

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**IA (IB) No. 656/KB/2021
in
CP (IB) No. 1850/KB/2019**

*An Application under section 33(1)(a) of Insolvency & Bankruptcy Code,
2016.*

In the matter of:

Royalpet Vanijya Private Limited

... Financial Creditor

Versus

Balgopal Distributors Private Limited

... Corporate Debtor

-And-

In the matter of:

Kailash Kumar Rathi,

Resolution Professional of Balgopal Distributors Private Limited

... Applicant

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearances (through video conferencing):

For the Applicant

(No name given in order sheet)

Order reserved on: 03.09.2021

Order pronounced on: 09.11.2021

ORDER

Per Rajasekhar V.K., Member (Judicial)

1. This court convened *via* video conferencing.
2. This is an application filed by the Resolution Professional upon the instructions of the Committee of Creditors ('CoC') seeking liquidation of the Corporate Debtor, *viz.*, Balgopal Distributors Private Limited [CIN:U51909WB2008PTC123780], on the ground that no resolution plan was received by the Resolution Professional.
3. This Adjudicating Authority *vide* its order dated 17.02.2020 on a Petition filed by the Royalpet Vanjya Private Limited (*financial creditor*) under section 7 of the Insolvency and Bankruptcy Code, 2016 (*the Code*) directed initiation of the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and appointed Mr. Kailash Kumar Rathi as the Interim Resolution Professional ('IRP'). The IRP was appointed as the Resolution Professional ('RP').
4. The Applicant submits that in terms of section 15 of the Code, public announcement was made on 25.02.2020, in Financial Express (English) and Ekdin (Bengali) (Kolkata Edition), fixing 08.03.2020 as the last date for submitting the claim. The public announcement was uploaded on the website of IBBI.
5. The Committee of Creditors was duly constituted with one financial creditor and the Report certifying the constitution of the CoC was filed with the Adjudicating Authority on 14.03.2020¹.
6. The first meeting of the CoC was held on 15.06.2020 wherein the CoC confirmed the appointment of the IRP as the RP. The CoC in the second CoC meeting held on 03.10.2020, approved the publication of Form G.

¹ Annexure C at Pp. 23-30 of the I.A.

The Applicant states that the publication for invitation of Expression of Interest (EOIs) in Form G was done on 06.10.2020 in Financial Express (English) and Ek Din (Bengali) (Kolkata edition) newspapers. Form G was re-published two times i.e., on 17.11.2020 and 22.02.2021 in Financial Express (English) and Ek Din (Bengali) (Kolkata edition) newspapers. The last date of submission of EOI was 09.03.2021.

7. It is submitted that the RP received six enquiries but did not receive any EOI. The CoC in its seventh CoC meeting held on 16.04.2021, the CoC passed a resolution to liquidate the Corporate Debtor as the Resolution Professional did not receive any EOI despite publication of Form G on three occasions. Further, the Corporate Debtor had no business activity.
8. Hence, the RP has filed an application under section 33 of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor no EOI had been received by the Resolution Professional.
9. That the CoC has passed resolution by 100% voting shares² that the Corporate Debtor be liquidated under the provisions of section 33(2) of the Code.
10. The Applicant/Resolution Professional, Mr. Kailash Kumar Rathi [Reg. No. IBBI/IPA-001/IP-P00547/2017-2018/10977], has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator, in terms of section 34(1) of the Code³ and has also filed a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, which is valid till 22.02.2022⁴.

² Page 101 of I.A.

³ Page 106 of I.A.

⁴ Annexure L in Page 105 of the I.A.

11. We have considered the submission made by the learned Counsel on behalf of the Applicant/RP and perused the record.
12. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 100% voting share to liquidate the Corporate Debtor.
13. This Bench, therefore, hereby orders as follows: -
 - a. The prayers as sought for in I.A. (IB) No. 656/KB/2021 filed by Mr. Kailash Kumar Rathi, RP of Balgopal Distributors Private Limited, the Corporate Debtor, is hereby allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;
 - b. **Mr. Kailash Kumar Rathi [Reg. No. IBBI/IPA-001/IP-P00547/2017-2018/10977]**, is hereby appointed as Liquidator as provided under section 34(1) of the Code.
 - 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.*, *Financial Express (English)* and *Ek Din (Bengali)* (Kolkata edition), 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, Kolkata, 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, Kolkata.

14. The application bearing **IA (IB) No. 656/KB/2021** shall stand disposed of in accordance with the above directions.

15. 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.

16. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

17. List the main **CP (IB) No. 1850/KB/2019** for reporting progress on **14.02.2022**.

[Harish Chander Suri]
Member [Technical]

[Rajasekhar V.K.]
Member [Judicial]

09 .11. 2021.

GGRB[LRA]