



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

IA(IBC)(LIQ.)/1 (KB)2024
in
CP(IB)/155(KB)2022

An Application Under section 33(1) of the Insolvency & Bankruptcy Code, 2016

In the matter of:
State Bank of India

.... **Financial Creditor**

Versus

Deccan Tradcom Pvt.Ltd

.... **Corporate Debtor**

And

In the matter of:
Arun Kumar Gupta,
Resolution Professional of Deccan Tradcom Pvt.Ltd.

... **Applicant/RP**

Order pronounced on: 16/10/2024

Coram:

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

Appearances (through hybrid mode):

For Liquidator : Mr.Arik Banerjee, Adv.
Mr.Arun Kumar Gupta, CA

ORDER

*Per: **Balraj Joshi, Member (Technical)***

1. This Adjudicating Authority convened through hybrid mode.



2. **IA(IBC)(LIQ.)/1 (KB)2024-** is an application filed under section 33 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) by the Resolution Professional (“RP”) of Deccan Tradcom Pvt.Ltd., 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. 7 of the IBC read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Financial Creditor, *vide* order dated 31/03/2022 in CP (IB)/1151(KB)2022, had ordered initiation of Corporate Insolvency Resolution Process (“CIRP”) against Deccan Tradcom Pvt.Ltd., the Corporate Debtor appointing Mr. Arun Kumar Gupta, as the Interim Resolution Professional (“IRP”). The said order was duly communicated to the IRP by the Registry.
4. It is submitted that in the 1st CoC meeting held on 17/08/2023, the IRP was appointed as RP with 100% voting share and *vide* order dated 15/09/2023, this Adjudicating Authority confirmed the appointment of IRP as RP in this matter. **(Annexure-B).**
5. That it is submitted that master data of the CD as downloaded from the MCA website shows that the CD is undergoing CIRP.
6. In terms of Public Announcement, under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the applicant being the IRP, issued a public announcement in Form A on the subject matter inviting claims from all creditors of Deccan Tradcom Pvt.Ltd., IRP received one claim from the Financial Creditors. The said public announcement was published on 21/07/2023 in “Business Standard” (English) and Aajkal (Bengali) newspapers circulated in West Bengal, where the registered office of the Corporate Debtor is situated. The last date to submit claims was 02/08/2023 as per public announcement, **(Annexure-D).**



7. In compliance with Section 18(1)(c) and 21(1) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 17(1) of the CIRP Regulations, the Interim Resolution Professional had constituted the Committee of Creditors as on 09/08/2023 and filed a report before this Adjudicating Authority on 11/08/2023.
8. That as per IBBI Circular No. IBBI/CIRP/36/2020 dated 27/11/2020, the RP filed the list of creditors under clause (ca) of sub-regulation (2) of regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on the IBBI website in the prescribed format on 09/08/2023 and circulated the list amongst the claimants/creditors of the CD as per the list of creditors by an email on 12/08/2023. **(Annexure-E).**
9. It is submitted that the IRP/RP conducted 1st, 2nd, 3rd meeting of the CoC on 17/08/2023, 05/09/2023, 18/10/203, and 29/11/2023 respectively. Minutes of the 1st, 2nd, 3rd and 4th meetings of the COC are annexed as **Annexure-F.**
10. That it is submitted that there was no cooperation from the Directors since the beginning of CIRP.The RP filed an application being IA/1511/KB/2023 before this Adjudicating Authority under section 19(2) of the Code, which was heard and reserved for orders on 16/07/2024 with this application. **(Annexure-G).**
11. It is submitted that the audited accounts were last filed for year ended 31/03/2013 with the Ministry of Corporate Affairs. That without the cooperation the Board of Directors and managerial personnel of the Corporate Debtor, without access to books and accounts, the process of finalization and auditing of accounts after 31/03/2013 and completing other statutory compliances could not be undertaken.
12. It is submitted that the Directors of the Corporate Debtor were not present at any of the 5 meetings of the CoC despite being sent notice of the meetings as required under Section 24(3)(b) of the IBC, 2016.
13. It is submitted that the RP is required to appoint 2 sets of registered valuers to determine the liquidation value and fair value of the corporate debtor (Regulation 27) within seven days of his appointment as RP but not later than 47th days of



commencement of CIRP. As per information available, the CD has no assets and is not a going concern. Based on the last filed Financial Statements as per the MCA website for FY 2012-13 and the Income Tax Report prepared by the Chartered Accountant appointed by the RP, the RP appointed 2 SFA valuers, to submit their valuation reports under Regulation 35A. Both the SFA valuers (Mr. Pijush Karmakar and Mr. Pranab Kumar Chakraborty) have submitted their signed reports to the RP and both valuers had concluded the exercise and valued the SFA at NIL. The same was discussed and copy of the valuation reports were circulated to the CoC.

14. It is submitted that as per discussion with the Financial Creditor (SBI), the RP engaged M/s SLO Technologies Private Limited (ADVRISK) for asset searching on 31/08/2023. The agency has submitted the final report and the same were sent to the CoC on 22/11/2023. The report mentions, “We have searched West Bengal Stamp & Registration records and West Bengal Property Tax for immovable properties of the target entity (Deccan Tradcom Pvt.Ltd.) and its directors, but we have not identified any unencumbered immovable properties directly owned by them”
15. It is submitted that the Information Memorandum was prepared on 16/10/2023 by the RP. The IM was circulated by the IRP to the members of the CoC after they prepared an undertaking under Section 29 to maintain confidentiality of the information and not to use such information to cause undue gain to undue loss to itself of any other person.
16. It is submitted that as per CIRP Regulation 35A, RP is required to form an opinion on avoidable transactions under Sections 43,45,50 and 66 within 75th day of CIRP commencement and then to make a determination within 115th day. As per the 1st CoC meeting minutes, the IRP could not find the registered office of the corporate debtor at the address mentioned in the MCA master Data. It seems that the corporate debtor is not maintaining its registered office. IRP has been able to contact the Directors and there is non-cooperation by the erstwhile management to

the IRP. The latest available financial statements as available from MCA portal is for Financial Year 2012-13.

17. It is submitted that the RP had tried to contact the erstwhile management and also the Auditors by speed post and also emails, but has not received any response/documents/ records/ information from anybody yet. The bank statements have no transactions for the period of last 2 years from CIRP commencement date. Due to the above reasons, the IRP could not form an opinion as required under CIRP Regulation 35A(1).
18. It is submitted that the RP appointed ACH & Associates, Chartered Accountants carrying out the Transaction audit of the corporate debtor under Sections 43,45,50 or 66 of the Code for the period 19/07/2021 to 18/07/2023. They have submitted their report. The same was submitted to CoC. The transaction auditor has not reported any avoidable transaction in his report.
- In absence of any information worth its name, the applicant being the RP has not been able to either form an opinion or make any determination as required under CIRP Regulation 35A.
19. It is submitted that on 3/10/2023, the RP sent an email to the CoC informing that the is unable to form an opinion, within 75 days, as required under CIRP Regulation 35A (1).
20. In terms of Regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,a public announcement in Form G, was issued on 7.09.2023 by the RP in widely circulated newspapers in English (**Business Standard**) and Bengali (Aajkaal) in West Bengal. The last date for submission of EOI was 11.10.2023. The eligibility criteria was same as approved by CoC for the 1st Form G published. The last date to submit EOI was 14.11.2023. No EOI was ever received by the RP and as such no RFRP was issued by the RP under Regulation 36B. The Form G issued on 7.9.2023 and 30.10.2023 are annexed as Annexure –J.



21. It is submitted that the CIRP period of the CD expired on 15/01/2024, considering the same the CoC in the 5th CoC meeting held on 10/01/2024, passed the following resolution with 100% majority against the required majority of 66%-

Vote and approve under Section 33(2) of the Code for liquidation of the Corporate Debtor by passing a resolution with a majority vote of not less than 66%-

“Resolved that the Corporate Debtor Deccan Tradcom Pvt. Ltd. be liquidated in terms of provisions of Section 33 of the Insolvency and Bankruptcy Code, 2016;

Resolved further that the RP be authorised to intimate this decision of the Committee of Creditors to the Hon’ble Adjudicating Authority under Section 33(2) of IBC, 2016 for liquidation of the Corporate Debtor.”

22. It was resolved that the CD is to be liquidated and that the RP will make the necessary application under section 33(2) of the IBC, 2016 for liquidation of the CD. The cost of drafting, filing and appearing in NCLT for this application will form part of the CIRP cost.

21. In the above facts, it is therefore prayed that the Corporate Debtor may be liquidated in accordance with Section 33(2) of the Insolvency and Bankruptcy Code, 2016 and the rules and Regulations framed thereunder.
22. In the above scenario, the applicant has filed the instant application being IA(IBC)(LIQ.)/1(KB)2024 under section 33(1) of the IBC seeking initiation of liquidation process against the Corporate Debtor.
23. 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.

23. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
24. The CoC has recommended the name of Mr. Aditya Kumar Tibrewal 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)*
25. We also note that the circular *ibid* 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.
26. This Bench, therefore, hereby orders as follows: -
- a. **IA(IBC)/1(KB)2024** filed by the RP/Applicant of Deccan Tradcom 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;
28. In view of the circular cited above, we hereby appoint Ms. **Sarika Jain, Regn. No. IBBI/IPA-001/IP-P-02666/2022-2023/14071** having e-mail ID **jsarika2750@gmail.com**, whose name appears at 17 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 same newspapers in which advertisements were issued earlier, i.e., in “Business Standard ” (English) and “Aajkal ” in Vernacular Language i.e. 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 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.

29. The application bearing **IA(IBC)(LIQ.)/1 (KB)2024** shall stand **disposed of** in accordance with the above directions.
30. **CP(IB)/115(KB)2022** is to come up for filing of Periodical Progress Report on **18-11-2024**.
31. The Registry is directed to send e-mail copies of the order forthwith to all the parties, including the liquidator appointed as above, and their Ld. Counsel for information and for taking necessary steps.
32. 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 16TH day of October, 2024.

PJ