



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

IA(IBC)/1897(KB)2023

in

C.P. (IB)/1136(KB)2020

***An application under Section 33(1) of the Insolvency and
Bankruptcy Code, 2016 as well as Rule 11 of the National
Company Law Tribunal Rules, 2016.***

In the matter of:

(1) Mr. Vikas Prakash Gupta, Liquidator of Man Tubinox Limited, G-19, Shreewardhan Complex, Mezzanine Floor, besides Landmark Building, Ramdaspath, Wardha Road, Nagpur, Maharashtra – 440010.

... Financial Creditor

-Versus-

(2) Basant Marketing Limited, a Company incorporated under the Companies Act, 1956 having its registered office at IMAX Lohia Square, Office No. 4B, 4th Floor, Premises No. 23, Gangadhar Babu Lane, Kolkata – 700012.

... Corporate Debtor

-And-

(3) Mr. Kanhaiya Maheshwari, Insolvency Professional, having IBBI Registration No. IBBI/IPA-001/IP-P01291/2018-19/12005, having address at 506, Amlesh Apartment, Malviya Nagar, Khamla, Nagpur – 440025.

... Applicant

Date of pronouncing of the order: 14/05/2024



Coram:

SMT. BIDISHA BANERJEE : MEMBER (JUDICIAL)
SHRI D. ARVIND : MEMBER (TECHNICAL)

Appearances (via video conferencing/physically):

Ms. Urmila Chakraborty, Adv. : For the Resolution Professional
Ms. Madhuja Barman, Adv. :

Mr. Sidhartha Sharma, Adv. : For the Respondent No. 4
Mr. Rishav Dutt, Adv. :
Mrs. Debarati Das, Adv. :

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The court convened through hybrid mode.
2. Ld. Counsels appearing for the parties were heard in extenso.
3. This application **IA(IBC)/1897(KB)2024** has been preferred to seek the following reliefs, inter alia: -

(a) *The Hon'ble Tribunal may graciously be pleased to pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter III as provided under Section 33 of the IBC, 2016;*

(b) *The Hon'ble Tribunal may graciously be pleased to appoint the applicant to act as Liquidator as provided under Section 34(1) of the IBC, 2016;*

(c) *Such further and/or other order or orders be passed, direction or directions be given as this Hon'ble Tribunal may deem, fit and proper.*




4. **Factual matrix of the case is as under: -**

- (a) This application was filed by **Mr. Vikas Prakash Gupta** (hereinafter referred to as “Financial Creditor”) Liquidator of Man Tubinox Limited, under Section 7 of IBC, 2016 before this Adjudicating Authority against the **Basant Marketing Limited** (hereinafter referred to as “Corporate Debtor”). This Adjudicating Authority vide its Order dated 24.04.2023 admitted the Corporate Debtor into CIRP and vide corrigendum Order dated 03.05.2023, the applicant came to be appointed as IRP of the Corporate Debtor.
- (b) In Compliance of Section 13, Section 15 and other applicable provisions of the IBC, the applicant made Public Announcement Form A in Business Standard (English), Kolkata and Dainik Statesmen (Bengali), Kolkata newspapers on 22.05.2023. The last date for submission of proof of claims by the creditors were on or before 02nd June, 2023.
- (c) The applicant, in compliance with Regulation 17(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 prepared a report certifying the Constitution of Committee of Creditors dated June 10, 2024. An application being IA(IBC)/1100(KB)2023 has also been filed before this Tribunal, filing the said report certifying the Constitution of CoC which was allowed by an Order dated September 26, 2023 passed by this Tribunal.
- (d) The IRP issued the notice as well as an email for conducting the first Committee of Creditors (hereinafter referred to as the “CoC”) on 13th June, 2023 and the same was held on 17th June, 2023. In the first CoC meeting, the IRP was



confirmed as the RP with 100% voting share. In that meeting, upon reporting of non-cooperation from the part of the Suspended Board of Directors, the CoC with 100% voting approved for filing an application under Section 19(2) of the said Code. It was observed by the member of the CoC, that the Suspended Board of Directors are untraceable and that the registered office of the Corporate Debtor is dummy. It appears that the CD is a sham company operated by some unknown person without any business transaction. The said minutes was circulated with the CoC members as well as to the suspended Board of Directors on 20th June, 2023.

- (e)** However, even after constant reminders and requests, the applicant was not able to get any relevant information from the suspended board of directors. No cooperation was provided from them and due to the said attitude, the applicant is not able to carry on with the duties necessary for conducting the CIRP.
- (f)** The applicant has tried its best to resolve and/or revive the CD by every possible means. In connection with the above, the applicant has called the CoC meetings from time to time to discuss about the publication of Form G to invite the interested bidder for the Corporate Debtor. However, the CoC found that the CD is a sham company, which is operated by unknown person without any business transaction. An application for non-cooperation has also been filed by the applicant because useless the relevant documents and information are provided to the applicant; it is in no position to carry out on with the CIRP. In the 2nd CoC meeting, the prospect of reviving the Corporate Debtor was discussed at length but a conclusion has been reached that no prudent buyer will bid for the Corporate Debtor and



hence, it is commercially viable to continue with the CIRP of the Corporate Debtor. As such, a unanimous decision was taken to liquidate the Corporate Debtor.

- (g)** The CoC was of the opinion that no prudent buyer can bid for the Corporate Debtor and hence, it is not commercially viable to continue with CIRP of the said CD. As such, the CoC unanimously adopted the agenda for liquidation of the Corporate Debtor.
- (h)** Thereafter, in view of the Resolution passed by the sole member of the CoC in its 2nd CoC meeting, the applicant hereby files this application for seeking Order for liquidation against the Corporate Debtor.
- (i)** That the applicant has appointed two (2) Registered Valuers for ascertaining the Fair and liquidation value of Securities or Financial Assets of the Corporate Debtor. Following are the details of value of the assets as per the valuation done by the registered valuer Neha Bhandari.
- (j)** Various mail communications were sent by the applicant to the Income Tax Department as well as to the CS, Ms. Mona Agarwal. The Income Tax Office was informed that the CD has been admitted into CIRP and that they should file their claim in the appropriate form so that the same can be assessed and verified by the applicant. Further, the applicant approached the CS to gain access to information relating to the Corporate Debtor and she was able to certain information which enabled the applicant to establish contact with certain individuals who was connected to the Directors of the CD.



- (k)** An email was sent to the Statutory Auditor of the CD, i.e., KSPM & Associates asking them to provide access to the bank account details, records and other relevant documents of the CD. A request was made to send the audited balance sheet with supporting documents like accounting records, bank statement or balance certificates of bank, third party balance confirmation, income tax demand notices, GST Notices and other relevant documents.
- (l)** As per the public announcement, the Applicant received two claim (a) Man Tubinox Ltd., through liquidator Vikas Prakash Gupta vide email dated 02nd June, 2023 and (b) Earth Water Limited, Operational Creditor vide email dated 12th June, 2023. The claim of Man Tubinox Ltd. has been verified and additional documents have been sought for to substantiate the claim. After verifying the claim of the unsecured financial creditor, the list of claims was uploaded on the IBBI website on 08th June, 2023.
- (m)** The applicant had visited the registered office of the Corporate Debtor but was informed that it has been closed for several years. After weighing in all the factors, in the 3rd CoC meeting it was decided that there was no meaning to continue with the CIRP and that the Corporate Debtor should be liquidated and the applicant has been as the Liquidator.
- (n)** It was found that the Corporate Debtor has three bank accounts, namely, Punjab National Bank bearing account no. 00231011003999 and balance as on August 23, 2023 is Rs. 6,27,865.17. The Corporate Debtor has another account with Axis Bank bearing account no. 917020055089060 and balance as on December 31, 2020 is Rs. 4950.69. The



Corporate Debtor has another account with Dombiwali Nagri Sahkari Bank Limited bearing account no. 016011100000594 and balance as on August 27, 2023 is Rs. 22,449.04. Due to the above, it was difficult for the applicant to prepare the information memorandum and/or to even update books of accounts on the basis of bank statement only. As such, in the 3rd CoC meeting held on 27.09.2023 after looking into the facts and circumstances, the member of the CoC does not find any viable option to revive the Corporate Debtor and further approved the appointment of the applicant to act as liquidator of the Corporate Debtor.

(o) Alternatively, no resolution plan is available with the Applicant for discussion and the time is an essence in seeing whether the Corporate Debtor can be put back on its feet, so as to stave off liquidation. In the present case, it is evident from the audited financial statements of the Corporate Debtor that it is a loss-making company.

5. Hence, the rival contentions were noted.

6. **Analysis and Findings:** -

(a) We have considered the submission made by the Ld. Counsel and perused the record.

(b) Section 33(1) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor when there is a contravention of the approved Resolution Plan. However, even before approval of the plan, Resolution failed due to reason mentioned in paras (e) & (f) of this order.



(c) Hence, we do find merit in the prayers made in **IA(IBC)/1897(KB)2023**, and deem it fit to order liquidation of the Corporate Debtor.

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

- a. Prayers as sought for in **IA(IBC)/1897(KB)2023** filed by RP, is allowed and **Basant Marketing Limited**, the Corporate Debtor is ordered to be liquidated in terms of section 33(1) of the Code;
- b. **Mr. Anal Basu** having registration no. **IBBI/IPA-001/IP-P-02436/2021-2022/13742**, **email: basu_anal@rediffmail.com**, mobile no. **9830160535**, is hereby appointed as Liquidator is hereby appointed as Liquidator as provided under section 34(1) of the Code subject to a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which she is a professional member;
- 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 newspapers 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 him 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, within whose jurisdiction the Corporate Applicant is registered.
- 8.** The application bearing **IA(IBC)/1897(KB)2023** shall stand **disposed of** in accordance with the above directions.
- 9.** List the main **C.P. (IB)/1136(KB)2020** for reporting progress on **19.07.2024**.
- 10.** 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.



11. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on: 14th of May, 2024.

Ar. [steno]