



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court -I)
KOLKATA**

**IA(IBC)(LIQ.)/22(KB)2024
in
CP(IB)/203(KB)2022**

An application Under section 33 of the Insolvency & Bankruptcy Code, 2016

In the matter of:
ALD Automotive Private Limited

.... Operational Creditor

Versus

Green Valley Energy Ventures Private Limited

.... Corporate Debtor

And

In the matter of:
Mr. Niraj Agrawal

... Applicant/Resolution

Professional

Order pronounced on: 27/08/2024

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**
Shri Balraj Joshi : **Member (Technical)**

Appearances (through hybrid mode):

Mr.Niraj Agarwal, RP] For the Applicant/RP

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.



-
2. **IA(IBC)(Liq.)/22(KB)2024-** is an application filed under section 33 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) by the Resolution Professional (“**RP**”) of **Green Valley Energy Ventures Private Limited**, the Corporate Debtor, praying for initiation of liquidation process of the Corporate Debtor. This application is supported by an affidavit duly affirmed by the RP.

The Ld. Counsel appearing for the RP submits that :

3. This Adjudicating authority, on a petition filed u/s. 9 of the IBC read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Operational Creditor**, *vide* order dated 25/01/2024 in CP(IB) No.203/KB/2022, had ordered initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against **Green Valley Energy Ventures Private Limited**, the Corporate Debtor appointing **Mr. Niraj Agrawal**, as the Interim Resolution Professional (“**IRP**”) and he was appointed as the Resolution Professional (RP) of the Corporate Debtor (CD) in the 1st CoC Meeting held on 23/02/2024.. The said order was duly communicated to the IRP by the Registry.
4. In terms of Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (“**CIRP Regulations**”) Public Announcements in **Form A** was made on 29.01.2024 intimating the commencement of CIRP against the Corporate Debtor and calling the creditors to submit the proof of claims.
5. It is submitted that the last date of submission of claims was 10.02.2024 being 14 days from the date of appointment of IRP i.e. 27.01.2024 (being the date of receipt of intimation of the aforesaid order by IRP). IRP received 3 claims from operations creditors. He did not receive any claim from the financial creditors, workmen and/or employees or their authorized representative and creditors other than financial creditors and operational creditors. Accordingly, the Committee of Creditors was constituted with Operational Creditors only.



-
6. It is submitted that subsequently, upon receipt of further claims from Operational Creditors and admission thereof, the Committee of Creditors was reconstituted on 12.07.2024. The revised list of creditors of the CD, along with the summary of their claims, claims admitted and the voting percentage in the CoC is annexed as **Annexure -1**.
7. It is submitted that the CD is currently not having any operations and there are no employees/ workers on the rolls. There is no registered office as the lease period of the registered office expired long ago. There are no significant assets of the CD apart from some bank balances, some furniture and fixtures at Gurugram office, some leased vehicles in scrap condition, some receivables appearing in the books of accounts. Since the commencement of the CIRP, RP has been given to understand from the erstwhile management that in the absence of any other employee, only Mr. Pratik Dasgupta – Director of CD has the knowledge and information about the CD operations/ documents, etc. He was in the custody of the GST Intelligence Unit even prior to the insolvency commencement date and was released on bail on the month of April 2024. Therefore, he started providing information/ documents/ financial statements of the CD albeit at a slow pace.
8. It is further submitted that on 25.03.2024, RP published brief particulars of the invitation for expression of interest in **Form G** from interested and eligible prospective resolution applicants to submit resolution plans. Publication was made in 2 newspapers. It was also uploaded on the IBBI portal. Last date for receipt of EOI was 15.04.2024. Whilst RP received many query e-mails, he did not receive any EOI till the last date of 15.04.2024.
9. It is submitted that the main reason for non-receipt of any EOI appears to be absence of any valuable assets of the CD.



-
10. On 03.05.2024, Information Memorandum was shared with the CoC Member upon receipt of confidentiality undertaking.
11. Inter-alia, RP went through the information in the claim Form B filed by “Excise and Taxation Department, Haryana State GST Intelligence Unit, Gurugram” wherein the GST department has claimed that the Company has availed wrongful input tax credit on the strength of invoices issued from non-existent/ suspicious firms located in Delhi and utilized this wrongful input tax credit to discharge its tax liabilities and thereby caused losses to state exchequer. Subsequently, RP met the concerned GST officials in their Gurugram office and also took cognizance of the fact that one of the Directors of the CD has been taken into custody by the GST Intelligence Unit. Primarily, on the basis of aforesaid information, RP has formed an opinion on 29.03.2024 that the CD has been subjected to transactions falling u/s “66 – Fraudulent or wrongful trading” and involved in some dubious transactions during the course of its operations. RP sought further information/ documents from the GST department and updated books of accounts from the erstwhile management so that he can make a determination as per provisions under Regulation 35A of the CIRP Regulations. He is yet to get any revert from the GST officials despite sending them reminder mails. Updated Tally data recently provided by the erstwhile management is being reviewed. Accordingly, the RP has presently not made any determination in the matter.
12. It is submitted that the RP came to know that there are some funds lying in the HDFC Bank account of the Corporate Debtor which are required to be transferred to the account maintained by the RP and accordingly gave mail to the bank. He also visited the Bank branch in Gurugram for the purpose. In reply, the Bank sent an email to RP dated 18.05.2024 informing that the Bank account of Corporate Debtor is already attached by the order of GST Department. In will require release order from the GST Department before releasing any funds to the CD’s CIRP account.



Similarly, there are some un-attached funds lying to the credit of the Corporate Debtor in its bank account maintained with Bank of Baroda, Malviya Nagar Branch, Delhi. Bank of Baroda is also yet to transfer the aforesaid funds to the CIRP A/c despite several reminders. Accordingly, the RP has filed an application “**IA(IBC) 1352 (KB) 2024 in C.P. (IB) No. 203/KB/2022**” before Hon’ble NCLT, Kolkata Bench seeking appropriate direction in the matter. This application is yet to be heard.

13. Further, the Director of the CD has recently shared with RP the updated financial statements of the CD and the RP is in the process of reviewing the same. In the given circumstances, the Valuers appointed by the RP are awaiting the required complete and accurate financial information/ documents in order to undertake an effective valuation exercise.
14. It is submitted that RP was of the opinion that inter-alia, there is good current demand in the sector of last mile delivery in which the CD was operating and the CD was having a good clientele in the past had experience and had also won awards in this field. Consequently, RP was of the opinion that there should be one more effort in trying to seek resolution during the CIRP process itself before considering the last option of liquidation. The CIRP period is scheduled to be completed on 22.07.2024. Hence, one time extension of the CIRP period by 90 days was required. Else, the Corporate Debtor is headed for liquidation.
15. In view of the aforesaid facts, the RP called the 4th CoC meeting on 15.07.2024 and inter-alia sought recommendation for extension of the CIRP period by 90 days in accordance with the provisions of Section 12 of the Code, failing which the CD shall compulsorily go for liquidation. In this 4th CoC meeting, the CoC decided against the recommendation for extension of CIRP period and consequently approved the resolution for initiation of Liquidation process against the Corporate Debtor post completion of the CIRP period of 180 days.

The following Resolution was taken as approved with 72.04% voting share:

“ RESOLVED THAT the Committee of Creditors be and hereby approved the filing of an application with NCLT for onetime extension of CIRP period for a period of ninety days and pursuant to the provision of section 12(2) of IBC, read with regulation 40(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Mr.Niraj Agrawal, Resolution Professional be and is hereby instructed to file an application to the Adjudicating Authority to extend the period of Corporate Insolvency Resolution Process beyond one hundred and eighty days by a further period of ninety days.”

“RESOLVED THAT the Committee of Creditors be and hereby approved the liquidation of the Corporate Debtor upon completion of the 180 days of the Corporate Insolvency Resolution Process period.”

16. Based on the decision of the CoC to liquidate the Corporate Debtor, the RP is hereby intimating the Adjudicating Authority, pursuant to Section 33(2) of IBC, 2016, of the decision of the CoC.
17. The RP submits that the CIRP of the Corporate Debtor started on 25.01.2024 and the 180 days of the CIRP period is completing on 22.07.2024.
18. In view of the aforesaid facts and circumstances, it is most respectful submission to allow this application and to pass Liquidation order pursuant to Section 33(1) of IBC, 2016 considering the decision of the CoC under Section 33(2) of IBC, 2016.
19. In the above scenario, the applicant has filed the instant application being IA(IBC)(LIQ./22(KB)2024 under section 33(1) of the IBC seeking initiation of liquidation process against the Corporate Debtor.
20. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass an order of liquidation where no resolution plan is received before the expiry of the

CIRP. Sub-section (2) thereof requires the Adjudicating Authority to pass the liquidation order where the Resolution Professional intimates to the Adjudicating Authority the decision of the Committee of Creditors approved by not less than **66% of the voting share** to liquidate the Corporate Debtor.

21. A conjoint reading of these two provisions leaves this adjudicating authority with no other option but to order liquidation of the corporate debtor.

22. The CoC has recommended the name of **Niraj Agarwal** to be appointed as liquidator. In this regard, it be mentioned that the replacement of the liquidator is covered under section 34(4) of the Code, which provides as under:-

(4) The Adjudicating Authority shall by order replace the resolution professional, if-

- a. The resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or*
- b. The Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded [in writing ;or]*
- c. The resolution professional fails to submit written consent under sub-section (1).*

23. We also note that a circular has been issued by IBBI under the powers given to the Board under section 34(4)(b), whereby the Board in Para 3 of the said circular recommends that the liquidator be appointed from the penal list of IBBI.

24. This Bench, therefore, hereby orders as follows: -

- a. IA(IBC) (LIQ.)/22(KB)2024 filed by **Niraj Agarwal** , RP of **Green Valley Energy Ventures Private Limited**, the Corporate Debtor, is **allowed**. Consequently, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;

25. The CoC has recommended the name of an RP for acting as a liquidator, however in view of the IBBI Circular dated 18/07/2023 vide no. Liq-12011/214/2023-IBBI/840



for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the Code, we are appointing **Mr. Rakesh Kumar Agarwal, Regn. No. IBBI /IPA-001/IP-P00443/2017-18/10786** having e-mail ID **rakesh202@hotmail.com**, whose name appears at S.No. 1 of the IBBI Panel for Kolkata region as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. The Liquidator is directed to submit his consent to act as Liquidator within **10 days** of receipt of this order. The erstwhile RP shall handover all papers and documents in his possession concerning the Corporate Debtor to the Liquidator appointed in this matter within **10 days**.

- a. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- b. Public Notice shall be issued in the newspapers in which advertisements were issued earlier, i.e., in Business Standard” (English) and “*Ekdin*” (Local/Bengali) stating that the Corporate Debtor is in liquidation.
- c. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- d. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by her in managing the liquidation process of the Corporate Debtor.
- e. 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 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.

f. In accordance with section 33(7) of the Code, this liquidation order 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.

g. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the **Registrar of Companies, West Bengal**, within whose jurisdiction the Corporate Debtor is registered. Additionally, the **Registry** shall also forward a copy of this Order to the **Registrar of Companies, West Bengal**.

26. The application bearing **IA(IBC)(LIQ.)/22(KB)2024** shall stand **disposed of** in accordance with the above directions.
27. **CP(IB)/203(KB)2022** is to come up for filing of Periodical Progress Report on **21.10.2024**.
28. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
29. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 27th day of August, 2024.

PJ