

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I), CHANDIGARH**

IA (I.B.C)/1271(CH)2023 & 1617(CH)2023

in

**CP(IB) No. 66/Chd/PB/2019
(Admitted)**

IN THE MATTER OF CP(IB) No. 66/Chd/PB/2019:

State Bank of India

.... Financial Creditor

Vs.

Venus Garments (India) Limited

..... Corporate Debtor

**Under Section 60(5) & 33(2) of the
Insolvency and Bankruptcy Code, 2016**

IN THE MATTER OF IA NO. 1271/2023:

Anil Kumar Jain

S/o Late Sh. Dharam Parkash Jain
R/o House No-B 328/1, Doctor Sham Singh Road,
Civil Lines, Ludhiana-141001

.....Applicant

Vs.

Sh. Navneet Gupta, Resolution Professional

of Venus Garments (India) Limited
Registered Office at Village Hussianpura,
Opposite Hotel Amaltas, G. T. Road (West), Ludhiana-141005

.....Respondent

IN THE MATTER OF IA NO. 1617/2023:

Sh. Navneet Gupta, Resolution Professional

of Venus Garments (India) Limited
Registered Office at Village Hussianpura,
Opposite Hotel Amaltas, G. T. Road (West), Ludhiana-141005

.....Applicant/Resolution Professional

Order delivered on: 22.07.2025

Coram: HON'BLE SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)

Present:

For the Applicant in IA No. 1617/2023 : Mr. Arora Vishwas Kumar, Advocate
And respondent in IA No. 1271/2023

For the Applicant in IA No. 1271/2023 : Mr. Sandeep Suri, Advocate
And respondent in IA No. 1617/2023

Per: SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)

ORDER

IA NO. 1271/2023

The present application is filed by Anil Kumar Jain, director, promoter and Shareholder of M/s Venus Garments (India) Limited ("VIGIL" or "Corporate Debtor") against Mr. Navneet Gupta, the Resolution Professional (RP) who was appointed as Resolution Professional the present, corporate Insolvency Resolution Process ("CIRP").

2) The present application has been filed seeking following prayer which is reproduced below :

"It is therefore prayed that further invitation of Expression of Interest be invited to submit the Resolution Plan in prescribed Form G be issued, calling general public at large for submitting expression of interest. That the applicant shall also be submitting its resolution plan, so that Corporate Debtor may be revived from the reigns of the CIRP and the interest of the all the stakeholders can be protected."

3) The primary objective of this application is to seek direct a **fresh invitation for Expression of Interest (EOI) i.e.** re-issuance of Prescribed Form G in terms of Regulation 36 A for submitting Resolution Plans, promoter, director and shareholder of the Corporate Debtor is intending to submit a Resolution Plan with the support of an investor.

SUBMISSIONS OF THE APPLICANT

- 4) The Applicant has submitted as under:
- i. The applicant has referred to an email dated April 28, 2023 at Page 04, from State Bank of India to the RP, indicating a discussion within the Committee of Creditors (CoC) to refer the Corporate Debtor to liquidation, as no resolution plan had been received. The applicant contends that this shows an intent to move towards liquidation prematurely, without fully exploring the potential for resolution.
 - ii. Further stresses that the fundamental objective of the Insolvency and Bankruptcy Code (IBC) 2016 is to resolve and rehabilitate the Corporate Debtor, maximize asset value, and ensure its continuation as a going concern, rather than solely focusing on liquidation. In this regard reference was given to Preamble of the IBC and various Supreme Court judgments (including *Swiss Ribbons Pvt. Ltd. v. Union of India*, *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta*, and *Innoventive Industries Ltd. v. ICICI Bank*) to reinforce that resolution and revival are the primary aims.
 - iii. The Corporate Debtor is a viable business with an established track record and is still a "going concern." Production can be instantly resumed with available raw materials and confirmed orders from existing customers if a revival plan is approved. Infusion of working capital is presented as a key to reviving operations.
 - iv. The liquidation would cause significant prejudice and substantial loss to all stakeholders, especially equity stakeholders and creditors other than secured creditors, as the distress value would be considerably lower than the fair market value. The physical location of Corporate Debtor's plant (Hussianpura) with improper road access is also cited as a factor that would further erode value during liquidation.

- v. Since, the Corporate Debtor is an MSME (Micro, Small and Medium Enterprises) enterprise, its promoters/directors are eligible to submit a Resolution Plan. The applicant explicitly states his intention to submit such a plan, having already tied up with an investor to infuse working capital and clear outstanding dues.
- vi. The initial publication of Form G for EOI was neither proper nor complete and that the news of VGIL being in CIRP was not widely known among the general public or business associates. This allegedly prevented potential investors from participating in the first round. Many business associates have reportedly approached the applicant, expressing interest in participating if Form G is re-published.
- vii. In numerous other cases, Form G has been published for a second or even third time, yielding very good and encouraging response, thus supporting the feasibility and benefit of a re-invitation.
- viii. The initial 180-day CIRP period (from the admission order dated November 24, 2022) has not yet been completed. And the RP and COC had an option to extend of 90 days of CIRP, there is ample time to re-invite EOIs and maximize resolution possibilities.
- ix. He further referred to the minutes of 4th COC Meeting whereby COC discussed the future course of action, these are reproduced below :

"Item No. A6

To discuss future course of action as no resolution plan was submitted by the prospective resolution applicant.

The Chairman informed the Committee that pursuant to Form G published on 23.01.2023 and RFRP dated 28.02.2023 the last date of the submission of the resolution plan was 30.03.2023 against which no resolution was submitted by any of the prospective resolution applicant included in the final list of prospective resolution applicants. And on the absence of receipt of resolution plan, the options available are either to issue another invitation for submission of Expression of interest (Form G) or file an application with the adjudicating authority for the initiation of proceeding under Section 33 of the Insolvency and Bankruptcy Code 2016 for initiation of liquidation.

He further informed that after issue of final list of prospective resolution applicants he has received call from one of the prospective resolution applicant that he has received a call from Mr. Anil Jain, Suspended Director, asking him not to participate in the resolution process and submit any resolution plan as Mr. Jain himself is interested in acquiring the Corporate Debtor and this could be an important factor why no one participated.

After discussion it was decided that CoC is of the opinion as the business of Corporate Debtor is not a going concern and there seems no possibility to restart the business and moreover, no resolution applicant has presented any resolution plan, therefore, the Resolution Professional shall submit a Liquidation Plan in the next CoC meeting to enable CoC to make decision regarding with respect to future course of action. Any potential buyer who is still interested in buying the assets, can always purchase the asset under liquidation as during liquidation also the liquidator has the option of selling the asset as going concern.

The Resolution Professional also informed CoC that in terms of the provisions of Regulation 39B, 39C and 39D of the IBBI (CIRP) Regulations, 2016 the CoC, while approving the resolution plan or deciding to liquidate the corporate debtor, is also required to pass resolutions upon meeting the liquidation cost, mode of sale of corporate debtor and the fee of liquidator. The same shall also be presented in the next CoC Meeting."

- x. And also the minutes of 5th COC Meeting whereby COC discussed the future course of action, these are reproduced below:

"Item No. A5

To discuss republication of the FORM G or liquidation of the Corporate Debtor and appointment of Liquidator.

The Chairman informed the Committee that in 4th COC meeting it was decided that as the business of Corporate Debtor is not a going concern and there seems no possibility to restart the business and moreover, no resolution applicant has presented any resolution plan, therefore, the Resolution Professional shall submit a Liquidation Plan in the next COC meeting to enable COC to make decision regarding with respect to future course of action.

He further informed that as Resolution Professional he has received an advance copy of application filed by Mr. Anil Kumar Jain (Suspended Director) seeking directions for issue of fresh invitation of Expression of Interest for submission of Resolution Plan. Apart from this, after the expiry of last date of submission of resolution plan (30.03.2023) pursuant to previous Form G published on 23.01.2023, three more prospective resolution applicants have also shown their interest in submitting expression of interest for submission of resolution plan, all the names of 3 resolution applicant were shared with the CoC. The CIRP period 180 days will be completed on 24.05.2023.

On this issue Mr Anil Jain requested the Committee that instead of liquidation of the Corporate Debtor, Form G be republished and he be given a chance to submit a resolution plan as it is in the interest of all the Stakeholders, to this representative from SBI stated that only 8 days left for the expiration of the CIRP period and a period of 47 days have already expired from the last date of submission of resolution plan. Moreover, even in liquidation also the Corporate Debtor can be sold as a going concern. On this issue Mr. Anil Jain reiterated that resolution plan will be in the interest of all the stakeholders. On this representative of SBI confirmed that this issue they will discuss with their Management and consider this at the time of voting. Representative of PNB stated that, there is possibility of giving a chance for resolution plan, the same may be considered at this stage also. If SBI having majority voting share agrees then PNB would also like to give another chance for submission of resolution plan.

Mr. Anil Jain assured that it will definitely be beneficial for everybody. A representative from SBI stated that presently they do not have the mandate for republication of Form G, however, they shall discuss the same with their Management and inform the Resolution Professional who can thereafter put up the respective resolutions for voting.”

- xi. He has further contended that in the minutes of meeting, there have been conflicting stands taken, as to whether the corporate debtor is a “going concern” or not. On the one side, it was recorded that the no resolution plan was received as business is not a going concern, and on the other side it was recorded that “... this representative from SBI stated that only 8 days left for the expiration of the CIRP period and a period of 47 days have already expired from the last date of submission of resolution plan. Moreover, even in liquidation also the Corporate Debtor can be sold as a going concern”.
- xii. The reference was further drawn to para 8 of the Reply filed by the RP, where by it was mentioned that “*In absence of the record with Answering Respondent, Information Memorandum could not be compiled in detail*” and contrary to same in the 2nd Meeting of CoC at Item A8, it is stated that the preparation of Information Memorandum was only delayed due to delay in providing information. It was nowhere stated that information was not provided by the management. Despite having

prepared the requisite information in the Information Memorandum, no resolution plan was submitted by the Prospective Resolution Applicants.

- xiii. The Applicant has also referred to the minutes of 3rd meeting of COC, wherein the email sent by the applicant requesting to extend the date of filing expression of interest by at least one week. It was further stated by the applicant in the email that few more investors are interested to be serious players as resolution applicants giving better valuation to Corporate Debtor. It is also evident from the minutes of 5th Meeting at Agenda A5, that more resolution applicants have also shown their interest prior to the expiry of 180 days. Therefore, the RP and COC would have accepted to re-publish the form G and also extend the timeline of the CIRP.
- xiv. He further emphasized that PNB was ready to allow the re-publication of the Form G, and SBI took the call on the same. Despite the fact, SBI stated that they will discuss internally, shall take the decisions accordingly. The intention of the Item A5 was clearly for republication but the RP chose to only put Liquidation for voting. However, Republication was never put for voting and the wording of Item B1 only referred to Liquidation.

SUBMISSIONS BY RESPONDENT

- 5) In response to the submissions made by the Applicant, the Resolution Professional made the following contentions:
 - i. The present application is not maintainable in law as the Applicant has failed to implead the members of the Committee of Creditors (CoC) as necessary parties to the proceedings. In the absence of such impleadment, the application suffers from non-joinder of necessary parties and is liable to be dismissed at the threshold.
 - ii. It was further submitted that the relief sought by the Applicant, specifically with respect to issuance of a fresh Form G inviting Expressions of Interest (EOI) for

submission of Resolution Plans, is in direct contravention of the commercial decision taken by the CoC to liquidate the Corporate Debtor. Despite being aware of the said resolution, the Applicant has deliberately omitted to array the CoC as a party, thereby rendering the application procedurally defective and unsustainable.

- iii. The RP pointed out that, in compliance with Regulation 36A of the CIRP Regulations, Form G inviting EOIs was duly issued on 23.01.2023 by the RP. The said Form G was published on the website of the Insolvency and Bankruptcy Board of India (IBBI) and in two widely circulated newspapers—namely, The Times of India (Chandigarh and Punjab editions) and Rozana Spokesman (Punjabi edition).
- iv. Subsequent to the publication of Form G, the CoC convened multiple meetings and finalized essential documents such as the Request for Resolution Plan (RFRP), eligibility criteria for prospective resolution applicants, and the evaluation matrix, all in strict conformity with the Insolvency and Bankruptcy Code (IBC) and relevant regulations. However, no Resolution Plan was received from any prospective applicant within the stipulated timeframe.
- v. In the 5th CoC meeting held on 16.05.2023, the CoC, by a unanimous vote (100%), resolved to proceed with the liquidation of the Corporate Debtor. This resolution was passed after considering the fact that despite issuance of Form G, no Resolution Plan was received. The commercial wisdom of the CoC was exercised after thorough deliberation and assessment of the prevailing circumstances.
- vi. It was further submitted that the Corporate Debtor has ceased all manufacturing operations and business activities, and is therefore not a going concern. The RP's Counsel clarified that the concept of "sale of the Corporate Debtor as a going concern" in liquidation is distinct from the status of the Corporate Debtor as a going concern during CIRP. As per the record, the Corporate Debtor is not a going concern

due to the complete cessation of its operations and no manufacturing has been going in the Corporate Debtor.

- vii. The decision to liquidate the Corporate Debtor is a commercial decision taken by the CoC after due deliberation and in accordance with the provisions of the IBC, and thus warrants judicial deference.
- viii. It was also contended that the publication of Form G falls within the exclusive domain of the CoC's commercial wisdom. Numerous judicial precedents have upheld the principle that the commercial wisdom of the CoC is paramount and not amenable to judicial interference.
- ix. There is no statutory provision under the IBC or the CIRP Regulations for automatic republication of Form G. The decision to reissue Form G or reinitiate the EOI process lies solely with the CoC and is to be exercised in accordance with its commercial judgment. The Adjudicating Authority's role is limited to verifying procedural compliance and not to substitute or override the CoC's business decisions. Therefore, the Applicant cannot claim a vested right to seek further issuance of Form G or re-initiation of the EOI process once the CoC has resolved to liquidate the Corporate Debtor.
- x. In support of his contentions, the Counsel for the RP relied on the judgment of the Hon'ble National Company Law Appellate Tribunal (NCLAT), New Delhi, in ***Ashdan Properties Private Limited v. Dr. Mamta Binani, Company Appeal (AT) (Insolvency) No. 464 of 2024***, wherein it was held:

“11. Regulation 36A which provide for Invitation for Expression of Interest also empowers the CoC to modify the invitation for Expression of Interest. It is always open for the CoC to take a decision to not proceed on the Applications, EOI received and take a decision for issuance of fresh Form G and permit other applicants to participate. When no fresh Form G has been issued, it is not open for any new applicant to submit application before the Adjudicating Authority for being permitted to participate in the CIRP and submit Resolution Plan.”

- xi. Further reliance was placed on the judgment in ***Jatinder Pal Singh Hanjra v. Vivek Raheja & Ors., Company Appeal (AT) (Insolvency) No. 1611 of 2023***, wherein the Hon'ble NCLAT set aside the NCLT's direction for reissuance of Form G, holding that such directions interfered with the commercial wisdom of the CoC. It was categorically held that the Adjudicating Authority cannot substitute its judgment with the CoC's commercial decision, and its power of judicial review is limited.
- xii. In view of the above submissions, the Resolution Professional prayed for dismissal of the present application as being devoid of merit and not maintainable in law.

ANALYSIS AND FINDINGS

6) We have heard the parties and have perused the record carefully. We observed that the applicant has filed the present application without annexing any document with the application. The pleadings made in the application were limited to the fact that the COC is planning to take the corporate debtor into liquidation without exploring full potential for the resolution of the corporate debtor. The pleadings revolve around the object of the code, value maximization and interest of the applicant in submitting the resolution plan. Accordingly, only prayer sought in the present application is for fresh issue form G for calling the public at large for submitting expression of interest to submit the resolution plan, as applicant himself is interested in submitting a resolution plan.

7) Further upon perusal of the record, it is seen that the resolution professional has duly published form G on the website of Insolvency and Bankruptcy Board of India (IBBI) and in two widely circulated newspapers—namely, *The Times of India* (Chandigarh and Punjab editions) and *Rozana Spokesman* (Punjabi edition). These two newspapers have wide circulation in states of Punjab and Chandigarh. Moreover, the applicant was fully aware of the fact of publication of form G and last date of submission of expression of interest.

Despite full knowledge of the fact of the last date of submission of expression of interest, the failure on the part of applicant to submit expression of interest within that time, cannot be condoned by virtue of prayer for re-issuance of the Form G.

8) Not only this, we feel that in terms of the provisions of the code and the precedents referred by the counsel for the respondent/RP, any decision on re-publication or re-issuance of form G lies squarely within the domain of 'commercial wisdom' of the Committee of Creditors. Such right to exercise commercial wisdom is only available with the committee of creditors, which is paramount in nature. Neither any stakeholder nor any prospective Resolution Applicant has any locus to seek republication of Form G, as a matter of right. Regulation 36A of the CIRP Regulations provides for Invitation for Expression of Interest and also empowers only the COC to modify the invitation for Expression of Interest. It is always open for the COC to take a decision to proceed or not to proceed on the Applications/EOLs received and take a decision for issuance of fresh Form G and permit other applicants to participate. When no fresh Form G has been issued, it is not open for any new/prospective applicant to submit an application before the Adjudicating Authority for being permitted to participate in the CIRP and submit Resolution Plan.

9) Further, had there been any irregularity in the process or publication of Form G, the CoC or PRA would have come before us and challenged the process. However, in this case, no PRA or any member of CoC has raised any concern.

10) Upon perusal of the minutes of the 5th Meeting of the COC, it is observed that the CoC was fully aware of the fact that Applicant is intending to submit the Resolution Plan. Not only this, even it is recorded in the minutes that there are furthermore prospective resolution applicants who are interested to submit the Resolution Plan. Despite knowledge of the same, the CoC, in exercise of its commercial wisdom, accorded their accent to liquidate the Corporate Debtor. Moreover, had their intent been to re-publish / re-issue the

Form G, they would have never accorded their consent to liquidate the Corporate Debtor. Since, the commercial decision was taken by the COC, after being fully informed about the interested applicants, we do not feel that there is any requirement of judicial intervention in the matter. We do not find any irregularity in the process adopted.

11) It is pertinent to emphasize that the **Corporate Insolvency Resolution Process (CIRP)** is a **time-bound process**, as envisaged under the Insolvency and Bankruptcy Code, 2016. Permitting repeated invitations of Expression of Interest (Form G) merely on the behest of an individual stakeholder would defeat the very objective of timeliness under the Code and render the process never-ending. The issuance of Form G is **not intended to be a trial and error mechanism**, but a structured, regulated opportunity for resolution applicants to participate within the prescribed timelines.

12) Furthermore, the **possibility of resolution of the Corporate Debtor does not cease upon commencement of liquidation proceedings**. The liquidation framework itself offers avenues for resolution—either by way of **sale of the Corporate Debtor as a going concern** under **Regulation 32(e) and (f)** read with **Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016**, or through **compromise or arrangement** in terms of **Sections 230-232 of the Companies Act, 2013**, read with **Regulation 2B of the Liquidation Regulations**. Thus, considering that resolution opportunities may still be explored during liquidation, we are **not inclined to issue directions for republication of Form G** at this stage.

13) Therefore, in light of the foregoing observations, **the present Interlocutory Application bearing No. IA (IBC)/1271(CH)2023 is hereby dismissed.**

IA NO. 1617/2023

14) The present Application has been filed by Mr. Navneet Gupta, the Resolution Professional of M/s Venus Garments (India) Limited (“Corporate Debtor”) before this

Adjudicating Authority under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) seeking initiation of liquidation proceedings of the Corporate Debtor on the basis of the decision taken by the Committee of Creditor (“CoC”) pursuant to 5th meeting of COC held on 16.05.2023 with 100% voting shares.

15) The Applicant seeks the following relief:

- i. Pass the order of Liquidation of the Corporate Debtor in accordance with Section 33 of Insolvency and Bankruptcy Code 2016.
- ii. Appoint Mr. Navneet Gupta, Insolvency Professional, having his IBBI Registration Number as IBBI/IPA-001/IP-P00361/2017-18/10619 and having his Registered Address as H. No. 1590, level-1, Sector 22 -B, Chandigarh-160022, Contact Number (+91) 9814333213 and E-mail navguptaca@gmail.com, as Liquidator of the Corporate Debtor in accordance with Section 34 of the Insolvency & Bankruptcy Code 2016.
- iii. Pass such necessary orders and directions as Tribunal may deemed fit in the matter, in interest of the Stakeholders and Corporate Debtor, in interest of justice & equity.

Facts of the Case:

16) The brief facts, as stated by the Applicant in the IA are as below:

- i. The Corporate Insolvency Resolution Process, in the captioned matter of Venus Garments (India) Limited (“Corporate Debtor”), having its registered office at G.T. Road, Near Jalandhar Bye Pass City Ludhiana (Punjab), was triggered by one of the Financial Creditors of the Corporate Debtor viz. State Bank of India under Section 7 of the Insolvency and Bankruptcy Code 2016. The Application of the Corporate Debtor was admitted by the Bench of National Company Law Tribunal vide order dated 24.11.2022.
- ii. Accordingly, this tribunal vide same order dated 24.11.2022 appointed Mr. Navneet

- Gupta, Insolvency Professional ("Applicant") to act as Interim Resolution Professional ("IRP") of the Corporate Debtor.
- iii. The IRP caused Public announcement in prescribed form A on 25.11.2022, which was published in the following national daily newspapers on 26.11.2022 in accordance with Regulation 6 of IBBI (CIRP) Regulation 2016 read with Section 13 (1) (b) and 15 of the code:
- a) The Tribune (Chandigarh and Punjab Edition)
 - b) Punjabi Tribune (Chandigarh and Punjab Edition)
 - c) The Hindu (Tamil Edition)
 - d) Times of India (Tamil Edition)
 - e) Economic Times (Chandigarh Edition)
- iv. Apart from publication in newspapers, Form A (Public Announcement) was also uploaded at the web portal of Insolvency and Bankruptcy Board of India (IBBI).
- v. On 17.12.2022, after collating claims from the Creditors of the Corporate Debtor, the IRP constituted the Committee of Creditors in accordance with the Section 21 of IBC, 2016, with following members of the COC :
- a) STATE BANK OF INDIA, with admitted amount of claim: Rs. 284,59,21,678.67 and Voting Share in Committee of Creditors as 98.08%
 - b) PUNJAB NATIONAL BANK, with admitted amount of claim: Rs. 5,58,38,000 and Voting Share in Committee of Creditors as 1.92%
- vi. Upon constitution of the Committee of Creditor, the Interim Resolution Professional convened the First Meeting of the Committee of Creditors on 23.12.2022 wherein, the tasks performed by the IRP were informed to the members of the CoC and the Agenda for appointment of Resolution Professional was also discussed. The meeting was followed by e-voting for appointment of Applicant as the Resolution Professional

to conduct and complete CIR Process. As e-voting happened subsequent to the First Meeting of the CoC, Navneet Gupta, the Interim Resolution Professional was confirmed to act as Resolution Professional in the CIR Process.

- vii. The Second Meeting of the Committee of Creditors was convened on 23.01.2023, whereby the decision on publication of invitation of Resolution Plan was taken. Also, agendas pertaining to Transaction Audit of Corporate Debtor, Form G, Compilation of Evaluation Matrix, and terms of Request for Resolution Plan (RFRP) Document were discussed. Also, eligibility criteria for prospective Resolution Applicants was also discussed.
- viii. Immediately after the 2nd COC Meeting, 23.01.2023, Expression of Interest for Submission of Resolution Plans was issued by the Applicant/ Resolution Professional in prescribed Form G, as per Regulation 36A (1) and 36A (2). Accordingly, it was published on the Website of IBBI and also published in following newspapers:
 - a) The Times of India (Chandigarh & Punjab Edition)
 - b) Rozana Spokesman (Chandigarh & Punjab Edition)
- ix. Subsequently, a provisional list of PRAs was compiled which consisted of following Resolution Applicants:
 - a) Mr. Pankaj Saraogi
 - b) Mr. Sandeep Gupta
 - c) Mr. Amrit Kumar Agrawal
 - d) M/s RKG Fund - I, a scheme of RKG Trust
- x. The Third Meeting of the Committee of Creditors was convened on 20.02.2023, wherein the decisions on publication of invitation of Resolution Plan was taken. Also, agendas pertaining to Form G, Compilation of Evaluation Matrix, and terms of Request for Resolution Plan (RFRP) Document were finalized.

- xi. The Fourth Meeting of the Committee of Creditors was convened on 05.04.2023, whereby it was informed to the members of COC that No Resolution Plans were received from the Prospective Resolution Applicant. The CoC discussed and decided that the corporate debtor is not a 'going concern' and there seems no possibility to restart the business. The CoC further discussed that as no resolution applicant has presented any resolution plan, agenda of liquidation and Liquidation Plan may be placed for the next CoC meeting, to enable the CoC to take the decision with respect to the future course of action.
- xii. On 16.05.2023, i.e. during the Fifth Meeting Committee of Creditors the members decided to put the agenda for voting in order to Liquidate the Corporate Debtor. Accordingly, voting was conducted, whereby members of the CoC with 100% Voting Share accorded their accent for Liquidation of the Corporate Debtor. In the same meeting agenda for Liquidation of Corporate Debtor was put to e-vote and was approved by all the members of COC, voting in favour of the Liquidation of the Corporate Debtor.
- xiii. The Agenda / Resolution for Liquidation was put to vote electronically, subsequent to 5th Meeting of Committee of Creditors, whereby, the members of COC approved the following resolution with 100% of voting share :

“Resolved that pursuant to the provisions of Section 33 of the Insolvency and Bankruptcy Code, 2016 the consent of the committee of creditors is hereby accorded for liquidation of Venus Garments (India) Ltd. (Corporate Debtor)”.

Apart from above mentioned resolution, another resolution was also passed with 100% voting share, assenting for appointment of Applicant / Resolution Professional, *Mr. Navneet Gupta* to act as liquidator. Accordingly, following resolution was passed:

“Resolved that Mr. Navneet Gupta Insolvency Professional having registration number IBBI/IPA-001/IP-P00361/2017-18/10619 be and is hereby appointed as Liquidator of Venus Garments (India) Ltd (corporate debtor) for conducting liquidation process of Venus Garments India Ltd at a fee @ 50% of the fee prescribed under regulation 4 (2) (b) of IBBI (Liquidation Process) Regulations, 2016”

- xiv. It was stated that in absence of resolution plan, the CoC, before the expiry of 180 days prescribed for CIRP, in its commercial wisdom, decides to liquidate the Corporate Debtor, and accordingly, the appropriate resolution was passed to seek liquidation of the corporate debtor in terms of Section 33(2) of the Code.
- xv. The Applicant / Resolution Professional along with the present application submitted his consent to act as Liquidator to the members of the Committee of Creditors along with a copy of Authorization for Assignment issued by IPA.
- xvi. The agenda for compliance of Regulation 39 B, 39 C & 39D of the CIRP regulations was also discussed in detail and placed before the CoC for approval in the 5th COC meeting, whereby it was resolved unanimously that :

Item no B2

To approve appointment of liquidator and fix his fees

"RESOLVED THAT Mr. Navneet Gupta Insolvency professional having registration number IBBI/IPA-001/IP-P00361/2017-18/10619 be and is hereby appointed as the liquidator of Venus Garments (India) Limited (Corporate Debtor) for conducting liquidation process of M/s Venus Garments (India) Limited at a fee @ 50% of the fees prescribed under Regulation 4(2)(b) of IBBI (Liquidation Process) Regulations, 2016."

Item no B3

To decide upon the mode of liquidation of corporate debtor and the possibility of selling the business of the corporate debtor or corporate debtor itself as a

going concern, in case the order of liquidation is passed against the corporate debtor under section 33, in terms of provisions of Regulation 39 C of IBBI (CIRP) Regulations, 2016

"RESOLVED THAT pursuant to Regulation 39 C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the COC hereby recommends the Resolution Professional to explore at least once the possibility of the sale of the corporate debtor as a going concern as per clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016."

Item no B4

To approve plan for contribution to meet liquidation costs.

"RESOLVED THAT pursuant to provisions of regulation 39B of IBBI (IRPCP) Regulations 2016 the financial creditors shall contribute towards the liquidation cost in proportion to the financial debts owed to them by the corporate debtor."

xvii. It is submitted by the Resolution Professional that the present Application is being filed in the interest of justice and the same is bona-fide in nature.

17) We have perused the record carefully. It has been observed that the CoC in its fifth meeting dated 16.05.2023 has decided to liquidate the corporate debtor before expiry of 180 days of CIRP, which were expiring on 23.05.2025. Therefore, the present application has been preferred by the Resolution Professional under Section 33 (2) of the Code.

18) The Section 33(2) reads as :

33. Initiation of liquidation. -

(1) Where the Adjudicating Authority, -

(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 creditors 1[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-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

19) The Section 33 of the IBC lays down the circumstances under which liquidation of a corporate debtor may be initiated. Specifically, sub-section (2) provides that if the Committee of Creditors (CoC), at any time during the Corporate Insolvency Resolution Process (CIRP) but before confirmation of a resolution plan, resolves to liquidate the corporate debtor by a two-thirds (66%) majority, the resolution professional is required to intimate the Adjudicating Authority (AA), which shall then pass an order for liquidation. This provision embodies the commercial wisdom of the CoC, recognizing its authority to decide the fate of the corporate debtor.

20) Once the CoC passes a resolution for liquidation under Section 33(2), the Resolution Professional (RP) is obligated to communicate this decision to the Adjudicating Authority. Upon such intimation, the adjudicating Authority is mandated to pass a liquidation order.

21) The Section 33(2) serves as a powerful tool in the hands of the CoC to avoid unnecessary delays in cases where resolution is unlikely. It empowers financial creditors to take commercially sound decisions, while ensuring due process through mandatory voting thresholds and reasoned resolutions.

22) It has been submitted that the business of Corporate Debtor is not a going concern, and no resolution plan has been received from any prospective applicant despite the issuance of Form G. Furthermore, members of the Committee of Creditors (CoC) have unanimously resolved to initiate liquidation proceedings.

23) In this regard, the Hon'ble Supreme Court in the matter of ***K. Sashidhar Versus Indian Overseas Bank & Ors. in Civil Appeal No. 10673 of 2018*** has held that the commercial decision of CoC is non-justiciable. In the case at hand, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.

24) In light of the above-quoted judgment, it is clear that the "Commercial wisdom of Committee of Creditors (CoC)" is given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyze or evaluate the commercial decision of the CoC. The members of the CoC are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by this Adjudicating Authority for the reason that it is not within the judicial ambit of Adjudicating Authority to examine commercial wisdom of CoC.

25) In the interest of justice and propriety, when the CoC has taken the decision of liquidation of the corporate debtor, we are inclined to order the Liquidation of the Corporate Debtor.

26) The second issue before us is whether the same resolution professional can be appointed as Liquidator when IBBI vide its notification bearing No. *Liq-12011/214/2023-IBBI/840 dated 18.07.2023* has recommended that a person other than IRP/RP of the Corporate Debtor be appointed as the Liquidator in the case of liquidation of the Corporate Debtor. With respect to the Appointment of the same RP as the Liquidator, we are guided by IBBI Circular No. *Liq-12011/214/2023-IBBI/840 dated 18.07.2023*. The contents of which read thus:



भारतीय दिवाला और शोधन अक्षमता बोर्ड Insolvency and Bankruptcy Board of India



7th Floor, Mayur Bhawan, Connaught Place, New Delhi-110001
Telephone : +91 11 23462900, +91 11 23462800
Fax +91 11 23462902, Web : www.ibbi.gov.in

Handwritten signature

8334
21/07/2023

Liq-12011/214/2023-IBBI / 840

18th July 2023

To
Secretary,
National Company Law Tribunal
Principal Bench
New Delhi

Subject: Recommendation for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the IBC, 2016 - regarding

The Code envisages time bound resolution of the Corporate Debtor (CD) to maximise the value of the assets. In cases where the CD has not been resolved successfully, Adjudicating Authority (AA) orders for initiation of the liquidation process of the CD and appoints a liquidator. In this regard, Section 34 of the Code provides that where AA passes an order for liquidation of the CD, the resolution professional (RP) appointed for the CIRP shall act as the liquidator unless replaced by the AA under the following three circumstances:

(i) the resolution plan submitted by the RP under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or

(ii) the Board recommends the replacement of a RP to the AA for reasons to be recorded in writing; or

(iii) the RP fails to submit written consent.

2. Section 34(4)(b) inter-alia provides that the AA shall replace the RP if the Board recommends the replacement for reasons to be recorded. During the review of performance of processes under the Code, it has been found that there is a meagre 4% average realisation against the admitted claims during the liquidation process whereas in Corporate Insolvency Resolution Process (CIRP) the average realisation is 32% against the admitted claims during CIRP. This necessitated for fresh perspective in the liquidation process and replacement of RP to act as liquidator. This subject has been considered by the Board and it is considered that AA may appoint a new IP as liquidator due to the following reasons:

(i) The IBC has been introduced with larger economic goals to revive the distressed viable CDs to convert non-performing assets as performing assets, promote employment, entrepreneurship, and credit by valuing capital invested in the project rather than selling in bits and pieces or recovery mechanism. The prime objective of the Code is resolution. Accordingly, in cases where the CD has not been successfully resolved or resolution plan has been failed, IP who has been assigned to conduct the resolution process of the CD, may not be recommended to continue to act as liquidator.

(ii) The Code creates an ecosystem for maximisation of the value of assets of a CD. Non-revival of the CD through CIRP adversely impacts on its value. Value is usually dependent on the time

Handwritten mark

taken to resolve the insolvency since it erodes over time and rapidly once the insolvency proceedings commence. Therefore, any delay in the insolvency resolution process may make reorganisation of the CD difficult and would induce liquidation, thereby destruction of value for the stakeholders. Thus, an independent IP needs to be entrusted to conduct the Liquidation process of the CD for value maximisation while also ensuring the transparency and complete independence in two separate assignments.

(iii) The Code envisages CIRP and liquidation as two distinct processes with distinct roles and responsibilities. Thus, an IP undertakes the two different assignments as RP and Liquidator, separately. Segregating the dual role of an IP in the same CD as RP and liquidator will foster an inbuilt system of check and balance in the process, thereby enhancing the accountability of each job and strengthening stakeholder's trust in the processes under the Code. Further, it would eliminate any perverse incentives, whatsoever, available with RP in deliberately pushing the CD towards liquidation and secure next assignment on ex-ante basis.

3. In view of above justification, the Board in exercise of its powers conferred under section 34(4)(b), recommends that an IP other than the RP/IRP may be appointed as liquidator in all the cases where liquidator order is to be passed henceforth. The liquidator can be appointed from the panel list of IBBI.


(Rajesh Tiwari)
General Manager

Review for my file
To be circulated
in all
pls NCLT Bench
Bd
31.7.23

Mr Kamal Kelling
31/7/23
(JS)

27) In view of the above notification, the same RP cannot continue as the Liquidator. In reference to the present issue, this tribunal has discussed this issue in detail in **IA (IBC)(LIQ.)/18 (CH)2024 passed in case titled as 'IDBI Bank Limited vs. Cheema Spintex Limited' in CP (IB) No. 132/Chd/Chd/2023**. The relevant para of the judgment is:

“13. The NCLT Principal Bench in IB-353/PB/2023, IA 12/2024 Bank of Baroda Vs. IBD Universal Pvt Ltd dated 22.05.2024 has taken a similar view in the above issue, the relevant excerpts of the Judgment reads as under:

*“After taking note of the circular issued by the IBBI, the Hon’ble High Court of Karnataka has taken a particular view, may be interim in nature and that order was passed in the facts of that case and it may not be appropriate to apply the same in the facts of this case. Accordingly, in the light of the circular issued by IBBI, we deem it appropriate to replace the RP and appoint **Mr. Rajeev Khurana** as Liquidator.”*

28) Since neither there is any stay on Circular issued by IBBI (Liq-12011/214/2023-IBBI/840 dated 18.07.2023), nor is there any specific direction of any superior court to continue the same RP as Liquidator. Therefore, we are unable to accept the plea of the Applicant to continue Mr. Navneet Gupta as Liquidator and we appoint CA Pramod Kumar Misra as the Liquidator from the list of the panel of IBBI.

29) In light of the above facts and circumstances, it is hereby ordered as follows:

- i. **The IA(IBC) 1617/2024, filed by Mr. Navneet Gupta, the Resolution Professional of M/s Venus Garments (India) Limited- the Corporate Debtor, is allowed** and the Corporate Debtor is ordered to be liquidated in terms of Section 33(2) of the Code read with sub-clause (i) of clause (b) thereof;
- ii. This Adjudicating Authority appoints CA Pramod Kumar Misra as the Liquidator of the Corporate Debtor. The Registration number of the Liquidator is IBBI Reg. No. IBBI/IPA-001/IP-P-02669/2022-2023/14099.
- iii. The email id of the Liquidator is capkmisra@gmail.com and the contact no. of the Liquidator is 9810702519.
- iv. Mr. Navneet Gupta, the Resolution Professional of the Corporate Debtor is relieved from the present assignment as the Resolution Professional.

- v. The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the Liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceeds of the Liquidation estate under Section 53 of the Code.
- vi. The Liquidator shall initiate the Liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- vii. The liquidator is directed to make a public announcement u/s 33(1)(b)(ii) of the Code, clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- viii. The Liquidator will also 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.
- ix. All the powers of the Board of Directors, and key managerial personnel, shall cease to exist in accordance with Section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- x. The personnel of the Corporate Debtor is directed to extend all assistance and cooperation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.
- xi. The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Code shall commence. On initiation of the Liquidation process but 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 the suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.

- xii. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- xiii. The Liquidator shall also follow up on the pending applications for disposal during the process of Liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- xiv. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- xv. The Liquidator and the Registry are hereby directed to send a copy of this order within 3 days from the date of this order to the Registrar of Companies, NCT of Delhi & Haryana. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.
- xvi. The Registry is directed to send a copy of this order to the IBBI for their record.
- xvii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- xviii. No order as to costs.

-Sd-

(SHISHIR AGARWAL)
MEMBER (T)

July 22, 2025

Japneet

-Sd-

(HARNAM SINGH THAKUR)
MEMBER (J)