



IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, COURT-II

KOLKATA

I.A. (IB)(Liq) No. 21/KB/2024

IN

C.P.(IB) No. 238/(KB)/2023

An application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

Canara Bank

... Financial Creditor

Versus

Birbhum Chemical and Fertilisers Ltd.

... Corporate Debtor

And

IN THE MATTER OF:

Avishek Gupta

... Applicant



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And

I.A. No. 1669/KB/2024

IN

C.P. (I.B.) No. 238/KB/2023

An application under Regulation 31A(11) of Insolvency and
Bankruptcy Board of India (liquidation process regulations, 2016
read with Rule 11 of the National Company Law Tribunal Rules, 2016

Canara Bank

... Applicant

Versus

Birbhum Chemical and Fertilisers Ltd.

... Respondent

Coram:

Shri Labh Singh : Member (Judicial)

Ms. Rekha Kantilal Shah : Member (Technical)

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Appearances (via physical mode/virtual mode)-:

For Canara Bank/FC

i) Ms. A. Rao, Adv.

For SBoD

i) Ms. Neelima Chatterjee, Adv.

ii) Mr. Riyanshu Agarwal, Adv.

For RP

i) Mr. Shaunak Mitra, Adv.

ii) Mr. Udit Agarwal, Adv.

iii) A. Gupta, RP

Date of Pronouncement-: 27.02.2026

ORDER

Per: Rekha Kantilal Shah, Member (Technical)

1. The Court convened through Hybrid Mode.
2. The Interlocutory application being **I.A. (IB)(Liq) No. 21/KB/2024**, has been preferred by the Resolution Professional (hereinafter referred to as "RP") of the Birbhum Chemical and Fertilisers Ltd., the Corporate Debtor (hereinafter referred to as "CD") praying for the following reliefs:-
 - a) *"To pass necessary order of Liquidation under Section 33 (2) of the Code, 2016;*
 - b) *Such other order / orders as this Hon'ble Tribunal may deem fit and proper."*

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3. The Interlocutory application being I.A. 1669 of 2025 has been preferred by Canara Bank, a financial creditor of the CD, praying for the following reliefs:-

- a) *“Appoint Sri Anup Kumar Singh as the Liquidator for the purpose of liquidation of the Corporate Debtor.*
- b) *Such further order/orders or direction/directions be passed as this Hon’ble Tribunal deems fit and proper.”*

4. **Background of I.A. (IB)(Liq) No. 21/KB/2024**

- 4.1 The CD was admitted into Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) vide an order of this Tribunal dated 08th January, 2024¹ and Mr. Avishek Gupta was appointed as the Interim Resolution Professional. Thereafter, in the 1st Meeting of the Committee of Creditors (hereinafter referred to as the “CoC”), the said Mr. Avishek Gupta was confirmed as the RP in respect of CIRP of the CD.
- 4.2 It has been submitted by the counsel for the RP, that the CoC had been constituted on 22nd January, 2024, however, as a belated claim was submitted by HDFC Bank, the CoC was reconstituted after verification of claim filed by HDFC Bank and the revised list of members of the CoC was filed by the Applicant on 08th June, 2024.
- 4.3 It is submitted that the RP had duly intimated the Suspended Board of Directors (hereinafter referred to as the “SBoD”) regarding the initiation of CIRP against the CD and requested their cooperation in providing access to records and information pertaining to the CD. However, as the SBoD failed

¹ Annexure A

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to cooperate, the RP filed an application under Section 19(2) of the Code, seeking appropriate directions against the SBoD.

4.4 It is further submitted that pursuant to the 4th meeting of the CoC² held on 14th March, 2024, Form G³ was issued published on 23rd March, 2024 inviting Expressions of Interest (“EoI”) from prospective Resolution Applicants.

4.5 Pursuant to the publishing of Form G, three EOIs were received by the RP from the following parties:-

- Devika Resources Private Limited (in consortium with Devika Ventures and Industries Private Limited)
- Real Value Infotech Projects Private Limited
- Green Valley Industries Private Limited

4.6 Subsequently, Real Value Infotech Projects Private Limited submitted its Resolution Plan on 21st June 2024. The Resolution Plan submitted by Real Value Infotech Projects Private Limited was placed before the CoC in their 9th Meeting⁴ held on 27th June, 2024, wherein the RP presented a summary of the commercial terms of the Resolution Plan along with the average fair value and liquidation value as determined by the registered valuers. After deliberations, the CoC members expressed that the amount offered under the Resolution Plan appeared to be low and conveyed their unwillingness to approve the same; however, they requested the RP to place the Resolution Plan for e-voting.

² Annexure C

³ Annexure D

⁴ Annexure F

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4.7 Pursuant thereto, the Resolution Plan was put to e-voting, which commenced on 01st July, 2024 and concluded on 04th July, 2024. As per the results of the e-voting, the members of the CoC voted against the Resolution Plan with 77.46% voting share. Thereafter, Axis Bank Limited, being a CoC member, informed the RP via email that it was not in favour of approving the Resolution Plan, resulting in 100% of the voting share being cast against the approval of the Resolution Plan.

4.8 It has submitted that the CIRP commenced on **08.01.2024**, and the statutory period of **180 days** stood expired on **06.07.2024**. As no Resolution Plan has been approved by the CoC and no resolution has been passed seeking extension of the CIRP period, the Applicant is constrained to file the present application under **Section 33 of the Code** seeking liquidation of the CD.

5. Background of I.A. (IB) No. 1669/KB/2024

5.1 This application has been preferred by Canara Bank, an Financial Creditor of the CD, proposing for appointment of Mr. Anup Singh as the liquidator for the purpose of liquidation of the Corporate Debtor.

5.2 It has been submitted by the applicant, that the Applicant alongwith Kotak Mahindra Bank Ltd., Axis Bank Ltd. and South Indian Bank Ltd. were the consortium lenders of the CD. It is submitted that a joint lenders meeting was convened on 03rd July, 2024, 04th July, 2024 and 09th July⁵ 2024 and the joint lenders have consented to appoint Mr. Anup Kumar Singh,

⁵Annexure C to the application.

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having IBBI Registration no. IBBI/IPA-001/IP-P00153/2017-18/10322 as the Liquidator with a voting share of 77.39%.

- 5.3 It has been submitted that Mr. Anup Singh has furnished his Written Consent to act as Liquidator vide a letter dated 19th July, 2024 alongwith his Authorisation for Assignment.

6. Analysis & Findings

- 6.1 We have considered the submission made by the Ld. Counsel and perused the record.
- 6.2 As per Section 33(1) of the Insolvency and Bankruptcy Code, 2016, where the adjudicating authority, before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under Section 12 does not receive a resolution plan under sub-section (6) of section 30 it shall pass an order requiring the CD to be liquidated in terms of the provisions of the IBC, 2016.
- 6.3 In the present case, the resolution plan filed by the Resolution Applicant has been rejected by the CoC. Further, the time limit of 180 days has expired and neither any application for extension of the period of CIRP has been filed by RP before this Tribunal nor any resolution has been approved by the CoC for the purpose of filing such an application, the RP has preferred the application for the purpose of liquidation.
- 6.4 As such, we find merit in the application being **I.A. (IB)(Liq) No. 21/KB/2024** for the CD to be liquidated and deem it fit to order Liquidation of the CD.

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6.5 Now coming to the facts of I.A. No. 1669/KB/2024, the same has been filed under Regulation 31A(11) of Insolvency and Bankruptcy Board of India (liquidation process regulations, 2016. The regulation states as follows:

“31A. Stakeholders’ consultation committee:

(11) The consultation committee, after recording the reasons, may by a majority vote of not less sixty-six per cent., propose to replace the liquidator and shall file an application, after obtaining the written consent of the proposed liquidator in Form AA of the Schedule II, before the Adjudicating Authority for replacement of the liquidator :

Provided that where a liquidator is proposed to be replaced, he shall-

(a) continue to work till his replacement; and

(b) be suitably remunerated for work performed till his replacement.

Provided that where a consultation committee under Regulation 31A has been constituted before the commencement of Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022, the liquidator within thirty days of the commencement of the said Regulations, shall re-constitute the consultation committee as required under the said Regulations and provisions provided under amended Regulation 31A shall come into effect only after such constitution.”

6.6 Thus, an application under Regulation 31A(11) can only be preferred for replacement of the liquidator, by the Stakeholder Consultation Committee, after approval of the same by atleast 66% of the members of the Stakeholders Consultation Committee.

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6.7 In the present case, the application under Regulation 31A(11) of the Liquidation Process Regulations, has been preferred, prior to the commencement of liquidation, by an Financial Creditor, to appoint Mr. Anup Kumar Singh as the liquidator in respect of the Corporate Debtor.

6.8 However, in terms of Regulation 31A(11), an application can be preferred only by the Stakeholders' Consultation Committee and solely for the purpose of replacement of a liquidator. The said provision does not contemplate appointment of a liquidator in respect of a Corporate Debtor against whom liquidation proceedings have not yet been initiated. Accordingly, we are not inclined to entertain **I.A. No. 1669/KB/2024** filed by the Financial Creditor, the same being not maintainable in law.

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

7.1 The prayers as sought for in **I.A (I.B.C)(Liq) No. 21/KB/2024** is allowed and **Birbhum Chemical and Fertilisers Ltd.** (Corporate Debtor) is ordered to be liquidated in terms of section 33(2) of the Code. However, in view of aforesaid, **I.A. No. 1669/KB/2024** is accordingly dismissed.

7.2 In view of the fact that the **I.A. (I.B.C)(Liq) No. 21/KB/2024** does not prescribe any name in respect of the liquidator for the liquidation process in respect of the CD, Sanjay Kumar Poddar, having registration Number IBBI/IPA-001/IP-P-01802/2019-2020/12759, email id- Poddar.sanjay@gmail.com 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 he is a professional member. The Liquidator is directed to submit his

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consent to act as Liquidator within 10 days of receipt of this order. The erstwhile RP shall handover all papers and documents in his possession concerning the Corporate Debtor to the Liquidator appointed in this matter within 10 days.

- 7.3 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.
- 7.4 The Liquidator fee is fixed as per Regulation 4(2)(b) of IBBI (Liquidation Process) Regulations, 2016.
- 7.5 The RP informed that agenda for meeting of liquidation cost as per regulation 39B of the CIRP Regulations 2016 was presented in 21st CoC meeting but no decision was made by CoC. Hence, as per Regulation 2A, the Financial creditor being the financial institutions shall contribute towards liquidation cost over the excess of liquid assets of the Corporate Debtor.
- 7.6 Public Notice shall be issued in the newspapers stating that the Corporate Debtor is in Liquidation.
- 7.7 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.
- 7.8 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.
- 7.9 On initiation of the Liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be

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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.

- 7.10 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 applications bearing I.A (I.B.)(Liq) No. 21/KB/2024 & I.A. (IB) No. 1669/KB/2024 shall stand disposed of in accordance with the above directions.
9. List the main C.P.(IB) No. 238/(KB)/2023 for reporting progress on 20th April, 2026.
10. The Registry is directed to send e-mail copies of the order forthwith to all the parties including the liquidator appointed as above, 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.

Rekha Kantilal Shah

Member (Technical)

Labh Singh

Member (Judicial)

Order dated the 27th of February, 2026.

HT (LRA)