



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

**IA(IBC)/677(KB)2022
in
CP(IB)/2098(KB)2019**

*Under section 33(1)(a) of the Insolvency & Bankruptcy Code, 2016
read with regulations 39B, 39C and 39D of IBBI (Insolvency Resolution
Process for Corporate Persons) Regulations, 2016 and
Regulation 32(F) of the IBBI (Liquidation Process) Regulations, 2016*

In the matter of:

Chaitanya Alloys Private Limited

.... Financial Creditor

Versus

Shyama Iron and Alloys Private Limited
(U27109WB1997PTC084572)

.... Corporate Debtor

And

In the matter of:

Sushanta Kumar Choudhury,
Resolution Professional of Shyama Iron and Alloys Private Limited

... Applicant

Order reserved on: 08/02/2023

Order pronounced on: 18/04/2023

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**
Shri Balraj Joshi : **Member (Technical)**



Appearances (through hybrid mode):

For RP : Mr. A. S. Ray, Adv.
Mr. Sushanta Kumar Choudhury,
RP in person

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/677(KB)2022** 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 **Shyama Iron and Alloys Private Limited**, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by Ms. Sushanta Kumar Choudhury, 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 Chaitanya Alloys Private Limited, the Financial Creditor, *vide* order² dated 18/11/2021 in CP(IB)/2095(KB)2019, had ordered initiation of CIRP against Shyama Iron and Alloys Private Limited, the Corporate Debtor. Mr. Sushanta Kumar Choudhury 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 21/11/2021 and 20/11/2021 respectively inviting claims from the creditors, stipulating last date of submission of claims on 01/12/2021.

¹ At pages 16 and 17 of the application

² Annexure “1” at pages 25 to 28 of the application

³ Annexure “A” at pages 6 and 7 of the supplementary affidavit affirmed on 03/02/2023



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5. A copy of the order of commencement of CIRP was submitted to MCA⁴ as well as Income Tax and GST Department. Constitution of Committee of Creditors⁵ (“CoC”) was submitted to the Adjudicating Authority on 08/12/2021 and subsequently, the change in the constitution of the CoC due to assignment of debts by one the creditor, i.e., M/s. BIGIL was intimated to this Adjudicating Authority on 11/03/2022
6. The first CoC meeting⁶ was held on 15/12/2021. At the said 1st CoC meeting, the CoC has confirmed the continuation of the IRP as Resolution Professional (“RP”). The second CoC meeting⁷ was held on 14/01/2022. The salient point of discussions held in the meeting were given as under:
- (a) The claim of Rs.52.78 Crores made by the Commissioner of Commercial Taxes, Govt. of West Bengal, so far treated as contingent liability in the books of account, was accepted on the verdict given by the Appellate & Revisional Board of the Department of Commercial Taxes, Government of West Bengal;
 - (b) Mr. Pranab Kumar Chakraborty, FCMA & RV and Mr. Anil Kumar Gupta, FCA & RV were appointed (**Annexure 7**) as registered valuers on 27/01/2022 for valuation of securities and Financial Assets (SFA);
 - (c) Mrs. Arundhati Basu was appointed (**Annexure 8**) as consultants to assist the Resolution Professional in the matter of accounting, taxation and filing of returns;
 - (d) Information Memorandum (IM) (**Annexure 9**) containing all details of the Corporate Debtors were circulated to all members of the CoC on 07/01/2022.

⁴ Annexure “3” at pages 30 to 32 of the application

⁵ Annexure “4” at pages 33 to 58 of the application

⁶ Annexure “5” at pages 59 to 63 of the application

⁷ Annexure “6” at pages 64 to 69 of the application



7. In terms of regulation 36A(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 Form G⁸ was first published in “*Business Standard*” (English) and “*Aajkal*” (Bengali) on 18/01/2022, stipulating last date of receipt of Expression of Interest (“EoI”) as 02/02/2022. Out of 8 (eight) EoI received, three were rejected due to submission after due date. After approval of the CoC in its 3rd Meeting⁹ held on 28/01/2022, Request for Resolution Plan (‘RFRP’) and eligibility criteria were issued to those who submitted their EoI within time for submission of Resolution Plan but none of them submitted their Resolution Plan.
8. At the 4th CoC meeting¹⁰ held on 07/02/2022, the applicant apprised the CoC that the claims of the Commissioner of Commercial Taxes, Govt. of West Bengal has been revised and reduced by Rs.5.80 Crores on account of advance payment made to the Commissioner of Commercial Taxes under protest against the demand made by the Bureau of Investigation, Commercial Taxes, thereby the claim has been reduced to Rs.46.98 Crores from Rs.52.78 Crores resulting in reduction of voting share from 30.72% to 28.30%.
9. At the 5th CoC meeting¹¹ held on 02/03/2022, the applicant apprised the CoC that against 2nd publication of Form G¹², only one successful EoI was received from M/s. Sunrise Industries, New Delhi within the due date but the party finally backed out/ withdraw the application *vide* e-mail dated 12/03/2022 on the ground that the Corporate Debtor does not have tangible fixed assets.
10. At the 6th CoC meeting¹³ held on 28/03/2022, the CoC with 99.79% voting share has decided for liquidation of the Corporate Debtor under section 33(1)(a) of the Code and passed the following Resolutions: -

⁸ Annexure “B” at pages 8 and 9 of the supplementary affidavit affirmed on 03/02/2023

⁹ Annexure 12 at pages 95 to 98 of the application

¹⁰ Annexure 13 at pages 99 to 103 of the application

¹¹ Annexure 14 at pages 104 to 108 of the application

¹² Annexure “B” at pages 10 and 11 of the supplementary affidavit affirmed on 03/02/2023

¹³ Annexure “15” at pages 109 to 114 of the application



“Resolved that the initiation of liquidation process against Shyama Iron & Alloys Private Limited, the Corporate Debtor, be and is hereby approved by 99.79% voting share of the Committee of Creditors as per requirement of the provisions of section 33(2) of the Insolvency and Bankruptcy Code, 2016.”

“Resolved further that the Resolution Professional be and is hereby authorized to submit the petition before the Adjudicating Authority (NCLT) for approval of the liquidation process and passing the liquidation order.”

11. At the 7th CoC meeting¹⁴ held on 11/04/2022 the CoC has nominated Mr. Uttam Tekriwal, an insolvency professional to act as Liquidator of the Corporate Debtor and accordingly has passed the following resolution with 99.79% voting share:

“Resolved that Mr. Uttam Tekriwal, an Insolvency Professional having registered with IBBI vide no. IBBI/IPA-001/IP-P02192/2020-2021/13365 and who has consented to act as Liquidator of Shyama Iron & Alloys Private Limited, the Corporate Debtor be and is hereby appointed as Liquidator of the Corporate Debtor (CD).”

Further resolved that the Resolution Professional be and is authorized to file a petition before the Hon’ble National Company Law Tribunal (NCLT) for approval of the liquidation process and Liquidator of the CD.”

12. Mr. Uttam Tekriwal has submitted his consent¹⁵ dated 31/03/2022 to act as the Liquidator of the Corporate Debtor along with Authorisation for Assignment (AFA) and IBBI registration certificate.
13. The 180 days CIRP period has ended on 16/05/2022 and no application for extension of the CIRP period has been filed.

¹⁴ Annexure “16” at pages 115 to 119 of the application

¹⁵ Annexure “17” at pages 120 to 123 of the application



14. 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.
15. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
16. This Bench, therefore, hereby orders as follows: -
- a. IA(IBC)/677(KB)2022 filed by **Mr. Sushanta Kumar Choudhury, RP** of **Shyama Iron and Alloys 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. Uttam Tekriwal [Reg. No. IBBI/IPA-001/IP-P02192/2020-2021/13365]** of **35, Dhakuria Station Road, Kolkata 700031, having e-mail i.d. uttam.tekriwal@gmail.com**, telephone no. **98319 13569** 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 “*Business Standard*” (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**.

17. The application bearing **IA(IBC)/677(KB)2022** shall stand disposed of in accordance with the above directions.
18. **CP(IB)/2098(KB)2019** is to come up for filing of Periodical Progress Report on **13/07/2023**.
19. The Registry is directed to send e-mail copies of the order forthwith to all the



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parties and their Ld. Counsel for information and for taking necessary steps.

20. 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 18th day of April, 2023.

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