

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- I
KOLKATA

IA (IB) No. 305/KB/2022
in
CP (IB) No. 2171/KB/2019

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

In the matter of

Darkwell Merchandise Private Limited

... Operational Creditor

Versus

SKP Steel Industries Private Limited

... Corporate Debtor

-And-

In the matter of:

Mr. Soumitra Lahiri,

Resolution Professional of SKP Steel Industries Private Limited

... Applicant

Order reserved on : 29th April, 2022

Order pronounced on : 10th May, 2022

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (through video conferencing):

For the Applicant:

1. Mr. Vikram Wadhera, Advocate
2. Ms. Vidushi Chokhani, Advocate
3. Mr. Soumitra Lahiri, RP in person

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In Re Liquidation of SKP Steel Industries Pvt Ltd.
IA (IB) No. 305/KB/2022 in CP (IB) No. 2171/KB/2019

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., SKP Steel Industries Private Limited [CIN: U70102WB2012PTC189246], on the ground that the CIRP period has expired and no resolution plan was approved by the Committee of Creditors ('CoC'). The Applicant has sought for the following reliefs:
 - a. *Pass an order for liquidation of the Corporate debtor;*
 - b. *Pass an order appointing Mr. Soumitra Lahiri, Insolvency Professional having registration number IBBI/IPA-001/IP-P00734/2017-18/11232 as the Liquidator to the Corporate Debtor*
3. This Adjudicating Authority *vide* its order dated 8th February 2021 on a Petition filed by Parag Sales Corporation ('operational creditor') under section 9 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. Uday Narayan Mitra** as the Interim Resolution Professional ('IRP').
4. The Applicant submits that in terms of section 15 of the Code, public announcement was made on 11th February 2021, in **Financial Express** (English) and **Ek din** (Bengali) newspapers. The public announcement was uploaded on the website of IBBI.
5. Subsequently, the Committee of Creditors (CoC) in its meeting dated 13th April 2021 by a vote of 99.35% resolved to replace the IRP with the Applicant herein and moved an application under section 22(3) of the Code. This Tribunal, *vide* order dated 21st June 2021, confirmed the appointment of the applicant herein as the Resolution Professional (RP) of the Corporate Debtor.

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6. The Committee of Creditors (CoC) was duly constituted with seven financial creditors and the report certifying the constitution of the CoC was filed with the Adjudicating Authority.
7. The Applicant states that the publication for invitation of Expression of Interests (EoIs) in Form G was done on 14th July 2021 in **Financial Express** (English), **Ekdin** (Bengali) newspapers on 31st July 2021, the Provisional List of Prospective Resolution Applicants was circulated and on 10th August 2021, the Resolution Professional circulated the Final List of Prospective Resolution Applicants.
8. The Applicant received two Resolution Plans from resolution applicants who confirmed eligibility in conformity with the requirements laid down under section 29A of the Code. The RP also checked the aspects of compliance of section 30(2) of the Code as well as regulations 37,38 and 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and separate report pertaining to each resolution plan was submitted to the perusal of the CoC.
9. The CoC in terms of its 14th meeting dated 9th March 2022 and consequent e-voting, was of the view that the resolution amount being offered in the said resolution plans were not satisfactory. Since, the CIRP period would come to an end on 4th May 2022, the CoC, with 94.94% voting share approved liquidation of the corporate Debtor, subject to the approval of the Adjudicating Authority.
10. In the said meeting, it was further resolved that the Corporate Debtor will continue to function during the Liquidation Period and therefore as stipulated under section 33(7) of the Code, the order of liquidation will not be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor.
11. Further, in terms of regulation 39C of the CIRP Regulations, while recommending liquidation of the Corporate Debtor under section 33 of the Code, the CoC recommended that the liquidator should first explore

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sale of the Corporate Debtor as a going concern under regulation 32(e) of the CIRP Regulations or sale of the business of the Corporate Debtor as a going concern under clause (f) thereof.

12. It was further resolved that as stipulated under regulation 39D of the CIRP Regulations, while suggesting liquidation of the Corporate Debtor under section 33 of the Code, the CoC, in consultation with the Applicant have fixed the fee payable to the Liquidator.
13. The CoC have further identified all assets of the Corporate Debtor comprising of warehouses, plant and machinery etc. spread all over India, which according to commercial considerations of the Committee of Creditors, ought to be sold as a going concern under regulation 32(e) and (f) of the CIRP Regulations.
14. Hence, the RP has filed an application under section 33(2) of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor on expiry of the CIRP period.
15. The Applicant/Resolution Professional, **Mr. Soumitra Lahiri** [Reg. No. IBBI/IPA-001/IP-P00734/2017-2018/11232], 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.
16. We have considered the submission made by the learned Counsel on behalf of the Applicant/RP and perused the record.
17. 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 corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six percent of voting share to liquidate the corporate debtor
18. This Bench, therefore, hereby orders as follows: -

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- a. Prayers as sought for in **I.A. (IB) No. 305/KB/2022** filed by Mr. Mr. Soumitra Lahiri, Resolution Professional of SKP Steel Industries 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;
- b. **Mr. Soumitra Lahiri** [Reg. No. IBBI/IPA-001/IP-P00734/2017-2018/ 11232], 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 **Ekdin** (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,

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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.

19. The application bearing **IA (IB) No. 305/KB/2022** shall stand disposed of in accordance with the above directions.
20. 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.
21. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
22. List the main **CP (IB) No. 2171/KB/2019** for reporting progress on **25th July 2022**.

**BALRAJ
JOSHI**

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[Balraj Joshi]

Member [Technical]

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[Rajasekhar V.K.]

Member [Judicial]

Signed on this, the 10th day of May, 2022

Suman M[LRA]