

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH - I
KOLKATA**

**IA (IB) No. 142/KB/2022
in
CP (IB) No. 1175/KB/2019**

Under section 33(1)(a) of Insolvency & Bankruptcy Code, 2016

In the matter of

Outlook Tracom Private Limited

... Financial Creditor

Versus

Toshniwal Enterprises Controls Limited

... Corporate Debtor

-And-

In the matter of:

Kamal Nayan Jain,

Resolution Professional of Toshniwal Enterprises Controls Limited

... Applicant

Order reserved on: 10.03.2022

Order pronounced on: 04.04.2022

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (through video conferencing):

For the Applicant:

Mr. Shaunak Mitra, Advocate

Mr. Kamal Nayan Jain, Resolution Professional] In person

ORDER

Per: Balraj Joshi, Member (Technical)

1. This court was convened via video conferencing.
2. This is an application filed by the Resolution Professional with the approval of the Committee of Creditors ('CoC') seeking liquidation of the Corporate Debtor, viz., **Toshniwal Enterprises Controls Limited**[CIN: U51420WB1991PLC053374], on the ground that the Committee of Creditors rejected the submitted Resolution Plan and decided to liquidate the Corporate Debtor. The Applicant has sought for the following reliefs:
 - a. *To pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter III as provided under section 33 of the IBC, 2016; or*
 - b. *To appoint Mr. Kamal Nayan Jain to act as Liquidator as provided under section 34(1), and*
3. This Adjudicating Authority *vide* its order dated 22.11.2019 on a Petition filed by the Outlook Tracom Private Limited ('financial creditor') under section 7 of the Insolvency and Bankruptcy Code, 2016 ('the Code') directed initiation of the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and appointed Mr. Kamal Nayan Jain as the Interim Resolution Professional ('IRP'). Subsequently, this Adjudicating Authority *vide* its order dated 30.12.2019 appointed Mr. Kamal Nayan Jain as the Resolution Professional ('RP')
4. The Applicant submits that in terms of section 15 of the Code, public announcement was made on 27.11.2019, in **Indian Express** (English) and **Aajkal** (Kolkata Edition) (Bengali) newspapers, fixing 09.12.2019 as the last date for submitting the claim. The public announcement was uploaded on the website of IBBI.

5. The Committee of Creditors (CoC) was duly constituted on 16.12.2019 with 17 financial creditor and the Report certifying the constitution of the CoC was filed with the Adjudicating Authority on 16.12.2019. The first meeting of the CoC was held on 19.12.2019.
6. The Applicant states that the publication for invitation of Expression of Interests (EOI) in **Form G** was done on 24.01.2020 in **Financial Express** (English) and **Aajkal** (Bengali) newspapers. However, no EOI was received within its due date. The Form G was revised from time to time and published on 10.09.2020, 21.10.2020 and 16.12.2020. The last date of submission of EOI was 28.01.2021.
7. It is submitted that after the publication of the 2nd revised Form G dated 21.10.2020, the RP received one EOI from Blueblood Ventures Ltd., but the said Prospective Resolution Applicant failed to submit a resolution plan within the stipulated time period. Thereafter, the date of submission of the resolution plan was extended and the RP received a resolution plan from Blueblood Ventures Ltd. on 08.02.2021. Upon subsequent revisions to the resolution plan thus submitted, and upon checking all necessary compliances as per the provision of section 29A of the Code, the Resolution Applicant shared the compliant Resolution Plan with the CoC members on 23.11.2021.
8. In the 17th COC meeting held on 18.01.2022, the Committee of Creditors voted against the submitted resolution plan with 79.04% voting share and approved the decision to liquidate the Corporate Debtor under section 33 of the Code. The Committee of Creditors further decided to sell the Corporate Debtor as per regulation 39C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and appointed Mr. Kamal Nayan Jain as the liquidator.

9. Hence, the RP has filed an application under section 33(1)(a) of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor on expiry of the CIRP period.
10. The Applicant/Resolution Professional, **Mr.Kamal Nayan Jain** [Reg. No. IBBI/IPA-001/IP-P00029/2016-2017/10065], has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator, in terms of section 34(1) of the Code and has a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member.
11. We have considered the submission made by the learned Counsel on behalf of the Applicant/RP and perused the record.
12. Section 33(1) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process the Adjudicating Authority does not receive a resolution plan under sub-section (6) of section 30.
13. This Bench, therefore, hereby orders as follows: -
 - a. Prayers as sought for in I.A. (IB) No. 142/KB/2022 filed by Mr. Kamal Nayan Jain, RP of ToshniwalEnterprises Controls Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(1) of the Code;
 - b. **MrKamal Nayan Jain**[Reg. No. **IBBI/IPA-001/IP-P00029/2016-2017/10065**], is hereby appointed as Liquidator is hereby appointed as Liquidator as provided under section 34(1) of the Code,
 - 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., **Financial Express**(English) and **Aajkal** (Bengali) (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, Kolkata, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy

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of this Order to the Registrar of Companies, West Bengal,
Kolkata.

14. The application bearing **IA (IB) No. 142/KB/2022** shall stand disposed of in accordance with the above directions.
15. 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.
16. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
17. List the main **CP (IB) No. 1175/KB/2019** for reporting progress on **27th June, 2022.**

[Balraj Joshi]
Member [Technical]

[Rajasekhar V.K.]
Member [Judicial]

Signed on this, the 4th day of April, 2022

Suman M[LRA]