

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

IA(IBC)(LIQ.)/3(KB)2024

C.P. (IB)/724(KB)2020

*An application under Section 33 read with Section 60(5) of the Insolvency and
Bankruptcy Code, 2016.*

In the matter of:

(1) ISERVE SOLUTIONS & SERVICES PRIVATE LIMITED

... Operational Creditor

-Versus-

**(2) CAPITAL ELECTRONICS AND APPLIANCES LIMITED [CIN:
U31901WB2006PLC110699] & [PAN: AAGCA1876P]**

... Corporate Debtor

-And-

(3) Mr. Rasik Singhania, Resolution Professional of Capital Electronics and Appliances Limited (In CIRP) having his office at Chitrakoot Building, Room No. 98, 9th Floor, 230A, Acharya Jagadish Chandra Bose Road, Kolkata – 700 020.

... Applicant/Resolution Professional

Date of pronouncing of the order: 09/04/2024

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**

Shri D. Arvind : **Member (Technical)**

Appearances (via video conferencing/physically):

Ms. Tanvi Luhariwala, Adv. : **For the Resolution Professional**

Mr. Rasik Singhania, RP :

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The court convened through hybrid mode.
2. Ld. Counsels appearing for the parties were heard in extenso.
3. This application **IA(IBC)(LIQ.)/3(KB)2024** has been preferred to seek the following reliefs, inter alia: -

- (a) *Direct the initiation of Liquidation Proceedings as envisaged under Section 33 of the Insolvency and Bankruptcy Code, 2016.*
- (b) *Direct issuance of Public Announcement stating that the corporate debtor is in liquidation.*
- (c) *Direct liquidation order be sent to the Registrar of Companies, Kolkata for its intimation and necessary compliance.*
- (d) *Direct the members of the Committee of Creditors to deposit the remaining CIRP costs to the CIRP Account of the Corporate Debtor to make necessary payments.*

4. Factual matrix of the case are as under: -

- (a) This application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) being **C.P. (IB)/724(KB)2020** to initiate a Corporate Insolvency Resolution Process (“CIRP”) was filed against the Corporate Debtor, namely, Capital Electronics and Appliances Ltd. The application was admitted by the Order dated 16th January, 2023 of this Tribunal by appointing the applicant as its Interim Resolution Professional (“IRP”).
- (b) On 18th January, 2023 the applicant published the Public Announcement in **Form A** in *Business Standard* (in English) and in *Ekdin* (in Bengali-vernacular), *inter alia*, inviting claims from the Creditors of the Corporate Debtor.
- (c) The applicant received claims from three Operational Creditors and based on the said claims, the applicant constituted the Committee of Creditors (“CoC”) of the Corporate Debtor.
- (d) On 14th February, 2023 the first meeting of the CoC was conducted, wherein the applicant was confirmed as the **Resolution Professional**. Thereafter, the applicant received further claims from two Operational Creditors and as a consequence thereof, the Constitution of CoC was

changed. The applicant had duly filed a report for the re-Constitution of CoC to this Tribunal, i.e., on 6th April, 2023.

- (e) Again, the applicant received further claims from two unsecured financial creditors, namely, Bajaj Finance Limited and Capfloat Financial Services Private Limited. The entire CoC was again reconstituted with Bajaj Finance Limited with 90.91 % voting share and Capfloat Financial Services Private Limited with 9.09 % voting share in the CoC. The applicant had duly filed a report for re-Constitution of CoC before this Tribunal on 6th April, 2023.
- (f) Meanwhile, on 17th March 2023, the applicant had published **Form G** under Regulation 36A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 for inviting expression of interest from prospective resolution applicants for the Corporate Debtor. In terms of the said **Form G**, the last date for submission of the EoI was on 1st April, 2023. On 1st April, 2023 the applicant received 3 EoIs from prospective Resolution Applicants.
- (g) On 8th April, 2023 Bajaj Finance Limited issue an email to the RP for withdrawal of its claim in the CIRP. Thereafter, on 18th April, 2023 Bajaj Finance Limited filed an application being IA(I.B.C.)/836(KB)2023 before this Tribunal, *inter alia*, praying for an Order allowing Bajaj Finance Limited to withdraw its claim from the CIRP of the Corporate Debtor and on this date, i.e., on 8th April, 2023 during the pendency of IA(I.B.C.)/836(KB)2023, Bajaj Finance Limited had refrained from participating in the CoC meetings.
- (h) Bajaj Finance Limited held 90.91 % voting share in the CoC and was not participating in the CoC meetings, therefore, no decisions or resolutions were being passed by the CoC with respect to the CIRP of the Corporate Debtor. As a result, the CIRP of the Corporate Debtor had practically

come to a standstill. Even the **Request for Resolution Plan (“RFRP”)** could not be approved from the CoC.

- (i) The period of 180 days as prescribed under Section 12 of the Insolvency and Bankruptcy Code, 2016 was expired on 14th July, 2023 due to Corporate Insolvency Resolution Process could not be completed within the prescribed time.
- (j) Capfloat Financial Services Private Limited, filed an application being IA(I.B.C.)/1431(KB)2023 for withdrawal of its claim from the CIRP of the Corporate Debtor.
- (k) On 20th September, 2023 this Tribunal allowed the application of both Capfloat Financial Services Private Limited as well as Bajaj Finance Limited to withdraw their respective claims from the CIRP of the Corporate Debtor and also allowed the application being IA(I.B.C.)/1199(KB)2023 and excluded the period from 8th April, 2023 till the date of the Order, i.e., 20th September, 2023 from the timeline for completing any activity relating to the CIRP of the Corporate Debtor.
- (l) On 20th September, 2023 the Constitution of CoC was again changed which then comprised of the Operational Creditors. In the interim period, the applicant received claims from one Mudit Commercial Corporation and the Income Tax Department, Government of India.
- (m) Due to non-functioning of the CoC, the **Request for Resolution Plan** could not be issued by the applicant. As such, the same was issued on 14th October, 2023 to the prospective resolution applicants. The last date for submission of the resolution plan was on 13th November, 2023 and also the applicant did not receive resolution plan from either of the 4 Prospective Resolution Applicant. In fact, the Prospective Resolution Applicants requested for the refund of their EMD amount.

- (n) On 24th November, 2023 the 6th meeting of the CoC was held and conducted, wherein the applicant had informed the members of the CoC that the CIRP period after exclusion would expire on 27th December, 2023. It was discussed that as no resolution plan has been received, then should the CIRP period be extended by 90 days and fresh **Form G** be issued or should the Corporate Debtor go into liquidation. All the members of the CoC who were present in the meeting was of the opinion that extending the CIRP process by 90 days was not going to yield any result and it would unnecessarily increase the cost. Accordingly, the members suggested that it would be better to head for liquidation.
- (o) On 23rd December, 2023 the 7th CoC meeting of the Corporate Debtor was conducted. In the said meeting one of the agenda for voting was regarding initiation of liquidation process with respect to the Corporate Debtor.
- (p) It is stated that the aforesaid agenda was voted upon by three members of the Operational Creditor being Vedik Dealcom Private Limited having 33.55% voting right, Vishal Video Appliances Private Limited having 1.5045% voting right and Mudit Commercial Corporation having 3.10% voting right. The other members of the CoC which includes two government entities have not voted on the said agenda. As such, the said Resolution for initiation of liquidations with respect to the Corporate Debtor, was not approved by 66% percent votes of the CoC.
- (q) After considering the exclusion of 133 days pursuant to Order dated 20th September, 2023 the period of CIRP of 180 days as prescribed under Section 12 of the Insolvency and Bankruptcy Code, 2016 was expired on 27th September, 2023.
- (r) In terms of Section 33 of IBC, where the Adjudicating Authority does not receive a resolution plan before the expiry of 180 days of the CIRP period, the Adjudicating Authority shall, *inter alia*, pass an Order requiring the Corporate Debtor to be liquidated. In Chapter III of the IBC Code, 2016 and direct issuance of Public Announcement stating that the Corporate

Debtor is in liquidation and direct that the liquidation Order be sent to the Registrar of Companies, Kolkata for its intimation and necessary compliance.

(s) It is further submitted that during the 6th CoC meeting, the Applicant had produced the summary of total estimated expenses incurred during the CIRP period and the details of the amount received by the Applicant. As such, the applicant indicated to the members of the CoC the estimated shortfall and requested the members to contribute their respective shares of shortfall of CIRP cost in the CIRP account of the Corporate Debtor. On 25th December, 2023, a remainder email was also sent to the members of the CoC requesting to make payment of their respective share of the CIRP cost. However, till date the member of CoC have not made any contribution towards the CIRP costs. Therefore, it is most humbly prayed that an Order be passed directing the members of the Committee of Creditors to deposit the remaining CIRP costs to the CIRP account of the Corporate Debtor.

(t) It is pertinent to mention that Mr. Prashant Agarwal, being the Suspended Directors of the CD had filed an appeal against the Order of admission dated 16th January, 2023 before the Hon'ble National Company Law Appellate Tribunal being Company Appeal (AT) (INS) No. 355 of 2023. However, the said appeal was finally withdrawn by Mr. Prashant Agarwal. As such, by an Order dated 31st January, 2024 the Hon'ble NCLAT, dismissed the said application as withdrawn.

5. The rival contentions were noted and the decisions were considered.

6. **Analysis and Findings:** -

(a) We have considered the submission made by the Ld. Counsel and perused the record.

(b) Section 33(1) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor when there is a contravention of the approved

Resolution Plan. However, even before approval of the plan, Resolution failed due to reason mentioned in para (m) of this order.

(c) Hence, we do find merit in the prayers made in **IA(IBC)(LIQ.)/3(KB)2024**, and deem it fit to order liquidation of the Corporate Debtor.

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

- a. Prayers as sought for in **IA(IBC)(LIQ.)/3(KB)2024** filed by RP, is allowed and **Capital Electronics and Appliances Limited**, the Corporate Debtor is ordered to be liquidated in terms of section 33(1) of the Code;
- b. **Mr. Subrata Ghosh** having registration no. **IBBI/IPA-003/IPA-ICAI-373/2021-2022/13872**, email: subhomusic@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 she is a professional member;
- 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 newspapers 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 Applicant is registered.
8. The application bearing **IA(IBC)(LIQ.)/3(KB)2024** shall stand **disposed of** in accordance with the above directions.
9. List the main **C.P. (IB)/724(KB)2020** for reporting progress on **10.06.2024**.
10. 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.
11. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on: 9th of April, 2024.

Ar.