IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

IA (IB) No. 681/KB/2022
in
CP (IB) No. 1689/KB/2019

An Application under section 33(1)(a) of Insolvency & Bankruptcy Code, 2016.

In the matter of

Dhiraj Enterprise Private Limited

...Financial Creditor

versus

Janpragti Commodities Private Limited

...Corporate Debtor

-And-

In the matter of:

Mr. Sudipta Ghosh

Resolution Professional of Janpragti Commodities Private Limited

… Applicant

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (through video conferencing):

For the Applicant

1. Mr. Shaunak Mitra, Adv.
2. Mr. Aniket Chaudhury, Adv.
3. Mr. Sudipta Ghosh, RP in person

Reserved for orders dated : 07.09.2022

Pronouncement of order dated : 08.12.2022

ORDER

Per Balraj Joshi, Member (Technical):

1. This is an application filed by the Insolvency Professional upon the instructions of the Committee of Creditors ('*CoC*') seeking liquidation of the Corporate Debtor, *viz.,* Janpragti Commodities Private Limited [CIN:U51109WB1995PTC068406], on the ground that no resolution plan was received by the Resolution Professional.

2. This Adjudicating Authority *vide* its order dated 15.07.2021 on a Petition filed by the Dhiraj Enterprise 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. Kailash Kumar Rathi** as the Interim Resolution Professional **('*IRP*'**). The IRP was later appointed as the Resolution Professional ('*RP'*).

3. In the 1st CoC Meeting held on August 13, 2021, it was resolved to appoint Mr. Sudipta Ghosh as the Resolution Professional in place of Mr. Kailash Kumar Rathi, IRP, which was approved by this Adjudicating Authority vide order dated December 01, 2021.

4. The Resolution Professional informed the CoC that Form G for invitation of Expression of Interest needs to be issued and as per Section 25(2)(h) of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016), the eligibility criteria for Prospective Resolution Applicants needs to be approved by the CoC. The RP thereafter placed before the meeting his Report on eligibility criteria for Prospective Resolution Applicants for discussion in the meeting.

5. The RP convened the 8th Meeting of the CoC on May, 2022 and the CoC noted that the Corporate Debtor was not a going concern and there was no revenue generation for the last two (2) years. There is no fixed asset for the

Corporate Debtor. The total Assets of the Corporate Debtor comprises of Loans and Advances, Non-current Investments and Trade Receivables. The chance of recovery from the Loans and Advances and the Trade Receivables seems to be remote and despite repeated follow up by the RP, no reply / correspondence had been received from their end. Considering the situation and financial position of the Corporate Debtor and after detailed discussion, the CoC decided not to publish Form-G, inviting Expression of Interest and passed the Resolution with 93.53% voting rights during the 8th Meeting of the CoC held on May 13, 2022 to initiate liquidation process of the Corporate Debtor.

6. Hence, the RP has filed an application under section 33 of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor.

7. That the CoC has passed resolution by 93.53% voting shares that the Corporate Debtor be liquidated under the provisions of section 33(2) of the Code.

8. The Applicant/Resolution Professional**, Mr. Sudipta Ghosh** having Regn. IBBI/IPA-001/IP-P00484/2017-2018/10872, has agreed to act as liquidator to carry on the process of liquidation and given his written consent to act as Liquidator, under Regulation 3(1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 on 06.07.2022.

9. We have considered the submission made by the learned Counsel on behalf of the Applicant/RP and perused the record.

10. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 93.53% voting share to liquidate the Corporate Debtor.

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

a. Prayers as sought for in I.A. (IB) No. 681/KB/2022 filed by Mr. Sudipta Ghosh, RP of Janpragti Commodities Private Limited, the Corporate Debtor, is allowed and 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. Sudipta Ghosh having Regn. No.** IBBI/IPA-001/IP-P00484/2017-2018/10872, 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 Aajkaal (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 of this Order to the Registrar of Companies, West Bengal, Kolkata.

12. The application bearing **IA (IB) No. 681/KB/2022** shall stand disposed of in accordance with the above directions.

13. 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.

14. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

15. List the main **CP (IB) No. 1689/KB/2019** for reporting progress on **16.01.2023**.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Signed on this, the 08th day of December, 2022.