

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

**IA(IBC)/191(KB)2023  
in  
CP(IB)/1381(KB)2020**

*Under section 33 of the Insolvency & Bankruptcy Code, 2016*

*In the matter of:*

UCO Bank

.... Financial Creditor

M/s. Bush Tea Company Private Limited  
(CIN: U15491WB1972PTC028384)

.... Corporate Debtor

*And*

*In the matter of:*

Mr. Santanu Brahma,  
Resolution Professional of M/s. Bush Tea Company Private Limited

... Applicant

**Order reserved on: 10/05/2023**

**Order pronounced on: 26/06/2023**

*Coram:*

<b>Smt. Bidisha Banerjee</b>	<b>:</b>	<b>Member (Judicial)</b>
<b>Shri Balraj Joshi</b>	<b>:</b>	<b>Member (Technical)</b>

*Appearances (through hybrid mode):*

For RP	:	Mr. Shaunak Mitra, Adv. Mr. Manas Das, Adv.
For applicant in IA/251/2023	:	Mr. Mr. Pranit Bag, Adv. Mr. Snehashis Sen, Adv.

For applicant in IA/298/2023 : Mr. Ajit Keshari, Adv.  
Mr. Neeraj Rai, Adv.

**ORDER**

***Per: Bidisha Banerjee, Member (Judicial)***

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/191(KB)2023** is an application filed under section 33 of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) by the Resolution Professional (“**RP**”) of **M/s. Bush Tea Company Private Limited**, the Corporate Applicant (Corporate Debtor), seeking liquidation of the Corporate Debtor. This application is supported by an affidavit<sup>1</sup> duly affirmed by Mr. Santanu Brahma, the RP.
3. This Adjudicating authority, on a petition filed u/s. 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by UCO Bank, Financial Creditor against M/s. Bush Tea Company Private Limited, Corporate Debtor *vide* order<sup>2</sup> dated 29/04/2022 in CP(IB)/1381(KB)2020, had ordered initiation of CIRP against the Corporate Debtor. Mr. Santanu Brahma was appointed as the Interim Resolution Professional (“**IRP**”). At the said 1<sup>st</sup> CoC meeting, CoC had approved appointment of IRP as RP.
4. In terms of section 15 of the IBC, Public Announcements<sup>3</sup> in **Form A** was published in “*Financial Express*” (English) and “*Aajkaal*” (Bengali) on 01/05/2022 inviting claims from the creditors and claims were duly received. In terms of section 21 of the IBC, Committee of Creditors<sup>4</sup> (in short “**CoC**”) was duly formed with UCO Bank, petitioning Financial Creditor, with 100% voting share. Report on the constitution of the CoC and List of Creditors as on 20/05/2022 was duly filed with this Adjudicating Authority on 22/05/2022.

<sup>1</sup> At pages 21 and 22 of the application

<sup>2</sup> Annexure A-1 at pages 25 to 34 of the application

<sup>3</sup> Annexure A-2 (Minutes of 1<sup>st</sup> CoC Meeting) at page 39 & List of Dates at page 6 of the application

<sup>4</sup> Annexure A-2 (Minutes of 1<sup>st</sup> CoC Meeting) at page 40 of the application

Subsequently, List of Creditors as on 21/06/2022 has been updated and duly filed with this Adjudicating Authority on 21/06/2022.

5. 1<sup>st</sup> meeting of the CoC was held on 27/05/2022. A copy of the minutes<sup>5</sup> of the 1<sup>st</sup> CoC meeting along with the voting result was annexed as **Annexure A-2** with the application.
6. The applicant has filed a contempt application being Cont.A.(IBC)/7(KB)2022 against the suspended members of the Board of Directors of the Corporate Debtor for dis-obeying the order of this Adjudicating Authority dated 29/04/2022 by not providing documents and information to the applicant. Subsequently, suspended members of the Board of Directors of the Corporate Debtor had handed over documents and information to the applicant and accordingly the said contempt application was disposed of vide order dated 04/11/2022.<sup>6</sup>
7. Subsequently, 2<sup>nd</sup> CoC meeting was held on 20/07/2022. In terms of the resolution passed at the 2<sup>nd</sup> CoC meeting, applicant had duly filed an application under section 12(2) of the IBC seeking exclusion of 87 days from the CIRP period due to non-cooperation by the members of the suspended Board of Directors of the Corporate Debtor. The said application was numbered as IA(IBC)/1040(KB)2022. However, since the CIRP period had been extended by 90 days, this IA was disposed of as infructuous *vide* order<sup>7</sup> dated 26/10/2022. A copy of the minutes<sup>8</sup> of the 2<sup>nd</sup> CoC meeting was annexed as **Annexure A-3** with the application.
8. With the approval of CoC **Form G**<sup>9</sup> was published in “*Business Standard*” (English) and “*Aajkaal*” on 15/10/2022 inviting Expression of Interest (in short “**EoI**”) from prospective resolution applicant (in short “**PRA**”). However, no EoI was received from any PRA till 30/10/2022, the last date of submission of EoI.

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<sup>5</sup> Annexure A-2 at pages 35 to 50 of the application

<sup>6</sup> Averments in paragraph 2 at page 11 of the application

<sup>7</sup> Annexure A-6 at pages 98-99 of the application

<sup>8</sup> Annexure A-3 at pages 51 to 79 of the application

<sup>9</sup> Annexure A-4 at pages 80 to 84 of the application

9. In terms of provisions of section 12(2) and 12(3) of the IBC, 2016, the CoC at its 3<sup>rd</sup> meeting held on 04/10/2022 has passed a resolution approving filing of an application for extension of CIRP period by 90 days. Accordingly, an application being IA(IBC)/1284(KB)2022 has been filed for granting extension of 90 days and this Adjudicating Authority *vide* order<sup>10</sup> dated 26/10/2022 has granted extension of the CIRP period by 90 days. A copy of the minutes<sup>11</sup> of the 3<sup>rd</sup> CoC meeting was annexed with the application as **Annexure A-5**.
10. With the approval of the CoC, at its 4<sup>th</sup> CoC meeting held on 07/11/2022, **Form G<sup>12</sup>** was published for the 2<sup>nd</sup> time on 10/11/2022 inviting EoI for submitting Resolution Plan from PRA in “*Business Standard*” (English) and “*Aajkaal*”. A copy of the minutes<sup>13</sup> of the 4<sup>th</sup> CoC meeting was annexed with the application as **Annexure A-7**. In response one EoI has been received from one M/s. Teltroy Merchants Pvt. Ltd., who had deposited E.M.D.<sup>14</sup> of Rs.15 Lakhs by way of a Demand Draft bearing no. 136333 dated 29/11/2022.
11. Final list was issued in terms of regulation 36A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 01/12/2022. In terms of regulation 36B of the the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the applicant had issued Request for Resolution Plan (in short “**RFRP**”), Evaluation Matrix (in short “**EM**”) and Information Memorandum (in short “**IM**”) to M/s. Teltroy Merchants Pvt. Ltd.<sup>15</sup> However, no Resolution Plan has been submitted by the said PRA, M/s. Teltroy Merchants Pvt. Ltd. within the stipulated timeline, instead they had sent an e-mail on 06/01/2023 to the applicant for refund of the said EMD amount of Rs.15 Lakhs, which is under process.<sup>16</sup>

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<sup>10</sup> Annexure A-6 at pages 98 to 99 of the application

<sup>11</sup> Annexure A-5 at pages 85 to 97 of the application

<sup>12</sup> Annexure A-8 at pages 119 to 122 of the application

<sup>13</sup> Annexure A-7 at pages 100 to 118 of the application

<sup>14</sup> Averments in paragraph 10 at page 14 of the application

<sup>15</sup> Averments in paragraph 11 at page 14 of the application

<sup>16</sup> Averments in paragraph 12 at page 14 of the application

12. The CoC at its 5<sup>th</sup> meeting held on 16/01/2023 after due deliberation and considering non-submission of any resolution plan having 100% voting share had resolved to liquidate the Corporate Debtor authorizing the Resolution Professional to file the instant application. The resolutions passed at the aforesaid 5<sup>th</sup> CoC meeting recommending liquidation of the Corporate Debtor and appointment of the applicant as Liquidator are reproduced below: -

*“RESOLVED THAT considering non-receipt of any Resolution Plan and approaching timeline for expiry of CIRP, the Committee of Creditors hereby authorizes the Resolution Professional for filing of an application for the liquidation of the Corporate Debtor before the Hon’ble NCLT, Kolkata (the Adjudicating Authority) in terms of the provision of Section 33(1)(a) of the IBC, 2016.*

*“RESOLVED THAT, in the event of commencement of Liquidation proceedings as per the order of Hon’ble Tribunal, the Committee of Creditors recommends for appointment of CA Santanu Brahma bearing IBBI Registration No. IBBI/IPA-001/IP-P01482/2018-2019/12251 as the Liquidator of Bush Tea Company Pvt. Ltd. Subject to the approval of Hon’ble Tribunal.”*

A copy of the minutes of the 5<sup>th</sup> CoC meeting along with the e-voting results was annexed with the application as **Annexure A-9**<sup>17</sup>

13. The applicant in compliance of regulation 40A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has submitted in paragraph 17, at pages 16 to 19 of the application, a Compliance Report.
14. After taking into consideration of extension of CIRP period by 90 days, 270 days CIRP period has ended on 24/01/2023.
15. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass

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<sup>17</sup> Annexure A-9 at pages 123 to 148 of the application

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.

16. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.

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

a. IA(IBC)/191(KB)2023 filed by **Mr. Santanu Brahma, RP of M/s. Bush Tea Company Private Limited**, the Corporate Debtor, is allowed. Consequently, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;

b. **Mr. Santanu Brahma** [Reg. No. *IBBI/IPA-001/IP-P01482/2018-2019/12251*] *having his office at AH-276, Salt Lake Sector – II, Kolkata 700091* e-mail i.d. **ip.santanubrahma@gmail.com** 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. The Liquidator is directed to submit his consent within 7 days of receipt of intimation of his appointment as Liquidator.

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., in “*Business Standard*” (English) and

in “*Aajkaal*” (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 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**.

18. The application bearing **IA(IBC)/191(KB)2023** shall stand disposed of in accordance with the above directions.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
SPECIAL BENCH (Court I)

IA(IBC)/191(KB)2023  
in CP (IB)/1381(KB)2020

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19. **CP(IB)/1381(KB)2020** is to come up for filing of Periodical Progress Report on **27/07/2023**.
20. 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.
21. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

Signed on this, the 26<sup>th</sup> day of June, 2023.

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