



NATIONAL COMPANY LAW TRIBUNAL

CUTTACK BENCH

IA (IB) No. 42/CB/2022

&

IA (IB) No. 244/CB/2023

in

TP No. 30/CB/2019

IN THE MATTER OF:

BANK OF INDIA

..... FINANCIAL CREDITOR

Vs.

MAA DURGA RICE PROCESSING AND EXPORTS PRIVATE LIMITED

..... CORPORATE DEBTOR

AND

IA (IB) No. 42/CB/2022

*(Application Under Section 30(6) for approval of Resolution Plan under
Section 31(1) of the Insolvency and Bankruptcy Code, 2016)*

IN THE MATTER OF:

KAMALESH KUMAR SINGHANIA,

**RESOLUTION PROFESSIONAL OF MAA DURGA RICE PROCESSING & EXPORTS PVT
LTD, AT Bajrang kunj, Room No"412 & 4I3,28,
Grant Lane, 4th F'loor, Kolkata-700012"**

..... APPLICANT

AND

IA(IB) No.244/CB/2023

*(An application under section 31(1) of the Insolvency and Bankruptcy code,
2016)*

IN THE MATTER OF:

KAMALESH KUMAR SINGHANIA,

**RESOLUTION PROFESSIONAL OF MAA DURGA RICE PROCESSING & EXPORTS PVT
LTD, AT Bajrang kunj, Room No"412 & 4I3,28,
Grant Lane, 4th F'loor, Kolkata-700012"**

..... APPLICANT

Vs

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IA(IB) No.42/CB/2022 and IA(IB) No.244/CB/2023

In

TP No, 30/CTB/2019

NCLT, CUTTACK BENCH

LORAMITRA RATH,

Kairapari, Kotasahi, Bainchua,
Tangi, Cuttack, Dist: Cuttack,
Odisha - 754022.

..... **RESPONDENT**

ORDER PRONOUNCED ON: 05.08.2026

CORAM: CHEEKATI RADHA KRISHNA, HON'BLE MEMBER (JUDICIAL)

BANWARI LAL MEENA, HON'BLE MEMBER (TECHNICAL)

FOR APPEARANCE:

FOR APPLICANT: PRANAY AGARWAL, ADVOCATE

FOR RESPONDENT: S.K. ACHARYA, ADVOCATE

SUBHAM AGARWAL, ADVOCATE

ORDER

PER: BANWARI LAL MEENA, MEMBER (TECHNICAL)

BRIEF BACKGROUND:

1. Maa Durga Rice Processing & Exports Pvt. Ltd., (hereinafter referred to as the **Corporate Debtor**) was admitted into CIRP vide order dated 04.09.2019. During the CIRP period, Government of India redefined the definition of MSME units and CD was eligible to be a MSME as per the revised definition and subsequent to such notification Prasant Chandra Rath one of the promoters and guarantors of CD, expressed intention to submit EOI if allowed by the CoC claiming exemption from provisions of section 29A in terms of section 240A of the Code. The Resolution Applicant submitted an affidavit dated 18.10.2021 under Section 29A confirming its eligibility to submit a resolution plan as its turnover is less than 250.00 crores. CoC at its meeting held on 03.07.2020 allowed the promoters to submit EOI as it was a registered Small-Scale unit and was falling within

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the meaning of MSME enterprise as per new notification S.O .2119(E) dated 26.06.2020 which came into effect from 01.07.2020 issued by the Govt. of India and RP was directed by CoC to accept the same if found otherwise eligible as per criteria fixed by the COC.

2. Mrs. Loramitra Rath, wife of Mr. Prasant Chandra Rath who is also director and guarantor of the CD submitted EOI and the Information memorandum, RFRP and Evaluation Matrix were shared with her and she subsequently submitted a Resolution Plan & after protracted negotiations and deliberations the CoC in its Adjourned 19th meeting held on 19.01.2022 accepted and Resolution plan submitted by Mrs. Loramitra Rath with 100% votes. However, the Resolution Plan submitted for approval before this Adjudicating Authority through IA(IB) 42/CB/2022 was dismissed and an order for liquidation of the CD was passed by the Hon'ble Bench on 05.04.2022.

3. The liquidation order was assailed by the Resolution Applicant before the Hon'ble High Court of Orissa and *vide* order dated 19.05.2022, Hon'ble High Court set aside the liquidation order and referred the matter to be reconsidered by this Adjudicating Authority and accordingly the Resolution Applicant filed IA(IB) No.225/CB/2022 seeking restoration of IA(IB) 42/CB/2022 which was allowed *vide* order dated 28.02.2023 and also in subsequent hearings permitted the Resolution Applicant to file additional documents in support of its MSEM status.

4. During the pendency of IA(IB) No. 42/CB/2022 the RP filed IA(IB) No. 244/CB/2022 with the following prayer:

a. Allow RP to withdraw IA no. 42/CB/2022 filed before the Hon'ble Bench with regard to approval of Resolution Plan submitted by Mrs. Loramitra Rath;

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*b. Issue necessary orders / directions **approving the liquidation of M/s. Maa Durga Rice Processing & Exports Pvt. Ltd.**, CD herein, as approved by the CoC.*

*c. Issue necessary orders/ directions approving the **appointment of Mr. Kamalesh Kumar Singhania as liquidator** in the matter of liquidation of CD, M/s. Maa Durga Rice Processing & Exports Pvt. Ltd., as approved by the CoC.*

d. Pass such other Order/directions as this Hon'ble Bench may deem fit and necessary in the facts and circumstances of the case.

5. The applicant in IA(IB) No. 244/CB/2022 has averred that the Resolution Applicant is ineligible to submit the Resolution plan on the following grounds:

a. In the matter for another group company M/s Maa Durga Rice Products Pvt. Ltd. in IA no. 276/CTB/2020 arising out of TP NO: 36/CTB/2019 connected with CP(IB) No. 1292/KB/2019, an order has been passed by this Hon'ble Bench on 26.04.2022 against the directors of the said company involving PUFEE Transactions and Mrs. Loramitra Rath, the RA herein, is also a director of the said M/s. Maa Durga Rice Products Pvt. Ltd. The orders dated 26.04.2022 were challenged before the Hon'ble NCLAT and the Hon'ble NCLAT vide judgement dated 30.09.2022 upheld the orders dated 26.04.2022. The judgement of the Hon'ble NCLAT was subsequently appealed before the Hon'ble Supreme Court but the same was withdrawn on 10.04.2023.

b. In the CIRP of M/s Maa Durga Rice Products Pvt. Ltd the Resolution Plan submitted by the Loara Mitra Rath was rejected in IA no. 337/CB/2020 and order for liquidation was passed as Mrs. Lora Mitra Rath was found to be ineligible under Sec 29A(g).

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c. Punjab National Bank had initiated proceedings under section 95 of the IBC on 25.10.2022 against Mrs. Loramitra Rath in CP(IB) No. 51/CB/2022 before this Adjudicating Authority and RP was appointed u/s 96 vide order dated 09.05.2023 after observing the valid invocation of guarantee against Lora Mitra Rath and the RP through its report has recommended the admission of the RA into Personal Insolvency Resolution Process.

6. The Resolution Applicant has objected to the application and has raised the following contentions that:

a. for the purpose of evaluating disqualification u/s. 29A(g) of the Code, the disqualification pursuant to PUFEE transactions would have to be there at the time of submission of the Resolution Plan, and not at such an advanced stage where the approval of the Resolution Plan is being considered pursuant to the order of the Hon'ble High Court.

b. The order dated 26.04.2022 in respect to avoidable transactions against the Resolution Applicant which was upheld by Hon'ble NCLAT was challenged before the Hon'ble SC however the same was withdrawn with the liberty to raise all objections before the Adjudicating Authority and accordingly IA(IB) No. 262/CB/2023 was filed and the same remains sub judice.

c. The application vide C.P. (IB) No. 51/CB/2022 u/s. 95 of the Code has been filed against the deponent by Punjab National Bank for initiation of personal insolvency proceedings against the deponent has not been admitted by this Hon'ble Tribunal as on date. The Hon'ble Tribunal has only taken note of the interim moratorium which commences from the date of filing of petition u/s. 95 of the Code, and this cannot be said to be a declaration of interim

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moratorium by this Hon'ble Tribunal. Hence it is false and misconceived to state that this Hon'ble Tribunal vide order dated 09.05.2023 has appointed the resolution professional u/s. 97 of the Code and had imposed the interim moratorium u/s. 96 of the Code. The application u/s. 95 can only be treated to be admitted upon the passing of the order u/s. 100 of the Code. Further, the applicant has also not mentioned under which clause of Section 29A does this amount to a disqualification.

d. In the 2nd Last para of Pg. 233 of the IA the applicant himself stated before the CoC that at the time of submission of the Plan, the SRA was not falling under the provisions of disqualification for PUFET transactions.

e. The applicant has prayed for withdrawal of IA 42, which was the application for approval of the resolution plan. In response thereto, it is submitted that under the Code, there is no provision for withdrawal of an application filed u/s. 30(6) of the Code. In fact, the CoC also is not empowered to direct the Resolution Professional to withdraw such an application and there is no provision even under the invoked section 31(1) which allows withdrawal of IA 42 for approval of the Plan.

f. The applicant has not arrayed the SRA as a party in the present application, and therefore, the instant application cannot be permitted because of non-joinder of necessary party.

ANALYSIS AND FINDINGS:

7. We have heard the learned counsels appearing for both the parties and have perused the records of IA(IB) No. 42/CB/2022 and IA(IB) No. 244/CB.2022. Since IA 244 has been filed by the RP seeking withdrawal

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of IA 42 and with consequential prayer of initiating liquidation of the Corporate Debtor, hence we are inclined to first decide IA 244 as the outcome of IA 244 directly affects the fate of IA 42.

8. The Id counsel for the RP has submitted that the Successful Resolution Applicant i.e. Lora Mitra Rath has become ineligible u/s 29A(g) and (h) as the SRA was a director of a CD wherein PUFE transactions was carried out and guarantee was invoked by a PNB executed by the SRA with respect to loan extended to M/s Maa Durga Rice Products Pvt. Ltd which has undergone CIRP upon the application filed by PNB.

9. Upon perusal of section 29A(g) of the code it is clear that a person is barred from submitting a plan who has been part of management of a CD 'in which' any avoidable transactions has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code. In the present case it is undisputed that the SRA herein was a director of M/s Maa Durga Rice Products Pvt. Ltd and vide order dated 26.04.2022 this Adjudicating Authority has concluded that certain PUFE transactions has taken place in the CD and has directed all the respondents including the SRA to contribute in the reimbursement and the said order has attained finality after the same has been unsuccessfully appealed before the Hon'ble Apex Court. Furthermore, in terms of section 29A(g) the disqualification regard to 29A(g) does not have to be ascertained at the time of submission of resolution plan, that condition is only applicable in case of 29A(c). Hence it is concluded that the SRA is barred u/s 29A(g) from submitting a resolution plan.

10. In regard to section 29A(h) it is seen that as per sec 240A of the code section 29A(h) is not applicable in case of an MSME, however the fact that the CD herein is in fact MSME has not been adjudicated as that issue

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remains pending adjudication in IA 42. Furthermore, in light of the observations made in the preceding paragraph wherein we have already ascertained that the SRA is hit by 29A(g) making her ineligible. Hence, we are not inclined to adjudicate upon the issue related to the disbarment of SRA u/s 29A(h) as it will not materially alter the outcome of this order and also the status of the CD as MSME has to be judicially adjudicated before applicability of 29A(h) can be truly looked upon.

11. In regard to the contention raised by the SRA that the applicant prayer for withdrawal or liquidation u/s 31(1) of the code is erroneous as the provision does not permit the same. It is observed that application has been filed u/s 31(1) of the code and upon bare perusal of section 31(1) of the code it is seen that section 31(1) neither permits the RP to file an application either seeking withdrawal of an application filed u/s 30(1) nor to seek initiation of liquidation. Section 31(1) in reality empowers this Adjudicating authority to either approve a plan which is filed u/s 30(6) after evaluating the approved plan on the parameters described in section 31(1) and in the alternate reject the plan in accordance with the power provided u/s 31(2) of the code. It is also seen that the code does not specifically contain any provision empowering the RP to file a specific application to withdraw an application filed u/s 30(2) of the code. However, since the RP has brought on record undisputed facts through IA 242 which has made the SRA ineligible u/s 29A and hence in light of such circumstances the appropriate provision of law to file an application seeking liquidation is section 33(2) of the Code. It is a trite law that mere filing under wrong provisions is not fatal to the application and hence the present application is treated as application u/s 33(2) of the Code. Section 33(2) of the Code states the following:

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(2) 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 committee of creditors ⁴[approved by **not less than sixty-six per cent. of the voting share**] to liquidate ³[or dissolve] the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), ⁵[(ii), (iii), (iv) and (v)] of clause (b) ⁶[of sub-section (1) or a dissolution order under sub-section (2A) of section 54, as the case may be:] .

12. The applicant herein has brought on record the Minutes of the 22nd CoC meeting held on 24.07.2023 wherein the following resolutions were put to vote:

As there is no alternate plan, the CoC then recommended for liquidation of the CD and passed the following Resolutions:

"RESOLVED THAT IA no 42/CB/2022 filed for approval of Resolution Plan submitted by Mrs. Loramitra Rath be withdrawn for the reasons of disqualifications of RA in terms of section 29A(g) of Code and initiation of personal insolvency against the RA in which renders the serious concerns about implementation of the plan by RA.

"RESOLVED THAT Mjs Maa Durga Rice Processing & Exports Pvt. Ltd., the CD, be liquidated and Mr. Kamalesh Kumar Singhania, Resolution Professional be appointed as liquidator of the company."

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FURTHER RESOLVED THAT Resolution Professional is authorised to take necessary steps with regard to withdrawal of IN 42/CB/2022 and also to file necessary application before the Hon'ble NCLT for liquidation of the CD

13. Accordingly, the resolutions were approved by CoC, however no voting results was enclosed along with the application and hence necessary clarification was sought. The applicant has filed a clarification affidavit on 08.07.2026 wherein he has clarified that the voting was conducted with the show of hands and has filed affidavits from both the members of the CoC to that effect. In light of the observations made above **MAA DURGA RICE PROCESSING AND EXPORTS PRIVATE LIMITED** is **Ordered to be Liquidated under section 33 of IBC,2016** and the following orders are passed:

- a. **Mr. Amarendra Kar** having Registration No. **IBBI/IPA-001/IP-P-02956/2025-2026/14557**, residing at Cuttack Odisha and having **Contact No.- 9861822570**, E-mail id - caamarendrakar@gmail.com is hereby appointed as the Liquidator.
- b. The Liquidator is directed to forthwith take into her custody all the assets, Properties, equipment, machineries, and actionable claims of the corporate debtor and take necessary steps to ensure preservation, protection security and maintenance of those properties as provided under section 35(1)(b) & (d) of IBC 2016.
- c. The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under

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Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time.

d. The Liquidator is directed to issue public Notice as contemplated under section 33(1) of the Code in one morning, English daily and in one morning regional language newspapers.

e. All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel, shall cease to exist in accordance with section 34(2) of the Code. These powers shall henceforth vest in the Liquidator. The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in the Liquidation process of the Corporate Debtor.

f. 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 a 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.

g. 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.

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h. In terms of Section 33(1) (b) (iii), the Liquidator shall file a copy of this Order with the Registrar of Companies within whose jurisdiction the Corporate Debtor is registered.

i. The **fee of Liquidator** to be determined as provided under Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation process) Regulation 2016.

j. As per Regulation 13 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, **the liquidator shall submit a preliminary report to the Adjudicating Authority within 75 days from the liquidation commencement date** providing various details/information as mentioned in the said regulation.

k. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel and to ROC, Odisha for information and for taking necessary steps.

14. Accordingly, **IA(IB) No. 244/CB/2023** is **PARTLY ALLOWED** to the extent of prayer regarding liquidation and **IA(IB) No.42/CB/2022** is **DISMISSED** in light of the orders passed in IA(IB) No.244/CB/2023

15. The **Applicant is discharged from his duties as RP and is directed** that all documents, books of accounts, official records, access and control of assets of the corporate debtor which he holds in his possession in the capacity of RP shall hand it over to the newly appointed Liquidator within 2 days of receipt of this order.

16. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel and the newly appointed Liquidator for information and for taking necessary steps.

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IA(IB) No.42/CB/2022 and IA(IB) No.244/CB/2023

In

TP No, 30/CTB/2019

NCLT, CUTTACK BENCH

17. Let the certified copy of the order be issued upon compliance with requisite formalities.

18. File be consigned to record

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BANWARI LAL MEENA
MEMBER (TECHNICAL)

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CHEEKATI RADHA KRISHNA
MEMBER (JUDICIAL)