

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

IA (IB) No. 429/KB/2023

in

CP (IB) No. 148/KB/2021

An application under section 33 of Insolvency & Bankruptcy Code, 2016

In the matter of

SREI Equipment Finance Limited

... *Financial Creditor*

Versus

Tattva Valuers Private Limited

... *Corporate Debtor*

-And-

In the matter of

Mr. Rakesh Kumar Agarwal, Resolution Professional of Tattva Valuers Private Limited

... *Applicant*

Order pronounced on: 05.03.2024

Coram:

Smt Bidisha Banerjee, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (through video conferencing):

Mr. Rahul Auddy, Adv
Mr. Aditya Gooptu, Adv

] For RP

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.
2. This application has been filed under section 33 of the Insolvency and Bankruptcy Code, 2016 (in short "IBC") by the Resolution Professional ("RP") of Tattva Valuers

Private Limited, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit duly affirmed by the RP.

3. This application filed by the Resolution Professional with the approval of the Committee of Creditors ('CoC') seeking liquidation of the Corporate Debtor, viz., Tattva Valuers Private Limited [CIN: U51103WB2005PTC224117], on the ground that the CoC has decided to liquidate the Corporate Debtor. The applicant has sought for the following reliefs:

a. To initiate Liquidation Process of the Corporate Debtor as per Section 33 of the Insolvency and Bankruptcy Code, 2016;

b. Appoint the Resolution Professional as the Liquidator of the Corporate Debtor or any other person as this Hon'ble Tribunal may deem fit or proper

c. Such further and/or other order or orders as this Hon'ble Court may deem fit and proper.

This Adjudicating Authority *vide* its order dated 15th June 2022 on a Petition filed by SREI Equipment Finance 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. Rakesh Kumar Agarwal** (the applicant) as the Interim Resolution Professional ('IRP') *vide* the same order. The applicant was later appointed as the Resolution Professional ('RP') in the 1st CoC meeting dated 13.06.2022.

4. The applicant submits that in terms of Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 Code, public announcement was made on 17th June 2022, in *Financial Express* (English) and *Aajkal* (Bengali) newspapers having wide circulation where the Registered Office of the Corporate Debtor, thereby inviting claims from creditors of the Corporate Debtor. The public announcement was uploaded on the website of IBBI.

5. The Applicant, after the announcement, received three claims from the Financial Creditors and no claim from the Operational Creditor and thus in accordance with the CIRP Regulations constituted the Committee of Creditors (CoC) on 7th July, 2022.
6. The Resolution Professional (RP) has conducted six Committee of Creditors (COC) meetings on the dates of 13th July 2022, 22nd August 2022, 21st September 2022, 3rd November 2022, 13th December 2022, and 15th January 2023. Furthermore, the RP, on 21st July 2022, appointed valuers and expeditiously formulated the Information Memorandum of the Corporate Debtor (CD) by 1st August 2022. The Resolution Professional (RP) has consistently submitted progress reports, with a total of four reports filed to date.
7. The RP has duly effectuated the publication of Form G on three occasions: firstly, on 29th August 2022; secondly, on 28th September 2022; and thirdly, on 14th November 2022, in *Financial Express* (English) at Delhi and Kolkata, *Jansatta* (Hindi) at Delhi and *Aajkal* (Bengali) at Kolkata. Regrettably, none of these publications elicited any responses.
8. The 3rd iteration of Form G was disseminated on 14th November 2022, specifying a deadline for Expression of Interest (EOI) by 29th December 2022. However, considering the culmination of the Corporate Insolvency Resolution Process (CIRP) at the end of the stipulated 180 days on 11th December 2022, the timeline for EOI and subsequent resolution plan submission extended beyond the statutory period. This matter was deliberated in the 4th COC meeting, wherein unanimous approval, with 100% voting, was garnered for a 90-day extension pursuant to section 12 of the Code.
9. Upon the adoption of the aforementioned resolution, the Resolution Professional (RP) submitted an application seeking an additional period of 90 days, as sanctioned by Section 12(2) of the Insolvency and Bankruptcy Code, 2016. Designated as IA No. 1476/2022, the application resulted in an order, dated 8th December 2022, wherein this Hon'ble Tribunal granted an extension of the Corporate Insolvency Resolution Process (CIRP) period for 90 days, extending it from 11th December 2022 to 11th March 2023.

10. Subsequently, the 5th Committee of Creditors (COC) meeting, convened on 13th December 2022, saw the Resolution Professional (RP) apprising the COC of the extension granted to the Corporate Insolvency Resolution Process (CIRP). The RP further communicated the absence of responses to the 3rd Form G and the non-submission of Expression of Interest (EOI) by any party. In the wake of these developments, the COC engaged in extensive deliberations to determine whether to initiate another round of EOI, considering the previous three attempts had proved futile, or to proceed with the liquidation of the Corporate Debtor (CD). After careful consideration, the COC resolved to proceed with the liquidation of the CD. The detailed minutes of the 5th COC meeting, along with voting results, are attached herewith and denoted as **Annexure "A."**
11. Subsequent to that, the 6th Committee of Creditors (COC) meeting convened on 15th January 2023, wherein the COC extensively deliberated on critical matters. These included determining whether the Corporate Debtor (CD) should be liquidated as a going concern, the continuity of the Resolution Professional (RP) as the Liquidator, and strategizing on addressing any shortfall in liquidation costs in comparison to available liquid funds. After thorough discussions, the COC resolved to proceed with the liquidation of the CD as a going concern, while also leaving the option of arrangement open. The COC concurred on allowing the RP to persist as the Liquidator. Notably, considerations around the estimated liquidation cost aligning with available liquid funds were discussed, with the understanding that any potential shortfall or contribution issues would be revisited by the COC, now the SCC (Sub-Committee of Creditors), if the situation arose. The detailed minutes of the 6th COC meeting, inclusive of voting results, are attached herewith and denoted as **Annexure "B."**
12. It is to be mentioned that the Applicant gave the percentage of voting of the 5th and 6th CoC meetings in a Supplementary Affidavit dated 28th April 2023 as they were not included in the original Application marked as **Annexure A** and **Annexure B** respectively.
13. The Consent of the RP to serve as Liquidator, inclusive of the Insolvency Professional (IP) Authorization for Assignment (AFA), is enclosed as **Annexure "C"** although he

had not attached the AFA in the said Annexure and thus had to submit a Supplementary Affidavit dated 8th June, 2023.

14. Additionally, a copy of FORM H, serving as the compliance certificate for the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor (CD), is attached herewith under **Annexure “D”**

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

a. IA (IB) No. 429/KB/2023 filed by **Mr. Rakesh Kumar Agarwal, RP** of Tattva Valuers Private Limited, the Corporate Debtor, is allowed. Consequently, the Corporate Debtor is ordered to be liquidated in terms of section 33 of the Code read with subsection (1) thereof;

b. Though the RP has given his consent to act as the Liquidator of the Corporate Debtor but in view of the IBBI Circular no. Liq-12011/214/2023-IBBI/840 dated 18/07/2023 for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the Code, we hereby appoint **Mr. Pratap Mukherjee IP** (Reg No. IBBI/IPA-001/IP-P-02515/2021- 2022/13851 having e-mail id pratapmukherjee62@gmail.com given at SI.No.43 of the Insolvency and Bankruptcy Board of India, panel for Jan 1, 2024 to Jun 24 - Kolkata Bench, as Liquidator in terms of section 34(1) of the Code. His appointment shall be subject to his/her possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he/she is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. The Liquidator is directed to submit his/her consent to act as Liquidator within 10 days of receipt of this order. The erstwhile RP shall handover all papers and documents in his possession concerning the Corporate Debtor to the Liquidator appointed in this matter within 10 days.

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, 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/her 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.
- 16.** The application bearing **IA (IB) No. 429/KB/2023** shall stand disposed of in accordance with the above directions.
- 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.
- 19.** List the main **CP (IB) No. 148/KB/2021** for reporting progress on **15-04-2024**

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

In Re Liquidation of Tattva Valuers Private Limited.
IA (IB) No. 429/KB/2023 in CP (IB) No. 148/KB/2021

- 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 issues, if applied for, upon compliance of all requisite formalities.

[Balraj Joshi]
Member [Technical]

[Bidisha Banerjee]
Member [Judicial]

Signed on this, the 5th day of March, 2024

AJS[L.R.A]