

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

**IA(IBC)/359(KB)2023
in
CP(IB)/1285(KB)2019**

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

In the matter of:

Indian Overseas Bank

.... Financial Creditor

Versus

Mahakal Agro Storage and Processing Unit Private Limited
(U63022WB2007PTC115018)

.... Corporate Debtor

And

In the matter of:

MR. ANIL ANCHALIA,

Resolution Professional of Mahakal Agro Storage and Processing Unit Private Limited

... Applicant

Order reserved on: 27/06/2023

Order pronounced on: 07/08/2023

Coram:

Shri Rohit Kapoor

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (through hybrid mode):

For RP

:

Mr. Rahul Parasrampurua, PCS
Mr. Anil Anchalia, RP in person

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/359(KB)2023** is an application filed under section 33(2) of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) by the Resolution Professional (“**RP**”) of **Mahakal Agro Storage and Processing Unit Private Limited**, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by Mr. Anil Anchalia, 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 Indian Overseas Bank, the Financial Creditor, *vide* order dated 25/05/2022 in CP(IB)/1285(KB)2019, had ordered initiation of CIRP against Mahakal Agro Storage and Processing Unit Private Limited, the Corporate Debtor. Mr. Anil Anchalia was appointed as the Interim Resolution Professional (“**IRP**”).
4. It is stated in the application that in terms of regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (“**CIRP Regulations**”) Public Announcements in **Form A** was published on 27/05/2022 inviting claims from the creditors in two newspapers, viz., “*Business Standard*” (English) and “*Aajkal*” (Bengali) mentioning the last date of submission of claims as 08/06/2022. Committee of Creditors (“**CoC**”) was duly formed on 17/06/2023. At the first CoC meeting held on 23/06/2022, the IRP was appointed as Resolution Professional (“**RP**”).
5. It is also stated in the application that the IRP/RP has altogether held eight CoC meetings on 23/06/2022, 02/08/2022, 26/08/2022, 11/10/2022, 21/11/2022,

¹ At pages 20 and 21 of the application

02/01/2023, 17/01/2023 and 01/02/2023 respectively and also submitted four Progress Reports on 20/08/2022, 28/09/2022, 23/11/2022 and 11/01/2023 respectively.

6. It is stated in the application that RP has filed two Applications one u/s. 19(2) of the IBC being IA(IBC)/570(KB)2022 and another u/s. 66 of the IBC being IA(IBC)/1154(KB)2022, which are pending for consideration by this Adjudicating Authority.
7. It is further stated in the application that an application u/s. 12(2) of IBC read with regulation 40 of the CIRP Regulations, being IA(IBC)/1390(KB)2022 was filed seeking extension of CIRP period by 90 days. *Vide* order dated 30/11/2022, this Adjudicating Authority has granted 90 days extension thereby the 270 days CIRP period has end on 18/02/2023.
8. It is stated in the application that in terms of regulation 36A(1) of the CIRP Regulations, Expression of Interest (“**EoI**”) was published in **Form G** on 04/08/2022 and in response RP has received three EoIs from the Prospective Resolution Applicants (“**PRA**”). Out of three PRAs one PRA asked for extension of time and other two PRAs took refund of their EMD amount.
9. It is further stated that the CoC at its 4th meeting held on 11/10/2022 had approved the extension of last date for submission of Resolution Plan to 26/12/2022 and also approved revised EoI with new timeline.
10. It is also stated in the application that **Form G** was reissued on 12/10/2022 in two newspapers, viz., “*Business Standard*” (English) and “*Aajkal*” (Bengali) mentioning the last date of submission as 07/11/2022. In response to the reissued Form G five EoIs were received from PRAs, including one PRA, who have submitted EoI earlier in terms of first publication of EoI on 04/08/2022. Out of the 5 PRAs only two PRAs, i.e., (1) M/s. Square Four Housing & Infrastructure Development Pvt. Ltd. and (2) M/s. UV Foods Pvt. Ltd. had submitted their Resolution Plans within the prescribed due date, i.e., 26/12/2022. After

verification of the Resolution Plans, the RP placed both the compliant Resolution Plans before the CoC at its 7th meeting held on 17/01/2023. Both the Resolution Plans were discussed with the Resolution Applicants and the CoC was of the opinion that the offers submitted by them were not satisfactory and, therefore, the financial aspects of the Plans are needed reconsideration by the Resolution Applicants. Subsequently, the Applicant received the modified Resolution Plan only from M/s. Square Four Housing & Infrastructure Development Pvt. Ltd. on 18/01/2023 and shared the same with the CoC member on the same day for their consideration and review and the Resolution Plan submitted by the said M/s. UV Foods Pvt. Ltd. remained unchanged.

11. It is further stated in the application that in the opinion of the CoC both the Resolution Plans were far below the Liquidation Value and also the Resolution Applicants have no prior experience in running a cold storage. Hence after overall assessment and considering the feasibility and viability, none of the Resolution Plan was approved by the CoC.
12. It is also stated in the application that the CoC at its 8th meeting held on 01/02/2023 has rejected both the Resolution Plans with 100% voting share and decided to proceed with Liquidation of the Corporate Debtor and accordingly passed the following resolution with 100% voting share:

“RESOLVED THAT pursuant to section 33(2) of the IBC 2016, the Committee of Creditors be and hereby approved the Liquidation of the Corporate Debtor M/s. Mahakal Agro Storage & Processing Unit Private Limited.”

“FURTHER RESOLVED THAT the Resolution Professional is hereby requested to intimate the Adjudicating Authority of the decisions of the CoC to liquidate the Corporate Debtor.”

A copy of the minutes² of the 8th CoC meeting held on 01/02/2023 along with voting results which forms **Annexure – A** to the application.

13. The applicant has submitted his consent³ in Form AA under the provisions of section 34(1) of the IBC to act as the Liquidator of the Corporate Debtor along with valid AFA, which forms **Annexure – B** to the application.
14. It is to be noted here that the 270 days CIRP period has ended on 18/02/2023.
15. 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.
16. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
17. This Bench, therefore, hereby orders as follows: -
 - a. IA(IBC)/359(KB)2023 filed by **Mr. Anil Anchalia, RP** of **Mahakal Agro Storage and Processing Unit 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. Though the RP has given his consent to act as the Liquidator of the Corporate Debtor but in view of direction of the IBBI Circular dated 18/07/2023 vide no. Liq-12011/214/2023-IBBI/840 for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the Code we are appointing **Mr. Rakesh Kumar Agarwal** Reg. No. IBBI/IPA-001/IP-

² At pages 23 to 39 of the application

³ At pages 40 to 41 of the application

P00443/2017-2018/10786) having e-mail i.d. rakesh202@hotmail.com, mobile no. 9830170962 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. 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, 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**.
18. The application bearing **IA(IBC)/359(KB)2023** shall stand disposed of in accordance with the above directions.
19. **CP(IB)/1285(KB)2019** is to come up for filing of Periodical Progress Report on **25th August 2023**.
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.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 7th day of August, 2023.

hb.