



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

**IA(IBC)1591(KB)2022
In
CP(IB)/1082(KB)2020**

An application under section 33 of the Insolvency and Bankruptcy Code, 2016

In the matter of:
UIL Commodities DMCC

....Operational Creditor

-Versus-

Maxgrow Overseas Limited (CIN: U51909WB2008PTC128225)

....Corporate Debtor

And

In the matter of:
Mr. Sushil Kumar Agrawal, Resolution Professional of Maxgrow Overseas Limited
..... *Applicant*

Date of Pronouncement: 20/12/2023

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


Appearances through hybrid mode:

For RP : Mr. Mr. Siddhanth Makkar, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/1591(KB)2022** is an application filed under section 33 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) by the Resolution Professional



(“**RP**”) of **M/s. Maxgrow Overseas Limited** the Corporate Debtor, praying for initiation of liquidation process u/s. 33 of the IBC against the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by the RP.

3. This Adjudicating authority, on a petition filed u/s. 9 of the IBC read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by UIL Commodities DMCC, the Operational Creditor, *vide* order² dated 19/05/2022 in CP(IB)/1082(KB)2020, had ordered initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against Maxgrow Overseas Limited, the Corporate Debtor appointing Mr. Sushil Kumar Agrawal, as Interim Resolution Professional (“**IRP**”).
4. In terms of regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”), Public Announcements in **Form A** was published in “*Financial Express*” (English), “*Tarun Bharat*” (Marathi), Mumbai Edition and “*Ekdin*” (Bengali) on 21/05/2022 inviting claims from the creditors³.
5. In compliance of section 21(1) of the IBC, Committee of Creditors (“**CoC**”) was formed with financial creditor, comprising of (1) Bank of Baroda, (2) Indusind Bank Ltd, (3) Bank of India, (4) Union Bank of India and (4) Punjab National Bank, and a report certifying constitution of the CoC was duly submitted before this Adjudicating Authority on 08/06/2022. Final list of creditors forms **Annexure ‘C’**⁴.
6. 1st meeting of the CoC was held on 17/06/2022. However, at the 3rd CoC meeting held on 26/07/2022, the CoC has approved appointment of IRP as RP. Copies of the minutes of the 1st, 2nd and 3rd meetings form **Annexure ‘D’**, **Annexure ‘E’**

¹ At pages 26 to 28 of the application

² Annexure ‘A’ at pages 29 to 35 of the application

³ Annexure ‘B’ at pages 36 to 42 of the application

⁴ At pages 43 to 44 of the application

and **Annexure 'F'** respectively.⁵

7. In terms of regulation 36A(1) of the CIRP Regulations, with the approval of the CoC at its 4th meeting held on 01/08/2022, Form G was published on 02/08/2022 in “*Business Standard*” (English) All Edition, “*Pratahkal*” (Marathi), Mumbai Edition and “*Ekdin*” (Bengali) inviting Expression of Interest (“**EoI**”) from prospective resolution applicants (“**PRAs**”) stipulating the last date of submission of EoI as 17/08/2022. Copy of Form G along with minutes of the 4th CoC meeting and voting results forms **Annexure 'G' (Colly)**⁶. In response to publication of Form G only one EoI was received from one PRA, namely, Nakshatra Corporate Advisors Limited, who through its e-mail dated 06/10/2022 requested for extension of submission of the Resolution Plan by further 10 days. With the approval of the majority members of the CoC at its 7th meeting held on 06/10/2022, last date of submission of Resolution Plan was extended till 16/10/2022. Copies of the minutes of the 5th, 6th and 7th meetings⁷ form **Annexure 'H', Annexure 'I' and Annexure 'J'** respectively.
8. However, the said PRA vide e-mail dated 15/10/2022 again sought for another extension of 10 days on the grounds of paucity of time and resources. The CoC at its 8th meeting held on 19/10/2022 after due deliberation on further extension has not approved the same instead took decision to refund the EMD of Rs.15 Lakhs to the PRA. Copy of the minutes of the 8th CoC meeting forms **Annexure 'K'**⁸.
9. At the 9th CoC meeting held on 25/10/2022 the following resolution was passed with 71.61% voting share by the CoC recommending re-issue of Form G:


“RESOLVED THAT the re-issue of Form G in One Newspaper All India Edition in English Language, One Newspaper in Bengali Language (widely circulated in West Bengali), and One in Marathi Newspaper (widely circulated in Maharashtra) be and hereby is approved by Committee of Creditors.”

⁵ At pages 45 to 83 of the application

⁶ At pages 84 to 109 of the application

⁷ At pages 110 to 130 of the application

⁸ At pages 131 to 136 of the application



Copy of the minutes along with voting results of the 9th CoC meeting forms **Annexure ‘L’**⁹. Accordingly, **Form G**¹⁰ was re-issued on 27/10/2022 in “*Business Standard*” (English) All Edition, “*Pratahkal*” (Marathi), Mumbai Edition and “*Ekdin*” (Bengali) stipulating last date of submission of EoI as 11/11/2022. However, in response no EoI was received from any PRA.

10. Vide order dated 10/08/2023 certain clarification was sought from the RP. In response to the said order the RP has filed a supplementary affidavit duly affirmed by the RP on 21/08/2023 enclosing the copy of the minutes of the 12th CoC meeting held on 07/12/2022, wherein the decision to liquidate the Corporate Debtor was taken. At the said 12th CoC meeting¹¹ held on 07/12/2022, the CoC has passed the following resolution with 99.67% voting share to liquidate the Corporate Debtor:

“RESOLVED THAT Liquidation process be commenced against Maxgrow Overseas Limited.”

11. The applicant has submitted his consent¹² in Form AA to act as Liquidator of the Corporate Debtor along with Authorisation for Assignment (AFA). In terms of regulation 39(4) of CIRP Regulations, the applicant has submitted Compliance Certificate in Form H¹³.
12. However, it is to be noted here that the RP has not sought any extension of time of CIRP after completion of initial 180 days CIRP period. Be that as it may, it is seen that in spite of publication of Form G twice, no resolution plan has been received and the 180 days CIRP period has also expired.
13. 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


⁹ At pages 137 to 141 of the application

¹⁰ Annexure ‘M’ at pages 142 to 153 of the application

¹¹ Annexure ‘B’ to the Supplementary Affidavit at pages 6 to 14 affirmed on 17/08/2023

¹² Annexure ‘N’ at pages 154 to 156 of the application

¹³ Annexure ‘O’ at pages 157 to 168 of the application



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.

14. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.

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

a. IA(IBC)/1591(KB)2022 filed by Mr. Sushil Kumar Agrawal, RP of M/s. Maxgrow Overseas 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. 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. Sandip Kumar Kejriwal (Reg. No. IBBI/IPA-002/IP-N00236/2017-18/10687) having e-mail i.d. sandipkej2@gmail.com, mobile no. 9831074124 as given at Sl. No. 17 of the Insolvency and Bankruptcy Board of India, Panel for July 1, 2023 to December 31, 2023 – Kolkata Bench, as Liquidator in terms of section 34(1) of the Code. His appointment shall be subject 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. The Liquidator is directed to submit his 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, i.e., “*Business Standard*” (English) All Edition, “*Pratahkal*” (Marathi), Mumbai Edition 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, 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(IBC)/1591(KB)2022** shall stand disposed of in

accordance with the above directions.

17. **CP(IB)/1082(KB)2020** is to come up for filing of Periodical Progress Report on **22/01/2024**.
18. 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.
19. 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 20th day of December, 2023.

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