



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

**IA(IBC)(LIQ.)/30 (KB)2024
in
CP(IB)/201(KB)2021**

An Application Under section 33(1) of the Insolvency & Bankruptcy Code, 2016

In the matter of:

Indian Bank, SAM Vertical Branch Kolkata

.... Financial Creditor

Versus

M/s Reacon Engineers (India) Private Limited .

.... Corporate Debtor

And

In the matter of:

Mr. Pratim Bayal ,

RP of M/s Reacon Engineers (India) Private Limited

... Applicant/IRP

Order pronounced on: 17/12/2024

Coram:

Mrs. Bidisha Banerjee,

: Member (Judicial)

Shri Balraj Joshi,

: Member (Technical)

Appearances (through hybrid mode):

For Indian Bank

: Mr.Santosh Kr. Ray,Adv.
Ms.Rituparna Sanyal,Adv.
Ms.Zeba Khan, Adv.
Ms.Muskan Saha, Adv.

For RP

: Mr.Shaunak Mitra, Adv.
Mr. Avishek Guha, Adv.
Mr.Arunika Dutta, Adv.
Mr.Pratim Bayal, RP
Mr. Sandip Kr. Kejriwal, IRP



ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)(LIQ.)/30 (KB)2024-** is an application filed under section 33 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) by the Resolution Professional (“RP”) of **M/s Reacon Engineers (India) Private Limited**, the Corporate Debtor, praying for initiation of liquidation process of the Corporate Debtor. This application is supported by an affidavit duly affirmed by the RP.

The Ld. Counsel appearing for the RP submits that :

3. This Adjudicating authority, on a petition filed u/s. 7 of the IBC read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Financial Creditor, *vide* order dated 28/08/2023, had ordered initiation of Corporate Insolvency Resolution Process (“CIRP”) against **M/s Reacon Engineers (India) Private Limited** , the Corporate Debtor appointing Mr. Pratim Bayal , as the Interim Resolution Professional (“IRP”). The said order was duly communicated to the IRP by the Registry.
4. That pursuant to the order of this Adjudicating Authority, the applicant made a public Announcement in **Form-A** on dated 30/08/2023 in Business Standard (English Daily) and Ekdin (Bengali daily) as per the procedure laid down under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) Regulations, 2016 inviting claims from the creditors of the Corporate Debtor. (**Annexure-B**).
5. It is submitted that thereafter the RP published the Form G under Regulation 36A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 11th October 2023 inviting EOIs from prospective Resolution Applicants containing timelines for submission



of EOI and subsequent events. The last date for submission of EOI in terms of the Form G was 11th November, 2023.

6. It is submitted that in the interest of maximization of value of the Corporate Debtor, the RP published another Form G on 11th November 2023 for providing fresh timelines, inter alia, for submission of EOI wherein the last date for submission of EOI was 25th November, 2023.
7. It is submitted that as per the revised Form G, the last date for submission of the Resolution Plan was 7th January, 2024. However, on the request of certain Prospective Resolution Applicants, due to holidays and other occupancies the last date of submission of the Resolution Plan was extended by 20 days i.e. till 27/01/2024 by the RP upon taking prior approval from Indian Bank, having the highest voting share of 71.88% on 6th January, 2024.
8. It is submitted that at the 7th CoC meeting held on 3rd May 2024, both the Resolution Applicants requested for at least 10 days more time to make some further assessments of the ongoing projects of the corporate debtor.
9. On 20th May, 2024, 8th CoC meeting was held, both the resolution applicants presented their improved financial officers with many fold increase of the initial officer made by the resolution applicants and those were further discussed in the 8th CoC meeting held on 20th May, 2024.
10. It is submitted that revised resolution plans, after negotiation by the Co C members submitted by both the prospective resolution applicants were finalized by the Committee of Creditors after deliberations and discussions in the 12th CoC meeting held on 8th July, 2024 and the Committee of Creditors further requested the applicant to put the revised resolution plans for e-voting from 15/07/2024 to 21/07/2024. The Committee of Creditors also further agreed with the evaluation of both the plans based on the evaluation matrix.
11. The applicant states that vide e-mail dated 19th July, 2024, the Committee of Creditors further requested the Applicant to extend the e-voting time line for voting



on the revised resolution plans by another 15 days till 03/08/2024.

12. That since the CoC members request to extend the e-voting timeline by 15 days is beyond the enlarged CIRP time period, the applicant sought approval from the Committee of Creditors to further enlarge the CIRP period for 30 days in order to conclude the CIRP process. The approval for such enlargement of the CIRP time period was granted by both the members of the Committee of Creditors, i.e. Indian Bank having highest voting share of 71.88% and PNB having a voting share of 28.12% vide e-mails both dated 19/07/2024.
13. The applicant states that since Indian Bank having the highest voting share of 71.88% failed to conclude voting on the revised resolution plans within the enlarged time period, Indian Bank further requested to extend the e-voting timeline by another 15 days for voting on the revised resolution plans which is beyond the enlarged CIRP time period granted by this Adjudicating Authority for the 2nd time beyond the 330 days of CIRP period till 23/08/2024.
14. It is submitted by the applicant that ultimately none of the resolution plans were approved and were declined by the CoC members by a majority of 71.88% votes.
15. It is submitted that in the wake of the aforesaid circumstances, the Corporate Debtor would automatically go into liquidation under Section 33(1) of the IBC, 2016.
16. It is submitted that the Committee of Creditors in its 13th meeting held on 14th October, 2024 took note of the same unanimously resolved, inter- alia, to appoint the petitioner as the Liquidator. It was further discussed and considered by both the CoC members that non continuation of the Resolution Professional as the liquidator could result severe financial loss for Indian Bank having the highest voting share for invocation of Guarantee and huge value deterioration of the Corporate Debtor for cancellation of projects. Any change in liquidator other than the Resolution Professional would severely hamper the ongoing two projects and value of the corporate debtor. Both the CoC members recognized that the

Resolution Professional has given his best effort in getting resolution plans.

17. After clarification sought by this Adjudicating Authority dt. 03/12/2024, the applicant has filed supplementary affidavit to bring on record the resolution passed by the COC, i.e. Indian Bank having the highest voting share of 71.88% for liquidation of the Corporate Debtor and for appointment of the RP as liquidator in the 14th COC meeting of the Corporate Debtor held on 06/12/2024. In the 14th COC meeting held on 06/12/2024 along with voting sheet of the CoC for approval of the liquidation process of the Corporate Debtor are taken on record. A copy of the 14th COC meeting held on 06/12/2024 is annexed as Annexure-B to the supplementary affidavit.
18. In the above facts, it is therefore prayed that the Corporate Debtor may be liquidated in accordance with Section 33(2) of the Insolvency and Bankruptcy Code, 2016 and the rules and Regulations framed thereunder.
19. In the above scenario, the applicant has filed the instant application being IA(IBC)(LIQ.)/30(KB)2024 under section 33(1) of the IBC seeking initiation of liquidation process against the Corporate Debtor.
20. 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.
21. A conjoint reading of these two provisions read with the Resolution of the CoC, leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
22. It is mentioned that the replacement of the liquidator is covered under section 34(4) of the Code, which provides as under:-



(4) *The Adjudicating Authority shall by order replace the resolution professional, if-*

- a. *The resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or*
- b. *The Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded [in writing ;or]*
- c. *The resolution professional fails to submit written consent under sub-section (1)*

25. We have noted the assertions made in the recommendation that the existing RP be continued as liquidator, however we also note that the Circular No. **Liq. 12011/214/2023-IBBI/840 dated 18/07/2023** has been issued by IBBI under the powers given to the Board under section 34(4)(b), whereby the Board in Para 3 of the said circular recommends that

“ In view of the above justification, the Board in exercise of its powers conferred under section 34(4)(b) , recommends that an IP other than the RP/IRP may be appointed as the liquidator in all cases where Liquidation order is to be passed henceforth. The Liquidator can be appointed from the penal list of IBBI.”

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

- a. **IA(IBC)/30(KB)2024** filed by the RP/Applicant of **M/s Reacon Engineers (India) 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;

28. In view of the circular cited above, we hereby appoint **Mr. Sanjeev Jhunjunwala** , Regn. No. **IBBI/IPA-001/IP-P-00325/2017-2018/10595** having e-mail ID sanjeevjhunjunwala@gmail.com, whose name appears at 19 of the IBBI Panel for Kolkata region, 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.

- a. 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.
- b. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., in “Business Standard ” (English) and “Ekdin (Bengali daily) ” in Vernacular Language i.e. Bengali stating that the Corporate Debtor is in liquidation.
- c. 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.
- d. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by in managing the liquidation process of the Corporate Debtor.
- e. 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.
- f. 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

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continued during the liquidation process by the Liquidator.

g. 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.

29. The application bearing **IA(IBC)(LIQ.)/30 (KB)2024** shall stand **disposed of** in accordance with the above directions.

30. **CP(IB)/201(KB)2021** is to come up for filing of Periodical Progress Report on **15-04-2025**.

31. The Registry is directed to send e-mail copies of the order forthwith to all the parties, including the liquidator appointed as above, and their Ld. Counsel for information and for taking necessary steps.

32. 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 17th day of December, 2024.

P.Jyoti
(PS)