

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

IA(IB) No. 312/KB/2021  
In  
CP (IB) No.1136/KB/2018

Under section 33(2) of the Insolvency & Bankruptcy Code, 2016, read with  
Rule 11 of the NCLT Rules, 2016

In the matter of

Otto Projects Private Limited

...Corporate Debtor

And

Sankar Kumar Patnaik, Resolution Professional

... Applicant

Date of hearing : 26-03-2021

Date of pronouncement of the Order : 07-04-2021

Coram : Shri Rajasekhar VK, Member(Judicial)

Shri Harish Chander Suri, Member(Technical)

Appearances (through video conference):

For Resolution Professional

Mr. Nirmalya Dasgupta, Advocate

Mr. Dibanath Dey, Advocate

Mr. Sankar Kumar Patnaik - Resolution Professional

## ORDER

Per: Harish Chander Suri, Member(Technical)

1. This is an application filed by the Resolution Professional (RP), seeking liquidation of the Corporate Debtor, namely, Otto Projects Private Limited, on the ground that no Resolution Plan was received.
2. This Adjudicating Authority, *vide* its order dated 24.10.2019, on a Petition filed by Calcutta Trading Centre, Operational Creditor, under section 9 of the Insolvency and Bankruptcy Code, 2016 ('the Code'), read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016, directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed the Applicant herein, as the Interim Resolution Professional for ascertaining the particulars of Creditors and convening a Committee of Creditors for evolving a Resolution Plan.
3. In compliance with the provisions of Section 21 of the Code, 2016, the Committee of Creditors was constituted and the report certifying constitution of the Committee was filed before this Tribunal. There was no Financial Creditor of the Corporate Debtor and the members of the Committee of Creditors are all Operational Creditors only.
4. Immediately after appointment, the IRP caused newspaper publication in Form – A, inviting submission of the claim by the Creditors by 24<sup>th</sup> November, 2019, considering the corrigendum published on 14<sup>th</sup> November, 2019.
5. In the first meeting of the Committee of Creditors held on 10<sup>th</sup> December, 2019, the Interim Resolution Professional was appointed as the Resolution Professional.

6. In the second CoC meeting held on 20<sup>th</sup> December, 2019, the criteria to invite Expression of Interest was approved and accordingly, Form-G was published on 18<sup>th</sup> January, 2020. Till the last date for receiving of such EoI on 23<sup>rd</sup> January, 2020, the Resolution Professional did not receive any EoI, except one enquiry which later on did not materialize. The RP proposed for extension of period for invitation of the EoI in the meeting of the CoC held on 16<sup>th</sup> March, 2020 but the CoC with 100% voting share decided not to make any extension of period for inviting the EoI.
7. The Corporate Debtor did not have liquid funds to meet the expenses of the CIRP and the members of the Committee of Creditors, comprising of all Operational Creditors, expressed their unwillingness to infuse any interim corpus for the CIRP. At the same time, there was no Bank balance or any other asset left, except the Sundry Debtors in the Corporate Debtor company. There were no fixed assets and the depreciated value of other assets were also negligible to meet any expenses of the Corporate Debtor. The Corporate Debtor Company undertook several projects which were at different stages of implementation. Since the suspended Board of Directors and other staff and employees were not co-operating, the Resolution Professional was finding it difficult to take steps to realize dues of the Sundry Debtors. From the records available in the Registered Office of the Corporate Debtor Company, the Resolution Professional found that the claim of the Corporate Debtor were not sustainable on several grounds.
8. The Corporate Debtor did not also have much operations and continuation of the Corporate Debtor, as a going concern, was not viable in the absence of any financial support.
9. No viable Resolution Plan came up or evolved or formulated in terms of Section 30 of the Insolvency and Bankruptcy Code, 2016, and there was no scope for revival of the business of the Corporate Debtor.
10. In view of the aforesaid reasons, in the absence of any Resolution Plan and in the absence of any scope for revival of the business of the Corporate Debtor, the Committee of Creditors, in their meeting held on 26<sup>th</sup> February, 2021, with 99.07%

voting share, decided to file Application before this Tribunal under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, for initiation of liquidation of the Corporate Debtor and to appoint a Liquidator of the Corporate Debtor, in terms of Section 33(2) of the Insolvency and Bankruptcy Code, 2016, and the rules made there under, since the Resolution Professional of the Corporate Debtor had not offered himself for appointment as the Liquidator.

11. Considering the decision of the Committee of Creditors under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, the Resolution Professional has submitted this Application and prayed for allowing the same and to pass Order of Liquidation, pursuant to Section 33(1) of the Insolvency & Bankruptcy Code, 2016.
12. We have heard the Ld. Counsel appearing for the Applicant, as well as the Ld. Resolution Professional, appeared in person.
13. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor, where the Resolution Professional, at any time during the CIRP but before confirmation of the Resolution Plan, intimates the Adjudicating authority of the decision of the CoC, approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 99.07% voting share to liquidate the Corporate Debtor.
14. This Bench, therefore, hereby orders as follows: -
  - a. The Application, IA(IB) No. 312/KB/2021, filed by Sankar Kumar Patnaik, Resolution Professional of Otto Projects 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. Invoking the powers conferred by Section 34(4)(c) of the Code, this

Adjudicating Authority hereby appoints Mr. Amit Choraria, having registration No.IBBI/IPA-001/IP-P01345/2018-2019/12129 [ e-mail Id hmcsamitchoraria@gmail.com], Mobile No. 9830858715, as the Liquidator of the Corporate Debtor.

- c. 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.
- d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., in 'Financial Express' (English), 'Aajkaal' (Bengali) of Kolkata edition and in 'Pratidin' (Odiya), stating that the Corporate Debtor is in liquidation.
- e. 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.
- f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator, as required by the Liquidator in managing the liquidation process of the Corporate Debtor.
- g. 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.
- h. 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.

- i. 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 has been registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.
15. The Application bearing **IA(IB) No. 312/KB/2021, in CP(IB) No. 1136/KB/2018**, shall stand disposed of, in accordance with the above directions.
16. The Company Petition, **CP(IB) No. 1136/KB/2018**, to come up for filing of periodical report on 21-6-2021.
17. 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.
18. Certified Copy of this Order may be issued, if applied for, upon compliance of all requisite formalities.

(Harish Chander Suri)  
Member(Technical)

Rajasekhar VK  
Member (Judicial)

Signed, this the 7<sup>th</sup> day of April, 2021

GOUR\_STENO