its Registered Office at Suite No.413, 4th Floor, Vardaan Market, 25A Camac Street, Kolkata 700 016, within the aforesaid jurisdiction;

And

In the matter of:

Mr. Anup Kumar Singh, the Resolution Professional having his office at Trinity Towers, Suit No.3G, 226/1 AJC Bose Road, Kolkata 700 020.

.....Applicant

Versus

Sd

SHREE GANESH JEWELLERY HOUSE (I) LIMITED, Suite No.413, 4th Floor,
Vardaan Market, 25A Camac Street, Kolkata 700 016;

Counsels on Record:

Mr. Anup Kr. Singh, - Resolution Professional
Mr. S. Kabiraj, Advocete – For Resolution Professional

Date of pronouncement of order: 14th September 2018.

ORDER

1. This is an application filed by the Resolution Professional praying for an order of liquidation of the Corporate Debtor, namely, Shree Ganesh Jewellery House (I) Ltd., under Section 33 (1) of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code).
2. The C.P. (IB) No.579/KB/2017 was filed by Abhishek Stock Broking Services Pvt. Ltd. & Ors. / Financial Creditor under Section 7 of I&B Code for initiating insolvency resolution process against Shree Ganesh Jewellery House (I) Ltd. The application was admitted vide order dated 12.02.2018 by appointing Mr. Manish Jain as the Interim Resolution Professional. Mr. Manish Jain, the IRP has been replaced by the Committee of Creditors (CoC) by Mr. Anup Kumar Singh and appointment of Mr. Anup Kumar Singh was approved vide order dated 18.05.2018. While continuing the CIRP process, the Resolution Professional has taken note of non-availability of the relevant records so as to prepare information memorandum. The annual returns of the Corporate Debtor was last filed in the financial year 2014-15 as Hard Disc and other records were seized by the CBI in June 2016 and despite the efforts of the Resolution Professional, he could not get copies of the records from the

CBI and information memorandum could not be prepared. He would submit that despite his efforts in tracing the books of accounts and other relevant information of the corporate debtor, he could not trace it out. Upon his enquiry, he found that several assets of the corporate debtor are in the custody of the enforcement agencies pending the valuation of the assets of the Corporate Debtor. In view of the difficulties and impediments faced by the IRP already appointed and despite directions issued to the investigating agencies including CBI and DRI upon the instance of the RP by making applications, the CBI and DRI did not hand over the necessary documents relating to the corporate debtor. In the above said factual background, the Resolution Professional was unable to prepare the Information Memorandum of the Corporate Debtor. However, the Committee of Creditors, in the meeting held on 12.06.2018, requested the Resolution Professional to prepare Information Memorandum of the Corporate Debtor on the basis of the limited information available, in order to expedite the process of CIRP. In the meanwhile, the promoter of the Corporate Debtor, Mr. Nilesh Parekh, who was appearing before the RP and the CoC to aid the CIRP, was arrested by DRI on 15.06.2018 and thereby the RP could not carry out the responsibility as provided in the regulations and the Code and because of the reasons beyond the control of the Resolution Professional, he could not prepare Information Memorandum within two weeks of the date of appointment of the RP.

3. He further submits that the Corporate Debtor has failed and neglected to cooperate with the Resolution Professional and thereby he was unable to identify prospective resolution applicant within the stipulated period. Though CBI was requested to give details of the assets in their custody, they did not respond to the query addressed to them. Repeated reminders sent to the authorities also became futile because of the non-cooperation from the side

of the investigating authorities and Enforcement Directorate. A Receiver, also seen appointed by the Debts Recovery Tribunal, who has taken possession of some of the properties of the Corporate Debtor, also could not be available with the Resolution Professional. While 5th meeting of the CoC was convened on 7th August 2018 to decide as to get the extension of the period of CIRP beyond 180 days, it failed because of not getting more than 14% vote share in favour of the resolution moved by the Resolution Professional for extending the period of CIRP process by 90 days from the period of CIRP already fixed at 180 days on the date of admission. Since the CoC did not pass the resolution for extension of the CIRP period beyond 180 days and no resolution applicant came forward to take over the assets of the corporate debtor, the CoC, in the 5th CoC meeting dated 25.08.2018 decided to apply for passing an order of liquidation of the corporate debtor upon the following grounds:

- (a) That Shree Ganesh Jewellery House (I) Ltd., Corporate Debtor is declared as Fraud account;
- (b) That the account is inoperative since year 2015;
- (c) That Information Memorandum which needs to be circulated within 14 days of appointment of Resolution Professional is still pending as the Corporate Debtor has not filed Annual Returns since year 2014-15. The petition filed as on 10th July, 2018 with the Hon'ble AA to accept the draft IM on the basis of the last audited annual financial statement as available i.e. for FY 2013-14 & FY 2014-15 is still pending before the Adjudicating Authority.
- (d) That RP has filed petition before Hon'ble NCLT, for custody of assets held with DRI, ED, CBI, WBIDC and with several receivers as appointed by DRT but the same is still to be deliberated upon by the Hon'ble AA.
- (e) That valuation of assets has not been completed as yet on account of the fact that the promoter of the Corporate Debtor has been in custody of

Investigation Agencies several times during CIRP and several custodians of the assets which are spread across different states.

(f) That Liquidation Value and Fair Value of the account still being pending, Expression of Interest (EoI) has not been published on account of which Resolution of the account could not happen in the stipulated period of 180 days.

(g) That the account being inoperative for the past several years, the assets of the Corporate Debtor have been continuously deteriorating in value. By taking the account into liquidation, the assets could be disposed of without further deterioration in the value of the immovable assets.

3. Upon the aforesaid ground, the Ld. Resolution Professional submits that till the expiry of the CIRP period under Section 12 of the Code, no Resolution Plan under Sub-Section 6 of Section 30 has been received by the Resolution Professional and since the period of CIRP was not extended beyond 180 days, the Committee of Creditors passed a decision to liquidate the CIRP process with the vote share of 67.64%.

4. Based on the said decisions, the Resolution Professional moved this application for passing order under Section 33 (1) to liquidate the Corporate Debtor. Upon hearing the argument on the side of the Ld. Counsel appearing for the Resolution Professional at length, I am satisfied that this is a fit case in which liquidation of the Corporate Debtor is to be ordered in accordance with Section 33 (1), Chapter III of the Insolvency and Bankruptcy Code, 2016. Therefore, the application is liable to be allowed. The Resolution Professional being consented to continue as a Liquidator, he is appointed as the Liquidator. Therefore, this application is allowed by passing an order requiring the

Corporate Debtor to be liquidated in the manner as laid down in Chapter III read with Section 33 (1) of the Code.

In view of the above said reasons, I am inclined to pass an order requiring the Corporate Debtor Shree Ganesh Jewellery House (I) Limited to be liquidated in the manner as laid down in Chapter III, Part II of the Insolvency and Bankruptcy Code, 2016 read with Section 33 (1) of the I&B Code, 2016 upon the following directions:

ORDER

- (i) Mr. Anup Kumar Singh (Mobile No.9830726554) with address Trinity Towers, Suite No.3G, 226/1, AJC Bose Road, Kolkata 700 020 (e-mail id: ip.sgjhl@gmail.com) with IBBI Registration No.IBBI/IPA-001/IP-P00153/2017-18/10322 is appointed as the liquidator.
- (ii) Mr. Anup Kumar Singh is directed to issue public announcement stating that the Corporate Debtor is in liquidation in terms of Regulation 12 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- (iii) The Registry is directed to communicate this order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi.
- (iv) The Order of Moratorium passed under Section 14 of the I&B Code, 2016 shall cease to have effect and a fresh moratorium under Section 33 (5) shall commence.
- (v) This order is deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33 (7) of I&B Code, 2016.

(vi) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III, Part II of the Insolvency and Bankruptcy Code, 2016.

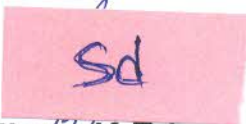
(vii) Upon proceeding with the liquidation, the Liquidator shall file a **Preliminary Report** as per Regulation 5 read with Reg.13 of the IBBI(Liquidation) Regulations,2016 at the registry within 75 days from the liquidation commencement date and continue to file **Progress Reports** as per Reg.15(1) within 15 days after the end of the quarter in which he is appointed.

(viii) The fee payable to the Liquidator shall form part of the liquidation cost as provided under Reg. 4(1) of the IBBI (Liquidation Process) Regulations,2016.

CA (IB) No.839/KB/2018 in CP (IB) No.579/KB/2017 is disposed of accordingly.

Copy of this order is to be sent to the Liquidator, financial creditor and Corporate Debtor for information and for taking necessary steps.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.


(Jinán K.R.)
Member (J)

Signed this day of 14th September 2018.

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