

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court – II)
KOLKATA

IA(IBC)/530(KB)2022
in
CP (IB)/2036(KB)2019

*Under section 33(1)(a) read with section 60(5)(c) of the
Insolvency & Bankruptcy Code, 2016*

In the matter of:

Chaitanya Alloys Private Limited

... Operational Creditor

Versus

Subhlabh Steels Private Limited
(CIN: U27109WB1991PTC052566)

...Corporate Debtor

And

In the matter of:

Mr. Netai Basak,
RP of Subhlabh Steels Private Limited

... Applicant

Order reserved on: 22/08/2022

Order pronounced on: 06/09/2022

Coram:

Shri Rohit Kapoor : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

Appearances (through video conferencing):

For the Applicant : Mr. Debasis Lahiri, Adv.
Mr. Netai Basak, RP in person

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.
2. This is an application filed by the Resolution Professional seeking liquidation of the Corporate Debtor, viz., Subhlabh Steels Private Limited (CIN: U27109WB1991PTC052566), on the ground that no Resolution Plan received by him and the CoC by 100% voting share approved liquidation of the Corporate Debtor.
3. This Adjudicating Authority *vide* its order dated 09/12/2021 on a Petition filed by Chaitanya Alloys Private Limited (*Operational Creditor*) under section 9 of the Insolvency and Bankruptcy Code, 2016 (*‘the Code’*) directed initiation of the Corporate Insolvency Resolution Process (*‘CIRP’*) against the Corporate Debtor and appointed the Applicant herein as the Interim Resolution Professional (*‘IRP’*), a copy of the order dated 09/12/2021 is annexed with the application as **Annexure “A”**.
4. In terms of section 15 of the Code, public announcement in Form ‘A’ was made on 11/12/2021 in *“Financial Express”* (English) and *“Ajkal”* (Bengali) inviting claims from the creditors. In response four claims were received and Committee of Creditors (*“CoC”*) was duly formed on 30/12/2021.
5. First meeting of the CoC was held on 05/01/2022, wherein the IRP was confirmed as RP. Two Registered Valuers was appointed on 13/01/2022 for valuation of the Corporate Debtor and they have submitted their Final Report on 04/03/2022 and 01/04/2022 respectively. **Form ‘G’** was published inviting Expression of Interest (*‘EoI’*) from prospective resolution applicants on 02/02/2022. But in response no EoI was received from any prospective resolution applicant.

6. CoC at its 4th meeting held on 21/02/2022 decided to go for 2nd time publication of Form ‘G’ keeping the same eligibility criteria due to non-receipt of EoI in response to 1st time publication made on 02/02/2022. **Form ‘G’** was published for the 2nd time inviting EoI from prospective resolution applicants on 23/02/2022. In response to the same only one EoI was received on 10/03/2022, fulfilling all the eligibility criteria.
7. The CoC was reconstituted on 11/03/2022 due to assignment of debt by one of the creditor members of the CoC after due diligence, which was duly informed to this Adjudicating Authority.
8. Transaction Auditor has submitted his Final Report on 12/04/2022 stating that the Corporate Debtor has not been subjected to any transaction under sections 43, 45, 50 and 66 of the Code.
9. At the 6th CoC meeting held on 04/05/2022, CoC has decided for liquidation of the Corporate Debtor since no Resolution Plan was received from the sole Prospective Resolution Applicant within the stipulated date, i.e., 24/04/2022. At the said 6th CoC meeting Mr. Netai Basak, RP has expressed his unwillingness to act as a Liquidator of the Corporate Debtor due to his other pre-occupation.
10. At the 7th COC meeting held on 10/05/2022 CoC passed resolutions with 100% voting share for liquidation of the Corporate Debtor and for appointment of **Mr. Uttam Tekriwal**, an Insolvency Professional having **Registration No. IBBI/IPA-001/IP-P02192/2020-2021/13365**, who has given his consent to act as Liquidator, subject to approval by this Adjudicating Authority. A copy of the minutes of the 7th CoC meeting is annexed with the application as **Annexure ‘B’**. A copy of the Written Consent given by the proposed Liquidator along with Registration Certificate and Form A (Certificate of Professional Membership) are also annexed with the application as **Annexure ‘C’**.

11. 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.
12. On conjoint reading of these two provisions, this Adjudicating Authority is left with no option but to order liquidation of the Corporate Debtor.
13. This Bench, therefore, hereby orders as follows: -
 - a. IA(IBC)/530(KB)2022 filed by Mr. Netai Basak, RP of Subhlabh Steels Private 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-section (1) thereof.
 - b. Since the RP has not given his consent to act as Liquidator, **Mr. Uttam Tekriwal [Reg. No. IBBI/IPA-001/IP-P02192/2020-2021/13365], E-mail ID: uttam.tekriwal@gmail.com, telephone no. 98319 13569**, is hereby appointed as liquidator as provided under section 34(4)(c) 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.
 - c. The RP is hereby directed to handover all documents in his possession in respect of the Corporate Debtor to the Liquidator appointed in this matter within 15 days from today.
 - d. 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.

- e. Public Notice shall be issued in the same newspapers one in “*Financial Express*” (English) and one in “*Aajkal*” (Bengali) stating that the Corporate Debtor is in liquidation.
- f. 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.
- g. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- h. 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.
- i. 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.
- j. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, 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, Kolkata.

14. The application bearing **IA(IBC)/530(KB)2022** shall stand disposed of in terms of the above directions.
15. **CP(IB)/2036(KB)2019** to come up for filing of periodical report on **05/12/2022**.
16. 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.
17. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 6th day of September, 2022.

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