



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

IA (IB) No. 1160/KB/2022  
and  
IA (IB) No. 169/KB/2023  
in  
CP (IB) No. 255/KB/2021

*An application under section 33(2) section 54(1) of Insolvency & Bankruptcy Code,  
2016*

***In the matter of***

M/S Panchshree Dealmark Private Limited

*... Corporate Debtor/Corporate Applicant*

*-And-*

***In the matter of***

Pankaj Kumar Kedia

Resolution Professional of M/S Panchshree Dealmark Private Limited

*... Applicant*

**Order pronounced on : 10.04.2024**

**Coram:**

**Shri Rohit Kapoor, Member (Judicial)**

**Shri Balraj Joshi, Member (Technical)**

**Appearances (through video conferencing):**

**For the Applicant IA (IB) No. 1160/KB/2022 and IA (IB) No. 169/KB/2023:**

Mr. Ratul Das, Adv  
Ms Sutapa Mitra, Adv

: For RP

IN THE NATIONAL COMPANY LAW TRIBUNAL  
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**ORDER**

*Per: Balraj Joshi, Member (Technical)*

1. This court was convened via video conferencing.
2. IA (IB) No. 1160/KB/2022 is an application filed by the Resolution Professional (“RP”) of Panchshree Dealmark Private Limited, the Corporate Debtor, praying for Liquidation of the Corporate Debtor while, IA (IB) No. 169/KB/2023 is an application filed by the same applicant, praying for dissolution of the Corporate Debtor. This application is supported by affidavits duly affirmed by Mr. Pankaj Kumar Kedia, the RP.
3. **Submissions under IA (IB) No. 1160/KB/2022**
  - 3.1 This is an application filed by the Resolution Professional with the approval of the Committee of Creditors (“CoC”) seeking liquidation of the Corporate Debtor, viz., M/S Panchshree Dealmark Private Limited [CIN: U51909WB2012PTC173589], on the ground that the CoC has decided to liquidate the Corporate Debtor by 100 % votes. The applicant has sought for the following reliefs:
    - a. *Issue necessary orders for initiation of the proceeding liquidation of the Corporate Debtor.*
    - b. *Issue necessary orders to appoint the Resolution Professional/ Applicant herein as the Liquidator of the Corporate Debtor;*
    - c. *Pass such further order/s and direction/s as this Hon'ble Bench may deem fit and proper.*
  - 3.2 This IA is supported by an affidavit sworn by RP at page 44-45 of the Petition.
  - 3.3 The petition CP (IB) No. 255/KB/2021 was filed by the Corporate Applicant/Corporate Debtor under Section 10 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy Board of India

IN THE NATIONAL COMPANY LAW TRIBUNAL  
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IA (IB) No. 1160/KB/2022 and IA (IB) No. 169/KB/2023  
in  
CP (IB) No. 255/KB/2021

(Application to Adjudicating Authority) Rules, 2016. The petition sought to initiate Corporate Insolvency Resolution Process (CIRP) concerning M/s Panchshree Dealmark Private Limited, hereinafter referred to as the Corporate Debtor, alleging defaults to creditors by the said Corporate Debtor.

- 3.4 The aforementioned petition was heard and admitted by this Hon'ble Tribunal on 07.06.2022, as evidenced by the attached copy marked with the letter A. The Tribunal appointed the Applicant as the Interim Resolution Professional. Subsequently, in the 1st meeting of the Committee of Creditors (CoC) held on 07.07.2022, the appointment of the Interim Resolution Professional as the Resolution Professional (RP) was sanctioned. Additionally, the CoC approved the appointment of Valuers during this meeting, and a copy of the Minutes of this CoC Meeting is attached and marked with the letter B.
- 3.5 In the 2nd meeting convened by the Committee of Creditors (CoC) on 28.07.2022, Valuers subsequently submitted their report on 22.07.2022. A copy of the 2nd CoC meeting is attached herewith and marked with the letter C.
- 3.6 The 3rd meeting was convened by the Committee of Creditors (CoC) on 16.08.2022, and a copy of the minutes of this meeting is attached herewith and marked with the letter D.
- 3.7 During the 4th meeting convened by the Committee of Creditors (CoC) on 07.09.2022, the Applicant informed the CoC that, as per the audited financials for the year 2021-2022, the total assets of the company amount to Rs. 1.94 lacs only. This total includes investments, but they hold a negligible book value and are not expected to yield any significant realizable amount. Additionally, the company was non-operational with no employees. Consequently, the Applicant conveyed that the resolution of the Corporate Debtor would not be feasible, and it was anticipated that no Resolution Applicant would express interest. The CoC collectively opined that even the costs associated with the Corporate Insolvency Resolution Process (CIRP) might not be recovered if pursued.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
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KOLKATA


IA (IB) No. 1160/KB/2022 and IA (IB) No. 169/KB/2023  
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CP (IB) No. 255/KB/2021

- 3.8 In light of the aforementioned circumstances, the resolution recommending the liquidation of the Corporate Debtor under Section 33(2) was endorsed by the Committee of Creditors (CoC) during its 4th Meeting, and a copy of the same is appended herewith and marked with the letter E.
- 3.9 The applicant has consistently submitted Progress Reports to this Hon'ble Tribunal.
- 3.10 The Applicant now urges this Hon'ble Tribunal to issue requisite orders for the liquidation of the Corporate Debtor, and appoint the Resolution Professional as the Liquidator, as deemed appropriate under Section 34(1) of the Insolvency and Bankruptcy Code, 2016.
- 3.11 The applicant /Resolution Professional, **Mr. Pankaj Kumar Kedia** [Reg. No. IBBI/IPA-001/IP-P01037/2017-18/11710], has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator, in terms of section 34(1) of the Code and has a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member. The written consent by the Resolution Professional and the Declaration of Eligibility are attached hereto and marked with the letter F.
- 3.12 We have considered the submission made by the learned Counsel on behalf of the applicant /RP and perused the record.
- 3.13 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 corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six percent of voting share to liquidate the corporate debtor

4 **Submissions under IA (IB) No. 169/KB/2023**

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

IA (IB) No. 1160/KB/2022 and IA (IB) No. 169/KB/2023  
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- 
- 4.1 This is an application filed by the Resolution Professional with the approval of the Committee of Creditors ('CoC') seeking dis of the Corporate Debtor, viz., M/S Panchshree Dealmark Private Limited [CIN: U51909WB2012PTC173589], on the ground that the CoC has decided to liquidate the Corporate Debtor by 100 % votes. The applicant has sought for the following reliefs:
- a. Issue necessary orders for Dissolution of the Corporate Debtor as AR Lapproved in the 5th Meeting of the CoC held on 21st December 2022;*
  - b. Such further or other order or orders be passed and/or directions are given as this Hon'ble Tribunal may deem fit and proper*
- 4.2 In the fourth meeting convened by the Committee of Creditors (CoC) on the 7th of September 2022, the resolution proposal endorsing the liquidation of the Corporate Debtor (CD) was duly approved. Subsequent to this CoC meeting, the applicant filed a petition on the 8th of October 2022, bearing the identifier IA (IB) No. 1160/KB/2022, seeking the initiation of the liquidation process for the Corporate Debtor pursuant to Section 33(2) of the Insolvency and Bankruptcy Code, 2016.
- 4.3 The applicant asserts that the aforementioned liquidation application was initially listed on the 1st of November 2022, subsequently on the 28th of November 2022, and lastly on the 22nd of December 2022. Due to circumstances beyond control, the liquidation application could not be heard on the aforementioned dates. The next scheduled hearing for the said liquidation application has been determined to be on the 19th of January 2023.
- 4.4 The applicant convened the 5th Meeting of the Committee of Creditors (CoC) on the 21st of December 2022, during which the option of dissolution without liquidation was deliberated among the CoC members. It was observed by the CoC that, given the inadequate realizable value of the company's assets to cover both the complete Corporate Insolvency Resolution Process (CIRP) costs and the liquidation costs, proceeding with liquidation followed by the application for

dissolution of the Corporate Debtor (CD) would be futile. In light of this observation, the CoC deemed it judicious to recommend dissolution without liquidation, provided it is permitted by the Hon'ble Adjudicating Authority. This resolution was unanimously passed with a 100% vote share. A copy of the minutes of the 5th Meeting of the CoC held on the 21st of December 2022 is attached herewith and marked as Letter A.

## 5 Analysis and Findings

The case in hand is that of a direct dissolution of the Corporate Debtor, without resorting to liquidation, which is ostensibly deemed to be an infructuous process by the CoC, in the situation that the Corporate Debtor has no assets and even the cost of liquidation can not be borne by it. The following provisions of the IBC are applicable to address the situation.

(i) **Section 54** of the Code reads as follows: -

*“54(1) Where the assets of the Corporate Debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.*

*(2) The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.*

*(3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.”*

(ii) **Rule 14 of the IBBI** (Liquidation Process) Regulations, 2016 reads as follows:-

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

IA (IB) No. 1160/KB/2022 and IA (IB) No. 169/KB/2023  
in  
CP (IB) No. 255/KB/2021

*“Rule 14. **Early dissolution** - Any time after the preparation of the Preliminary Report, if it appears to the liquidator that –*

*(a) The realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and*

*(b) The affairs of the corporate debtor do not require any further investigation; he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution”.*

(iii) **Rule 11 of the NCLT Rules, 2016** confers inherent powers on NCLT, which reads as follows: -

*“Rule 11 : Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”*

(iv) Section 12 of the Code stipulates time-limit for completion of insolvency resolution process, which reads as follows: -

*“12(1) Subject to sub-section (2) the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.*

*(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent of the voting shares;*

*(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that*

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

IA (IB) No. 1160/KB/2022 and IA (IB) No. 169/KB/2023  
in  
CP (IB) No. 255/KB/2021

*corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eight days by such further period as it thinks fit, but not exceeding ninety days.*

***Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.***

5.1 Upon a conjoint reading of the above provisions, the paramount aim of the Code is to expediently facilitate either the resolution of the insolvency through the approval of a Resolution Plan or to proceed with the liquidation and subsequent dissolution of the Corporate Debtor. Given that the Corporate Debtor ostensibly lacks any assets of significant value that could be maximized—evidenced by its entirely depleted share capital, negligible assets, and minimal bank or cash balances, coupled with its "strike-off" status and the conspicuous absence of any financial records or books of account—it is clear that the Corporate Debtor was not a going concern at the time of its admission under the Corporate Insolvency Resolution Process (CIRP). Under these circumstances, proceeding with the liquidation of the Corporate Debtor would not fulfil any productive purpose.

5.2 We rely on the case of ***Mr. Mandar Wagh, Interim Resolution Professional of Synew Steel Private Limited passed in Company Petition C.P. (IB)No.96/BB/2020 & I.A.No.435/2020***, the Bangalore NCLT held as under:

*“By conjointly reading the above provisions, the ultimate objective of Code is either to resolve the issue by way of Resolution Plan or to dissolve the Corporate Debtor, as expeditiously as possible. If the facts and circumstances of a case justify that no purpose would be served to keep the Corporate Debtor under regular CIRP proceedings, and thereafter under Liquidation proceedings, under the provisions of Code, the Adjudicating Authority, by exercising its inherent powers conferred under the Act, may pass appropriate order(s) in the interest of speedy justice.”*

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

IA (IB) No. 1160/KB/2022 and IA (IB) No. 169/KB/2023  
in  
CP (IB) No. 255/KB/2021

*“The above facts and circumstances of the Case justify that there would be no useful purpose served, by placing the Corporate Debtor under a Liquidation process, under the extant provisions of Code. Since the Assets of Company were realized, the liquidation process under the provisions of Code is deemed to have been completed under Chapter III of Part II of Code, and thus it would be just and proper for the Adjudicating Authority to dissolve the Company, as proposed by Resolution Professional. The instant Application is filed in accordance with law and the Resolution in question to dissolve the Corporate Debtor was approved by the Sole COC, as detailed supra. We are satisfied that this is a fit case for dissolving the Applicant Company and allowing the Petition filed by the RP praying for the same.”*

5.3 In the present matter, given the confirmation by the Resolution Professional (RP) and the Committee of Creditors (CoC) that there are no assets of the Corporate Debtor, and consequently, an acknowledgment that there are inadequate funds to cover the entirety of the Corporate Insolvency Resolution Process (CIRP) expenses alongside the Liquidation costs, it follows that the requirements delineated within Section 54 of the Insolvency and Bankruptcy Code (IBC), particularly dealing with the fact that the assets of the Corporate Debtor have been completely liquidated, are deemed to have been duly satisfied, since there are virtually no assets. It is stated in their 5<sup>th</sup> CoC Meeting dated 21.12.2022 **[Annexure A, Page No 11 to 14]:**

*"RESOLVED THAT the approval of members of the Committee of Creditors be and is hereby given for dissolution of the company without going into liquidation if permitted Hon'ble NCLT."*

5.4 Based on the facts and circumstances, this Adjudicating Authority, exercising the authority vested under subsection (1) of Section 54 of the Insolvency and Bankruptcy Code, 2016, hereby orders the dissolution of the Corporate Debtor, namely Panchshree Dealmark Private Limited, effective from the date of this order. As a result, the Corporate Debtor is dissolved. However, personal

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

IA (IB) No. 1160/KB/2022 and IA (IB) No. 169/KB/2023  
in  
CP (IB) No. 255/KB/2021

liability/Guarantee of any Director/Promoter of the Corporate Debtor, if any, would not absolve them of their liability by virtue of this order. Aggrieved party/parties, if any, shall be at liberty to continue or to take appropriate legal remedies against them.

- 6 The Resolution Professional and the Registry are directed to serve a copy of this order upon the Registrar of Companies, West Bengal, immediately and, in any case, within fourteen days of receipt of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.
- 7 The IRP/RP shall stand discharged from his responsibilities, subject to procedural compliances.
- 8 IA (IB) No. 169/KB/2023 is allowed with the above directions and consequently IA (IB) No. 1160/KB/2022 is rendered infructuous and both the IAs are accordingly disposed of along with CP (IB) No. 255/KB/2021.
- 9 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.
- 10 Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
- 11 File be consigned to records.

**[Balraj Joshi]**  
Member [Technical]

**[Rohit Kapoor]**  
Member [Judicial]

**Signed on this, the 10<sup>th</sup> day of April, 2024**

A.J.S