



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

**IA(IBC)/612(KB)2022  
in  
CP(IB)/1270(KB)2019**

*Under section 33(1)(a) of the Insolvency & Bankruptcy Code, 2016*

*In the matter of*

Marotia Steel Traders Pvt. Ltd.

...Operational Creditor

*Versus*

S. B. Ispat (India) Private Limited  
(CIN: U27106WB2007PLC117835)

...Corporate Debtor

*And*

*In the matter of*

Mr. Nitin Daga,  
Resolution Professional of S. B. Ispat (India) Private Limited

... Applicant

**Order reserved on: 07/11/2022**

**Order pronounced on: 18/11/2022**

*Coram:*

**Shri Rohit Kapoor** : **Member (Judicial)**  
**Shri Balraj Joshi** : **Member (Technical)**

*Appearances (through video conferencing):*

For RP : Mr. Shaunak Mitra, Adv.  
Mr. Sourav Jain, Adv.

For suspended members of Board of Directors of the Corporate Debtor : Mr. Moti Sagar Tiwari, Adv.  
Ms. Shweta Poddar, Adv.



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**ORDER**

***Per: Rohit Kapoor, Member (Judicial)***

1. This Adjudicating Authority convened through hybrid mode.
2. IA(IBC)/612(KB)2022 is an application filed by the Resolution Professional of S. B. Ispat (India) Private Limited, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is duly supported by an affidavit<sup>1</sup> affirmed by Mr. Nitin Daga, RP.
3. This Adjudicating authority *vide* order<sup>2</sup> dated 07/01/2022 in CP(IB)/1270(KB)2019 had ordered initiation of CIRP against the Corporate Debtor and appointed Mr. Nitin Daga as the Interim Resolution Professional (IRP). The said order was duly received by the IRP on 08/01/2022.
4. In terms of regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, **Regulations 2016**), Public Announcement<sup>3</sup> in **Form A** was published on 10/01/2022 in “*Financial Express*” (English) and “*Aajkal*” (Bengali). Committee of Creditors (“**CoC**”)<sup>4</sup> was duly constituted on 29/01/2022. The CoC at its 1st meeting held on 04/02/2022 had confirmed the appointment of the IRP as the Resolution Professional (RP)<sup>5</sup>. Altogether four CoC meetings were held by the IRP/RP. Copy of the minutes<sup>6</sup> of the 1<sup>st</sup> CoC meeting held on 04/02/2022 is annexed as “Annexure C” to the application.
5. As per regulation 36A(1) of the said Regulations 2016 and with the approval of the CoC, **Form G**<sup>7</sup> was published in “*Financial Express*” (English) and

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<sup>1</sup> At pages 22 to 25 of the application

<sup>2</sup> Annexure – “A” at pages 26 to 35 of the application

<sup>3</sup> Annexure – “B” at pages 36 to 38 of the application

<sup>4</sup> Averment in paragraph IV(3) at page 12 of the application

<sup>5</sup> Averment in paragraph IV(4) at page 12 of the application

<sup>6</sup> Annexure – “C” at pages 39 to 51 of the application

<sup>7</sup> Annexure – “E” at pages 61 to 63 of the application



“Aajkal” (Bengali) in Kolkata Edition on 23/03/2022 inviting Expression of Interest (in short “**EoI**”) from prospective resolution applicants. The said Form G was also uploaded in the website of IBBI. However, no EoI has been received till the last date of submission of EoI from any prospective resolution applicant. Copy of the minutes<sup>8</sup> of the 2<sup>nd</sup> CoC meeting held on 21/03/2022 is annexed as “Annexure D” to the application.

6. The applicant, however, had received a cheque, late evening on 07/04/2022 (last date of submission of EoI), from one Mr. Bikash Sharma, erstwhile director of the Corporate Debtor for submission of EoI and the same could not be considered because of the reason that cheque was not the specified mode of payment for submission of EoI, as mentioned in the EoI documents. Above facts have already been brought to the notice of the CoC members.
7. At the 3<sup>rd</sup> CoC meeting held on 19/04/2022, the applicant informed the CoC members that he had received a few requests from some of the prospective resolution applicants and the promoters for extension of time for submission of EoI and had requested members of the CoC to consider the said requests of the prospective resolution applicants. However, such request was dissented by the members of the CoC since they do not expect resolution / revival of the Corporate Debtor and extension of time for submission of EoI may be a phishing one and waste of time. Therefore, the CoC at the said 3<sup>rd</sup> CoC meeting placed **Agenda Item No. 13**, which is placed at page 71 as follows:

**“ To consider and approve Liquidation of the Corporate Debtor before completion of CIRP.”**

*The authorised representative of HDFC Bank Limited being one of the CoC members informed that they are not hopeful of resolution / revival of the Corporate Debtor since no EOI have been received so far and that there are no material assets in the Corporate Debtor and the operation of Corporate Debtor being shut for more than 2 year the Corporate Debtor may not attract interest from any investor. As such they suggested to opt for liquidation of the Corporate Debtor before the*

<sup>8</sup> Annexure – “D” at pages 52 to 60 of the application



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*completion of CIRP timeline to save cost & time of the CoC relating to the process, subject to approvals of their higher authorities. The other CoC members shared similar views.”*

The Agenda Item No. 13 was put to e-voting and the same was approved with 100% voting (at page 74 of the application). Copy of the minutes of the 3<sup>rd</sup> CoC meeting<sup>9</sup> held on 19/04/2022 along with the voting sheet are annexed as “Annexure F” to the application.

8. At the 4<sup>th</sup> CoC meeting held on 31/05/2022, the CoC has passed resolutions as per the relevant provisions of the IBC prior to the commencement of liquidation proceedings of the Corporate Debtor. The RP has also submitted his consent to act as Liquidator of the Corporate Debtor. Copy of the minutes of the 4<sup>th</sup> CoC meeting<sup>10</sup> held on 31/05/2022 along with the voting sheet and Consent Letter of the RP are annexed as “Annexure G” (Collectively) to the application.
9. Meanwhile, the 180 days CIRP had expired on 05/07/2022.
10. 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.
11. On conjoint reading of these two provisions, this Adjudicating Authority is left with no option but to order liquidation of the Corporate Debtor.
12. This Bench, therefore, hereby orders as follows: -
  - a. IA(IBC)/612(KB)2022 filed by **Mr. Nitin Daga, RP of S. B. Ispat (India) 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-

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<sup>9</sup> Annexure F at pages 64 to 75 of the application

<sup>10</sup> Annexure G at pages 76 to 87 of the application



section (1) thereof;

b. **Mr. Nitin Daga, RP [Reg. No. IBBI/IPA-001/IP-P02213/2020-2021/13405]**, having e-mail i.d. [daga.nitin.cs@gmail.com](mailto:daga.nitin.cs@gmail.com) mobile no. +91 98742 55772 is hereby appointed 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.

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., “*Financial Express*” (English) and “*Aajkal*” (Bengali) in Kolkata Edition 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



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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 Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the **Registrar of Companies, West Bengal**.

13. The application bearing **IA(IBC)/612(KB)2022** shall stand disposed of in accordance with the above directions.
14. **CP(IB)/1270(KB)2019** is to come up for filing of periodical progress report on **04/01/2023**.
15. 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.
16. 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 18<sup>th</sup> day of November, 2022.

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