



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

**IA(IBC)/1488(KB)2023  
in  
CP(IB)/1256(KB)2019**

*Under section 33 and section 60(5) of the Insolvency & Bankruptcy Code, 2016  
and the applicable regulations*

*In the matter of:*

Mahavir Industrial Corporation

...Operational Creditor

*-Versus-*

Hindustan Controls and Equipment Private Limited (CIN: U51109WB2000PTC091319)

...Corporate Debtor

*And*

*In the matter of:*

Subodh Kumar Agrawal,

Resolution Professional of Hindustan Controls and Equipment Private Limited

... Applicant

**Order reserved on: 13/10/2023**

**Order pronounced on: 21/11/2023**

*Coram:*

**Smt. Bidisha Banerjee** : **Member (Judicial)**

**Shri Arvind Devanathan** : **Member (Technical)**

*Appearances (through hybrid mode):*

For RP : Mr. Subodh Kumar Agrawal,  
RP in person

For R3 : Mr. Subhasis Sengupta, Adv.  
Mr. Souvik Kundu, Adv.

For R1 in IA/782/2022 : Mr. A. N. Ghosh, Adv.



---

For R5 in IA/782/2022 : Mr. Koushik Chowdhury, Adv.  
Mr. B. K. Dey, Adv.  
Ms. M. Pramanik, Adv.

For respondent in IA/782/2022 : Mr. N. Adhya, Adv.  
Ms. B. Ghosh, Adv.  
Ms. R. Seal, Adv.

For respondent in IA/782/2022 : Mr. Arijit Basu, Adv.  
Ms. S. Dey, Adv.

For respondent in IA/1644/2023 : Mr. Prantic Garai, Adv.  
Mr. A. Sikdar, Adv.  
Ms. S. Dey, Adv.

### **ORDER**

***Per: Arvind Devanathan, Member (Technical)***

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/1488(KB)2023** is an application filed under section 33 and section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) by the Resolution Professional (“**RP**”) of **M/s. Hindustan Controls and Equipment Private 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 affidavit<sup>1</sup> duly affirmed by Mr. Subodh Kumar Agrawal, 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 Mahavir Industrial Corporation, the Operational Creditor, *vide* order<sup>2</sup> dated 05/07/2022 in CP(IB)/1256(KB)2019, had ordered initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against Hindustan Controls and Equipment Private Limited, the Corporate Debtor appointing Mr. Subodh Kumar Agrawal, as Interim Resolution Professional (“**IRP**”).

---

<sup>1</sup> At pages 28 to 30 of the application


<sup>2</sup> Annexure ‘A’ at pages 31 to 48 of the application



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) and “*Aajkal*” (Bengali) on 07/07/2022 inviting claims from the creditors<sup>3</sup>.
5. In compliance of section 21(1) of the IBC, Committee of Creditors (“**CoC**”) was formed with Punjab National Bank, sole Financial Creditor and a report certifying constitution of the CoC was duly submitted before this Adjudicating Authority on 22/07/2022. Later on, one more claim was received from Small Industries Development Bank of India (“**SIDBI**”) and the CoC was duly reconstituted on 29/12/2022 and a report on reconstitution of the CoC was also duly submitted before this Adjudicating Authority.
6. 1<sup>st</sup> meeting of the CoC was held on 30/07/2022 wherein the CoC has approved appointment of IRP as RP. In terms of regulation 27 of the CIRP Regulations, two sets of Registered Valuers were appointed on 06/08/2022 to assess the ‘fair value’ and ‘liquidation value’ for Securities and Financial Assets of the Corporate Debtor. Later on, another two sets of Registered Valuers were appointed on 30/03/2023 to assess the ‘fair value’ and ‘liquidation value’ for Plant & Machinery and Land & Building of the Corporate Debtor<sup>4</sup>.
7. In terms of regulation 36A(1) of the CIRP Regulations, with the approval of the CoC at its 3<sup>rd</sup> meeting held on 13/09/2022, Form G was published on 16/09/2022 in “*Financial Express*” (English) All India Edition and “*Aajkal*” (Bengali) inviting Expression of Interest (“**EoI**”) from prospective resolution applicants (“**PRAs**”) stipulating the last date of submission of EoI as 03/10/2022. Since many PRAs showed interest for which the CoC at its 4<sup>th</sup> meeting held on 30/09/2022 has decided to extend the last date of submission of EoI to 21/10/2022. Accordingly, revised Form G dated 01/10/2022 was published in “*Financial Express*” (English) All India Edition on 02/10/2022 and “*Aajkal*”

<sup>3</sup> Averments in para 4 at page 14 of the application

<sup>4</sup> Averments in para 9 at page 15 of the application



---

(Bengali) on 07/10/2022<sup>5</sup>. However, no EoI was received from any PRAs within the stipulated time. Hence the CoC at its 5<sup>th</sup> meeting held on 25/10/2022 has duly recommended for liquidation of the Corporate Debtor as per section 33(2) of the IBC<sup>6</sup>.

8. Pursuant to the aforesaid decision taken by the CoC at its 5<sup>th</sup> CoC meeting held on 25/10/2022, an application for liquidation of the Corporate Debtor being IA(IBC)1474(KB)2022 was filed by the RP.
9. Meanwhile, one of the PRA, Ms. Vineeta Singhania approached this Adjudicating Authority for condonation of delay in submission of EoI by filing an Interlocutory Application being IA(IBC)/1663(KB)2022. After hearing the matter on 22/12/2022, this Adjudicating Authority directed to submit EoI within one week. A copy of the said order dated 22/12/2022 forms **Annexure 'B'**<sup>7</sup>. In compliance of the aforesaid direction dated 22/12/2022, EoI was received along with refundable deposit from the said Ms. Vineeta Singhania on 29/12/2022, who was eligible to participate in the resolution process of the Corporate Debtor. When the matter came up for hearing on 31/12/2022, the PRA sought seven more days' time for submitting the Resolution Plan and the same was granted *vide* order dated 31/12/2022, a copy whereof also forms **Annexure 'B'**<sup>8</sup>. Accordingly, the applicant issued the RFRP, Evolution Matrix, Information Memorandum on 03/01/2023 and other documents to the PRA from time to time for submission of Resolution Plan by 03/02/2023. Accordingly, the PRA submitted her Resolution Plan on 07/02/2023 and the updated Resolution Plan was finally received on 08/03/2023 and the same was placed before the CoC for consideration.
10. Since one EoI was received from one of the PRA, the RP sought to withdraw the liquidation application being IA(IBC)/1474(KB)2022 and accordingly this Adjudicating Authority *vide* its order<sup>9</sup> dated 03/02/2023 disposed of the said

---

<sup>5</sup> Averments in para 14 at page 17 of the application

<sup>6</sup> Averments in para 15 at page 17 of the application

<sup>7</sup> At pages 49 to 51 of the application

<sup>8</sup> At pages 42 to 53 of the application

<sup>9</sup> Annexure 'C' at pages 54 to 56 of the application

application as withdrawn.


11. At the 6<sup>th</sup> CoC meeting held on 31/12/2022, the CoC after due deliberation took decision for extension of the CIRP period by 90 days since, 180 days CIRP period would come to an end on 31/12/2022. Accordingly, an Interlocutory Application being IA(IBC)/74KB)2023 was filed, and upon hearing, this Adjudicating Authority vide its order<sup>10</sup> dated 03/02/2023 had granted 90 days extension, thereby the 270 days CIRP period would come to an end on 31/03/2023.
12. At the 9<sup>th</sup> CoC meeting held on 23/03/2023, it was transpired that two lands belonging to the Corporate Debtor was mortgaged with SIDBI, Financial Creditor, and after due deliberation the CoC had decided to do the valuation of the said lands before negotiating the Resolution Plan with the PRA and accordingly passed a resolution with 100% voting share for a further extension of the CIRP by 60 days period. Accordingly, an interlocutory application being IA(IBC)/625KB)2023 was filed and after hearing, this Adjudicating Authority vide its order<sup>11</sup> dated 26/06/2023 had granted a further extension of 60 days, thereby the CIRP period would come to an end on 25/08/2023.
13. At the 10<sup>th</sup> CoC meeting held on 03/05/2023, the applicant apprised the status of CIRP as well as appointment of Registered Valuers, which was duly ratified by the CoC<sup>12</sup>.
14. At the 14<sup>th</sup> CoC meeting held on 10/07/2023, the applicant submitted the compliance certificate under sections 29A and 30(2) of the IBC with applicable Regulations. A copy of the Compliance Certificate forms **Annexure 'E'**<sup>13</sup>.
15. At the adjourned 15<sup>th</sup> CoC meeting held on 11/08/2023, after due deliberation on the Resolution Plan, e-voting took place for approval of the Resolution Plan, submitted by Ms. Vineeta Singhania. The CoC with 100% voting share rejected

<sup>10</sup> Annexure 'C' at pages 54 to 56 of the application

<sup>11</sup> Annexure 'D' at pages 57 to 62 of the application

<sup>12</sup> Averments in para 30 at page 22 of the application

<sup>13</sup> At pages 63 to 77 of the application



---

the said Resolution Plan of the PRA. A copy of the minutes of the 15<sup>th</sup> CoC meeting forms **Annexure ‘F’**<sup>14</sup>. A copy of e-voting results forms **Annexure ‘G’**<sup>15</sup>. Therefore, the Resolution Plan submitted by the PRA did not obtain the requisite approval of the CoC. Hence, the RP could not place any resolution plan before this Adjudicating Authority for its approval.

16. The applicant has submitted his consent<sup>16</sup> in Form AA to act as Liquidator of the Corporate Debtor. In terms of regulation 39(4) of CIRP Regulations, the applicant has submitted Compliance Certificate<sup>17</sup> in Form H.
17. It is to be noted here that the 330 days CIRP period has ended on 25/08/2023.
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. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
20. This Bench, therefore, hereby orders as follows: -
  - a. IA(IBC)/1488(KB)2023 filed by Mr. Subodh Kumar Agrawal, RP of M/s. Hindustan Controls and Equipment 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 contained in Circular no. Liq-12011/214/2023-IBBI/840 dated 18/07/2023 for appointment of Liquidator

---

<sup>14</sup> At pages 78 to 90 of the application

<sup>15</sup> At pages 91 to 94 of the application

<sup>16</sup> Annexure ‘H’ at page at pages 95 and 96 of the application

<sup>17</sup> Annexure ‘I’ at page at pages 97 to 107 of the application



other than IRP/RP under section 34(4)(b) of the Code, we are appointing Mr. Anil Kumar Dubey (Reg. No. IBBI/IPA-002/IP-N01187/2022-2023/14249) having e-mail i.d. [anil@mandaassociates.in](mailto:anil@mandaassociates.in) mobile no. 9883039240 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 the 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., in “*Financial Express*” (English) and “*Aajkal*” (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**.

21. The application bearing **IA(IBC)/1488(KB)2023** shall stand disposed of in accordance with the above directions.
22. **CP(IB)/1256(KB)2019** is to come up for filing of Periodical Progress Report on **09/01/2024**.
23. 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.
24. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Arvind Devanathan**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

Signed on this, the 21<sup>st</sup> day of November, 2023.

hb.