

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

**IA(IBC)/1024(KB)2023
in
CP(IB)/172(KB)2022**

Under section 33(2) of the Insolvency & Bankruptcy Code, 2016

In the matter of:

State Bank of India

.... Financial Creditor

Versus

Viswatma Merchandise Private Limited
(U01403WB2010PTC154589)

.... Corporate Debtor

And

In the matter of:

Mr. Arun Kumar Gupta,

Resolution Professional of Viswatma Merchandise Private Limited

... Applicant

Order reserved on: 26/06/2023

Order pronounced on: 27/07/2023

Coram:

Smt. Bidisha Banerjee

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (through hybrid mode):

For RP

:

Mr. Arik Banerjee Adv.

Mr. Arun Kumar Gupta, RP in person

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.

2. **IA(IBC)/1024(KB)2023** is an application filed under section 33(2) of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) by the Resolution Professional (“**RP**”) of **Viswatma Merchandise Private Limited**, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by Mr. Arun Kumar Gupta, 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 State Bank of India, the Financial Creditor, *vide* order² dated 29/12/2022 in CP(IB)/172(KB)2022, had ordered initiation of CIRP against Viswatma Merchandise Private Limited, the Corporate Debtor. Mr. Arun Kumar Gupta was appointed as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry.
4. In terms of section 15 of the IBC, Public Announcements³ in **Form A** was published in “*Financial Express*” (English) and “*Aajkal*” (Bengali) on 31/12/2022 inviting claims from the creditors and duly formed Committee of Creditors (in short “**CoC**”) with sole petitioning Financial Creditor, State Bank of India.
5. IA(IBC)/217(KB)2023 has been filed for reporting constitution of CoC to this Adjudicating Authority, which was taken on record *vide* order⁴ dated 10/02/2023 and the same was subsequently updated as on 29/03/2023 in terms of regulation 13(2)(ca) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) and uploaded on the IBBI Website in the prescribed format on 29/03/2023⁵. 1st meeting of the CoC was held on 27/01/2023. At the said 1st meeting of the CoC, IRP was appointed as RP. The

¹ At pages 9 to 11 of the application

² Annexure C at pages 59 to 67 of the application

³ Annexure F at pages 71 to 74 of the application

⁴ Annexure E at pages 69 to 70 of the application

⁵ Annexure G at pages 75 to 76 of the application

- applicant has filed IA(IBC)330(KB)2023 for placing on record 1st Progress Report and the same was taken on record *vide* the aforesaid order dated 10/02/2023.
6. In terms of regulation 36A(1) of the CIRP Regulations Form G⁶ was published in “*Financial Express*” (English) and “*Aajkal*” (Bengali) inviting Expression of Interest (“**EoI**”) on 20/02/2023 and in response three EoIs were received within the stipulated time, i.e., 16/03/2023 from (1) Khayerbari Tea Company Ltd., (2) Nakshatra Corporate Advisors Ltd. and (3) Shivam Condev Pvt. Ltd. However, ARSS Infrastructure Projects Limited, one of the related party of Shivam Condev Pvt. Ltd. is presently undergoing CIRP⁷.
 7. Provisional list of prospective resolution applicants was published on 21/03/2023 fixing last date of submission of objections, if any, on 26/03/2023. However, RP did not receive any objection from any of the PRAs⁸.
 8. In terms of regulation 36(A)(12) of the CIRP Regulations, final list⁹ of prospective resolution applicants was published on 05/04/2023 comprising of (1) Khayerbari Tea Company Ltd. and (2) Nakshatra Corporate Advisors Ltd.
 9. The RP had appointed one M/s. Balkrishna Lal More to conduct survey relating to land of the corporate debtor and also owned by the personal guarantors within the factory boundary. The final report was received on 26/04/2023 and was circulated to the CoC and the PRAs as part of the Information Memorandum. A copy of the land survey report forms **Annexure L**¹⁰
 10. In compliance of regulation 36B(1) of the CIRP Regulations, Evaluation Matrix, Information Memorandum and Request for Resolution Plan (‘RFRP’) were shared on 26/03/2023 with two prospective resolution applicants as per Final

⁶ Annexure O at pages 282 to 284 of the application

⁷ Averments in para 20 at page 23 of the application

⁸ Averments in para 21 at page 23 of the application

⁹ Annexure P at pages 285 to 290 of the application

¹⁰ At pages 255 to 264 of the application

List¹¹ stipulating last date of submission as 25/04/2023, which was at the request of the PRA subsequently extended to 09/05/2023 by the CoC in terms of regulation 36(B)(6) of the CIRP Regulations. One of the PRAs, Khayerbari Tea Company Ltd. vide e-mail¹² dated 08/05/2023 has expressed their unwillingness on the grounds that “*only corporate debtor’s portion of land alone will not be sufficient to run the corporate debtor viably*”. However, despite extension of time to submit resolution plan, no resolution plan has been received from any of the PRAs till 6.00 PM on 09/05/2023¹³.

11. The applicant has held 1st, 2nd, 3rd and 4th meetings of the CoC on 27/01/2023, 16/02/2023, 22/03/2023 and 11/05/2023 respectively, copies whereof form **Annexure H**¹⁴ collectively.
12. As there was no cooperation from the suspended members of the Board of Directors of the Corporate Debtor since the beginning of the CIRP, an application being IA(IBC)/291(KB)2023 has been filed u/s. 19(2) of the IBC. The orders passed on the above application dated 24/03/2023 and 09/05/2023 form **Annexure I**¹⁵ collectively.
13. It is submitted by the Ld. Counsel for the RP that last audited accounts were filed with the Ministry of Corporate Affairs for the year ended on 31/03/2013. However, due to non-cooperation of the suspended members of the Board of Directors of the Corporate Debtor and managerial personnel of the Corporate Debtor as well as without access to the books and accounts, the process of finalization and auditing of accounts could not be completed as well as other statutory compliances under section 17(2)(e) of the Code.¹⁶ Moreover, the Cold Storage was not operational since the year 2013.

¹¹ Averments in para 21 & 23 at pages 23 & 24 of the application

¹² Annexure Q at pages 291 of the application

¹³ Averments in para 23 and 24 at page 24 of the application

¹⁴ At pages 77 to 143 of the application

¹⁵ At pages 144 and 145 of the application

¹⁶ Averments in paras 12 & 13 at pages 18 and 19 of the application

14. In terms of regulation 27 of the CIRP Regulations, two sets of registered valuers were appointed on 24/01/2023 to determine the liquidation value and fair value, who have duly submitted their reports, copies whereof form **Annexure J¹⁷** to the application. As per valuation reports average Fair Value vis-à-vis Liquidation Value is Rs.5,43,28,355/- and Rs.1,94,27,727/- respectively.
15. In terms of regulation 35A of the CIRP Regulations, RP is required to form an opinion on avoidance transaction and accordingly appointed one M/s. ACH & Associates, Chartered Accountants for carrying out the transaction audit of the Corporate Debtor under sections 43, 45, 50 or 66 of the Code for the period from 29/12/2020 to 29/12/2022. The said transaction auditor had duly submitted its report stating that on close perusal of the documents available, they have not come across any case of transactions covered under sections 43, 45, 50 or 66 of the Code. A copy of transaction audit report forms **Annexure M¹⁸**. On 13/03/2023, the RP sent an e-mail to the CoC informing that he is unable to form an opinion, within 75th day, i.e., 14/03/2023, as required under regulation 35A(1) of CIRP Regulation due to reasons stated in the e-mail. A copy of the said e-mail dated 13/03/2023 forms **Annexure N¹⁹**.
16. At the 4th CoC meeting held on 11/05/2023, the matter was discussed at length with the members of the CoC and after due deliberations, it was decided not to issue another Form G, instead members of the CoC suggested to prepare for liquidation of the Corporate Debtor and to call 5th CoC meeting on 22/05/2023 to vote on the agenda for liquidation of the Corporate Debtor (**at page 138 of the application**). Copy of the minutes of the 4th CoC meeting forms **Annexure H(colly)²⁰**. Accordingly, 5th CoC meeting was held on 22/05/2023 and the CoC with 100% voting share decided to liquidate the Corporate Debtor and passed the following resolutions (at page 42 of the application):

¹⁷ At pages 146 to 250 of the application

¹⁸ At pages 265 to 279 of the application

¹⁹ At pages 280 to 281 of the application

²⁰ At pages 77 to 143 of the application

“Resolved that the Corporate Debtor – Viswatma Merchandise Pvt. Ltd. be liquidated in terms of provisions of Section 33 of the Insolvency and Bankruptcy Code, 2016 (IBC);”

“Resolved further that the RP be authorised to intimate this decision of the Committee of Creditors to the Hon’ble Adjudicating Authority under Section 33(2) of IBC, 2016 for liquidation of the Corporate Debtor;”

“Resolved further to nominate the existing Resolution Professional (RP) – Mr. Arun Kumar Gupta, appointed for the CIRP, who being eligible offers himself for appointment, to act as the Liquidator in the matter of liquidation of the Corporate Debtor – Viswatma Merchandise Pvt. Ltd., under Section 34(1) of IBC, 2016.”

Copy of Minutes of the 5th CoC meeting forms **Annexure A**²¹.

17. The RP has submitted his consent to act as the Liquidator of the Corporate Debtor along with valid AFA²².
18. The RP has duly submitted Compliance Certificate in **Form H**, which forms **Annexure R**²³.
19. It is to be noted here that the 180 days CIRP period has already ended on 26/06/2023 and no application for extension of the CIRP period has been filed.
20. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass 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.
21. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
22. This Bench, therefore, hereby orders as follows: -

²¹ At pages 29 to 56 of the application

²² Annexure B at pages 57 and 58 of the application

²³ At pages 292 to 306 of the application

- a. IA(IBC)/1024(KB)2023 filed by **Mr. Arun Kumar Gupta, RP of Viswatma Merchandise 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. Arun Kumar Gupta [Reg. No. IBBI/IPA-001/IP-P00013/2016-2017/10037], having e-mail i.d. guptaarunkumar2001@yahoo.com, Mobile No. 98301 24481** 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.
- 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 “*Financial Express*” (English) and “*Aajkal*” (Bengali) 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**.

23. The application bearing **IA(IBC)/1024(KB)2023** shall stand disposed of in accordance with the above directions.
24. **CP(IB)/172(KB)2022** is to come up for filing of Periodical Progress Report on **16/10/2023**.
25. 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.
26. 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 27th day of July, 2023.

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