



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

**IA(IBC)/959(KB)2022
in
CP(IB)/122(KB)2021**

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

In the matter of:

M/s. Panchkoti Traders Private Limited
(CIN: U51909WB2012PTC173619)
Having its registered office at 63, Radha Bazar Street,
3rd Floor, Room No. 43, Kolkata 700001

.... Corporate Applicant

And

In the matter of:

Mr. Neeraj Kejriwal,
Resolution Professional of M/s. Panchkoti Traders Private Limited

... Applicant

And

**IA(IBC)/159(KB)2023
Connected with
IA(IBC)/959(KB)2022
in
CP(IB)/122(KB)2021**

Under section 54(1) of the Insolvency & Bankruptcy Code, 2016

In the matter of:

M/s. Panchkoti Traders Private Limited
(CIN: U51909WB2012PTC173619)
Having its registered office at 63, Radha Bazar Street,
3rd Floor, Room No. 43, Kolkata 700001

.... Corporate Applicant

And

In the matter of:

Mr. Neeraj Kejriwal,
Resolution Professional of M/s. Panchkoti Traders Private Limited

... Applicant



Order reserved on: 05/07/2023

Order pronounced on: 21/11/2023

Coram:

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

Appearances (through video conferencing):

For RP : Mr. Ratul Das, Adv.
Mr. Ritoban Sarkar, Adv.
Ms. Sutapa Mitra, Adv.
Ms. Ankana Basu, Adv.

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.
2. For convenience both IA(IBC)/959(KB)2022 and IA(IBC)/159(KB)2023 are taken together for consideration.
3. **IA(IBC)/959(KB)2022** is an application filed by the Resolution Professional (“RP”) of **Panchkoti Traders Private Limited**, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed on 03/09/2022 by Mr. Neeraj Kejiwal, the RP.
4. **IA(IBC)/159(KB)2023** is an application filed by the Resolution Professional (“RP”) of **Panchkoti Traders Private Limited**, the Corporate Debtor, praying for dissolution of the Corporate Debtor. This application is supported by an affidavit² duly affirmed on 06/01/2023 by Mr. Neeraj Kejiwal, the RP.
5. This Adjudicating authority *vide* order³ dated 20/04/2022 in

¹ At pages 29 and 30 of IA/959/2022

² At pages 15 and 16 of IA/159/2023

³ Annexure “A” at pages 11 to 16 of IA/959/2022

CP(IB)/122(KB)2021, had ordered initiation of CIRP against the Corporate Applicant (Corporate Debtor). Mr. Neeraj Kejriwal was appointed as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry, NCLT *vide* e-mail dated 20/04/2022.

6. In terms of regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, **CIRP Regulations 2016**), Public Announcements⁴ in **Form A** was published in “*Financial Express*” (English) and “*Aajkal*” (Bengali) inviting claim from the creditors and formed Committee of Creditors with sole petitioning Operational Creditor.
7. At the 1st CoC meeting held on 20/05/2022, the CoC had approved appointment of IRP as RP. Minutes of the 1st CoC meeting forms Annexure “B”⁵.
8. At the 2nd CoC meeting held on 14/07/2022, the CoC has approved appointment of Valuers for valuation of assets of the Corporate Debtor. A copy of minutes of the 2nd meeting of the CoC meeting forms Annexure “C”⁶. It is stated in the application that from the valuation reports it transpired that the Corporate Debtor has a very negligible assets and most of the assets of the Corporate Debtor are in the form of Shares which is very difficult to sell and recover. As per the said reports most of the investments of the Corporate Debtor as on date have a very low value. Hence, resolution of the Corporate Debtor would not be feasible and it is expected that no Resolution Applicant will show any interest.⁷
9. It is stated in the application that 3rd meeting of the CoC was convened on 30/08/2022 wherein the resolution to recommend liquidation of the Corporate Debtor under section 33(2) was approved.⁸ A copy of the minutes of the 3rd CoC

⁴ Annexure “B” at page 17 of IA/959/2022

⁵ At pages 17 to 19 of IA/959/2022

⁶ At pages 20 to 22 of IA/959/2022

⁷ Averments in paragraph 3 at page 8 of IA/959/2022

⁸ Averments in paragraph 4 at page 9 of IA/959/2022

meeting forms Annexure “D”⁹. It was recorded in the minutes of the 3rd CoC meeting as follows: -

“ITEM NO.1 PROGRESS IN THE CIRP

The RP stated that till today he couldn't meet or talk any of the directors of the company. Advocate Sanwal Tibrewal is co-ordinating in providing the documents of the company. The share certificates of quoted share (not in demat account) were not given as those are missing. Investment in two companies are showing in demand account but those are not shown in Audited Balance sheet. The reason for not showing in Audited Balance sheet was stated as the value of those shares are Nil. The equity share Vindus Holdings Ltd. (listed on Calcutta Stock Exchange) is showing in Balance Sheet but the share is not showing in Demant Account statement. The A/R of CD is said that the share of the company is in physical form but the physical share certificates are missing. The director of the CD has given a letter stating that he will compensate the CD (CIRP Process) if the shares are not found.”

“The valuers have assigned very less value to the Investment held in the name of the company. The only assets in the name of company are investment in Unquoted shares and some quote shares. The unquoted shares are shown at nil value by valuers and these shares may not find any buyer. Only one share Vindus Holdings Ltd. (Listed on Calcutta Stock Exchange) has some value but this share also may not find any buyer.”

“ITEM NO. 2A TO APPROVE AND VOTE ON INITIATION OF LIQUIDATION

In the 2nd CoC meeting it was concluded that the company doesn't have much of realisable assets and the company is also not a going concern, so the resolution of the corporate debtor is not possible and recommending the liquidation of corporate debtor under section 33(2) of IBC is the only option left. So, the company should be directly taken to Liquidation without going to procedure of EOI.”

“RP had provided the calculation of the Liquidation Cost Under clause (16) of section 5 of IBC in the meeting. The COC accepted the liquidation cost and agreed to pay the liquidation expenses.”

The resolution to recommend the liquidation of corporate debtor under section 33(2) of IBC was put to vote and it was voted in favour of the resolution.”

⁹ At pages 23 to 25 of IA/959/2022



10. RP has given his consent to act as Liquidator of the Corporate Debtor.
11. The applicant convened 4th meeting of the CoC on 07/12/2022 wherein both the options, Liquidation and Dissolution, were discussed. Since realisable value of the asset of the company are insufficient to meet the full CIRP cost as well as Liquidation Cost and CoC was not willing to bear the Liquidation expenses, the CoC resolved for dissolution of the Corporate Debtor without going into liquidation process. A copy of the minutes of 4th CoC meeting held on 07/12/2022 forms Annexure “B” ¹⁰. It was recorded in the 4th CoC meeting as follows: -

“It was discussed in the meeting that the only assets in the name of company are investment in Unquoted shares and some quoted shares. The unquoted shares are shown at Nil value by valuers and these shares may not find any buyer. Only one share “Vindus Holdings Ltd.” (Listed on Calcutta Stock Exchange and held in physical form) has some value but this share also may not find any buyer. The valuers have assigned Rs.1,84,240, as Liquidation value of the Quoted share but also stated that these Equity shares are not tradeable, hence it is very difficult to sell these shares.”

“Both the option Liquidation and Dissolution was discussed in the meeting. The CoC member said that the realizable value of the asset of the company are insufficient to meet the full CIRP Cost as well as Liquidation Cost and he is also not willing to bear the liquidation expenses then the corporate debtor can be dissolved without going into liquidation process, if Adjudicating Authority permits to dissolve directly.

12. Accordingly, the RP has filed IA(IBC)/159(KB)2023 on 11/01/2023 praying for dissolution of the Corporate Debtor without going through the process of liquidation as approved by the CoC at its 4th meeting held on 07/12/2022.
13. The IA(IBC)/159(KB)2023 came up for hearing on 18/01/2023. During hearing, Ld. Counsel appearing for the RP seeks time to file a proper supplementary

¹⁰ Annexure B at pages 11 to 14 of IA/159/2023



affidavit giving all the compliance desired for dissolution of the Corporate Debtor and this Adjudicating Authority has granted three weeks' time for the same.

14. In compliance of the aforesaid order dated 18/01/2023, the RP has filed a supplementary affidavit affirmed on 15/02/2023 annexing an affidavit¹¹ affirmed by one of the suspended members of Board of Directors of the Corporate Applicant, which states as follows: -

- “1. *I am the Director of M/s. Panchkoti Traders Private Limited. I know and have made myself well acquainted with the facts and circumstances of the case. I am competent to affirm this affidavit for and on its behalf.*
2. *That the Application has been filed under section 10 of the IBC, 2016 recording the default of the company towards various Creditors the said application has not been filed by the company to defraud any creditor and/or any person.*
3. *The statements made herein are true to my knowledge.*

The applicant has also annexed with the supplementary affidavit Compliance Certificate in **Form H**¹² under regulation 45(3) of the IBBI (Liquidation Process) Regulations 2016 and closure¹³ of Account No.50200069120742 maintained with HDFC Bank, P-313, CIT Scheme VI-M, Kankurgachi, Kolkata 700054.

15. *Vide* order dated 12/04/2023 this Adjudicating Authority had directed paper publication in two daily newspapers one in English, “Business Standard” and one in vernacular language “Ananda Bazar”. In compliance thereof an affidavit affirmed on 09/05/2023 has been filed annexing insertion of paper advertisements as directed.
16. However, the 180 days CIRP period had expired on 16/10/2022 and no extension was sought.
17. We have heard the Ld. Counsel for the IRP, perused the application and the

¹¹ Annexure A at pages 4 and 5 of Supplementary Affidavit affirmed on 15/02/2023

¹² Annexure B at pages 6 to 10 of Supplementary Affidavit affirmed on 15/02/2023

¹³ Annexure C at pages 11 and 12 of Supplementary Affidavit affirmed on 15/02/2023

documents attached therewith.

18. 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.
19. Section 54 of the Codes reads as follows: -

“54(1) Where the assets of the Corporate Debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

(2) The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.”

Rule 14 of the IBBI (Liquidation Process) Regulations, 2016 reads as follows: -

*“Rule 14. **Early dissolution** - Any time after the preparation of the Preliminary Report, if it appears to the liquidator that –*

- (a) The realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and*
- (b) The affairs of the corporate debtor do not require any further investigation; he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution”.*

Rule 11 of the NCLT Rules, 2016 confers inherent powers on NCLT, which reads as follows: -

“Rule 11 : Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be

necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”

Section 12 of the Code stipulates time-limit for completion of insolvency resolution process, which reads as follows: -


“12(1) Subject to sub-section (2) the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent of the voting shares;

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eight days by such further period as it thinks fit, but not exceeding ninety days.

***Provided** that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.”*

20. Upon conjoint reading of the above provisions, the ultimate objective of the Code is either to resolve the issue by way of approval of Resolution Plan or to liquidate and then to dissolve the Corporate Debtor, as expeditiously as possible.
21. In the instant case, in course of valuation of the assets of the Corporate Debtor, it was found that the company has very limited realisable assets since most of assets of the Corporate Debtor are in form of shares. Moreover, the share certificates were not in demat form and the paper copies are missing. On the other hand investment in two companies are showing in demat account but those are not shown in Audited Balance Sheet. The reason for not showing in Audited Balance Sheet was stated as the value of those shares are “NIL”. Further, the equity shares of Vindus Holdings Ltd. (listed with Calcutta Stock Exchange)



though showing in balance sheet but not showing in demat account, for which the reasons given is that the share of the company is in physical form but the physical share certificates are missing.

22. The sole CoC member, who happens to be the petitioning operational creditor, expressed the views that the realizable value of the assets of the Company are insufficient to meet the full CIRP cost as well as Liquidation Cost and is also not willing to bear the liquidation expenses suggesting dissolution of the Corporate Debtor, since no useful purpose would be served by ordering liquidation of the Corporate Debtor.
23. In view of the above facts and circumstances, it is prudent to **dissolve the Corporate Debtor, and it is ordered accordingly**. However, personal liability/Guarantee of any Director/Promoter of the Corporate Debtor, if any, would not absolve them of their liability by virtue of this order. Aggrieved party/parties, if any, shall be at liberty to continue or to take appropriate legal remedies against them.
24. The Resolution Professional is further directed to serve a copy of this order upon the Registrar of Companies, West Bengal, immediately and, in any case, within fourteen days of receipt of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.
25. The Resolution Professional accordingly shall stand discharged from his responsibilities, after all procedural compliance.
26. **IA(IBC)/959(KB)2022** is dismissed. **IA(IBC)/159(KB)2023** is allowed with the above directions and the **IA(IBC)/159(KB)2023** and **CP(IB)/122(KB)2021** are hereby disposed of accordingly.
27. 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.

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



IA(IBC)/959(KB)2022
And IA(IBC)/159(KB)2023
in CP (IB)/122/(KB)2021

28. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
29. File be consigned to records.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 21st day of November, 2023.

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