

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

IA(I.B.C) 357/KB/2023

In

C.P (I.B) 97/KB/2020

Under Section 33(1) of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Jyoti Maheswari

....Operational Creditor

Versus

Rajprotim Agencies Private Limited

CIN: U51109WB2003PTC096541

....Corporate Debtor

And

In the matter of:

Mr. Pratim Bayal, Resolution Professional of Rajprotim Agencies Pvt Ltd.

...Resolution Professional/Applicant

Order reserved on: 19/04/2023

Order Pronounced on: 22/06/2023

Coram:

Shri Rohit Kapoor : ***Member (Judicial)***

Shri Balraj Joshi : ***Member (Technical)***

Appearances through hybrid mode

For RP : Mr. Rishv Banerjee, Adv.
Mr. Rajarshi Banerjee, Adv.
Mr. Siddhant Makkar, Adv.

For Respondents in IA 661/2022 : Mr. Shahrukh Raja, Adv.
Ms. S. Mohta, Adv.

For Respondent in IA 1145/2022 : Mr. Shaunak Mitra, Adv.
Mr. Snehasish Sen, Adv.

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA (IBC)/357(KB)2023** is an application filed under section 33(1) (a) of the Insolvency and Bankruptcy Code, 2016 (in short “IBC”) by the Resolution Professional (“RP”) of **Rajprotim Agencies Private Limited**, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by **Mr. Pratim Bayal, the RP**.
3. This Adjudicating Authority, on a petition filed u/s. 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Jyoti Maheshwari (sole proprietress), Operational Creditor, *vide* order² dated 12/01/2022 in **CP (IB) No.97/KB/2020**, had ordered initiation of CIRP against Rajprotim Agencies Private Limited, (Corporate Debtor). **Mr. Sandip Mitra** was appointed as the Interim Resolution Professional (“IRP”). The said order was duly communicated to the IRP by the Registry.
4. This Adjudicating authority, on an application being **IA(IBC)/487(KB)2022** seeking replacement of resolution professional in view of the resolution passed by the CoC on 15.03.2022 with 84% voting share, *vide* order³ dated 21/07/2022 had ordered replacement of Mr. Sandeep Mitra, RP **with Mr. Pratim Bayal**, an Insolvency Professional as Resolution Professional.
5. *Vide* order⁴ dated 21.07.2022 passed in IA(IBC)552/2022 had granted 90 days extension beyond 180 days CIRP period and also granted exclusion of 121 days from 19.04.2022 till 18.08.2022 *vide* order⁵ dated 30.09.2022 passed in IA(I.B.C)/1060(KB) 2022, thereby 270 days CIRP period had ended on 07.02.2023.

¹Affidavit at pages 23A to 25 of the application

² Annexure A at pages 26 to 31 of the application

³ Annexure C at pages 34 to 36 of the application

⁴ Annexure C at pages 34 to 36 of the application

⁵ Annexure E at pages 40 to 41 of the application

6. 1st Form G inviting Expression of Interest⁶ (in short “**EoI**”) was published on 15/06/2022 by the erstwhile Resolution Professional (RP). Since no EoIs were received, 2nd EoI⁷ in Form G was published on 23.08.2022.
7. Pursuant to second publication of Form-G two EoIs were received from following prospective resolution applicants (in short “**PRA**”):
 - (i) Agarwal Packers and Movers Limited and
 - (ii) Nakshatra Corporate Advisors Limited.

As per **Form-G** the last date for submission of resolution plan was 12/10/2022. At the request of the aforesaid two PRAs time to submit the resolution plan was extended till 31.10.2022. However, no resolution plan was received.

8. At the 10th CoC Meeting⁸ held on 01/12/2022, Mr. Partha Pratim Banerjee one of the suspended Members of the Board of Directors of the Corporate Debtor had proposed to avail the opportunity under the provisions of section 12A of the IBC. Accordingly, time was granted till 12/12/2022 and further extended till 23/12/2022 for settlement. However, neither any money was deposited by the said suspended members of the Corporate Debtor nor any communication received in this regard.
9. The COC at its 13th Meeting⁹ held on 30.01.2023 passed the following resolutions for initiation of liquidation proceeding against the Corporate Debtor with 73.1% voting share and authorised the applicant to file application under section 33. The said resolutions are reproduced herein below:-

“RESOLVED THAT pursuant to the provision of Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (including all the amendments and modifications for the time being in force) and the regulations made thereunder, approval of the committee of creditors be and is hereby accorded to initiate liquidation proceedings of Rajprotim Agencies Pvt. Ltd. (“Corporate Debtor”).”

“RESOLVED FURTHER THAT the Resolution Professional be & is hereby authorized to file an application and approach the Adjudicating Authorities,

⁶ Annexure B at pages 32 to 33 of the application

⁷ Annexure D at pages 37 to 39 of the application

⁸ Annexure G at pages 44 to 53 of the application

⁹ Annexure J at Pages 74 to 90 of the application

Hon'ble NCLT, Kolkata, to intimate the decision of the committee of creditors with a request to pass an order of liquidation of Corporate Debtor in terms of Section 33 (2) of IBC, 2016.”

“RESOLVED FURTHER THAT pursuant to Regulation 39C(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (including all the amendments and modifications for the time being in force) and other applicable rules and regulations made thereunder, the committee hereby recommends that the liquidator appointed shall explore sale of the Corporate Debtor as a going concern under clause (e) of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, if an order for liquidation is passed under section 33 of the Code.”

10. The COC at its 11th Meeting¹⁰ held on 17.12.2022 has consented appointment of RP as the liquidator. The Applicant/RP has given his written consent¹¹ to act as Liquidator of the Corporate Debtor under section 34 of the IBC along with Authorization for Assignment in **Form B**¹².
11. After taking into consideration of extension of 90 days and exclusion of 121 days from the CIRP period, 270 days CIRP period had ended on 07/02/2023.
12. 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 that 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.
13. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
14. This Bench, therefore, hereby orders as follows:-
 - a. **IA (IBC)/357(KB)2023** filed by **Mr. Pratim Bayal, RP of Rajprotim Agencies Private Limited**, the Corporate Debtor, is allowed. Consequently,

¹⁰ Annexure H at pages 54 to 62 of the application

¹¹ At pages 91 to 92 of the application

¹² At page 93 of the application

the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereto;

- b. **Mr. Pratim Bayal, RP**, having Registration No. **IBBI/IPA-003/IP-N00213/2018-2019/12385**, of **Rajprotim Agencies Private Limited [CIN: U51109WB2003PTC096541]** of 18/1, Tarapukur Main Road, Ghosh Para, Agarpara, Kolkata 700109, 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., one in English and one in 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**.
15. The Application bearing **IA(IBC)/357(KB)2023** shall stand disposed of in accordance with the above directions.
16. **CP(IB)/97(KB)/2020** is to come up for filing of Periodical Progress Report on **09/08/2023**.
17. 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.
18. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 22nd day of June, 2023.

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