

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

**IA(IBC)/1062(KB)2022
in
CP(IB)/154(KB)2019**

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

In the matter of:

Bhuwalka Mercantile LLP, (LLPIN – AAI-9814)

.... Operational Creditor

Versus

M/s. Aelis Enterprise Learning And Implementation Solutions Private Limited
(U74999WB2009PTC216105)

.... Corporate Debtor

And

In the matter of:

Smt. Rashmi Chhawchharia,

Resolution Professional of M/s. Aelis Enterprise Learning And Implementation
Solutions Private Limited

... Applicant

Order reserved on: 09/10/2023

Order pronounced on: 20/11/2023

Coram:

Smt. Bidisha Banerjee

: Member (Judicial)

Shri Arvind Devanathan

: Member (Technical)

Appearances (through hybrid mode):

For RP

:

Mr. Rahul Parasrampuria, PCS
Ms. Rashmi Chhawchharia, RP in person

For the applicant

:

Mr. S. Ghosh, Adv.

In IA(IBC)/912(KB)2023

:

Mr. Rohit Keshri, Adv.
Mr. Raju Mukherjee, PCS

For R-1

:

Mr. P. K. Tripathi, Adv.
Mr. Udit Agarwal, Adv.
Mr. K. Bose, R-1 in person

ORDER

Per: Arvind Devanathan, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/1062(KB)2022** is an application filed under section 33(2) of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) by the Resolution Professional (“**RP**”) of **Aelis Enterprise Learning and Implementation Solutions Private Limited**, the Corporate Debtor, praying for order for initiation of liquidation process of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by Smt. Rashmi Chhawchharia, 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 Bhuwalka Mercantile LLP, the Operational Creditor, *vide* order² dated 21/03/2022 in CP(IB)/154(KB)2019, had ordered initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against Aelis Enterprise Learning and Implementation Solutions Private Limited, the Corporate Debtor appointing Smt. Rashmi Chhawchharia as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry.
4. In terms of regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (“**CIRP Regulations**”) Public Announcements³ in **Form A** was published on 23/03/2022 in “*Financial Express*” (English) and “*Dainik Statesman*” (Bengali) inviting claims from the creditors.
5. In response to public announcement, claims were received from creditors and Committee of Creditors⁴ (“**CoC**”) was duly formed on 12/04/2022 comprising of

¹ At pages 19 to 22 of the application

² Annexure A at pages 12 to 19 of the Supplementary Affidavit affirmed on 22/08/2023

³ Annexure C at pages 23 and 24 of the Supplementary Affidavit affirmed on 22/08/2023

⁴ Annexure J at pages 62 to 64 of the Supplementary Affidavit affirmed on 22/08/2023

National Skill Development Corporation, the sole Financial Creditor, in accordance with provisions of the IBC. A report⁵ on the constitution of the CoC was filed before this Adjudicating Authority on 12/04/2022. 1st meeting of the CoC was held on 18/04/2022. At the said 1st meeting of the CoC, appointment of IRP was confirmed as RP⁶. During the CIRP period of the Corporate Debtor, IRP/RP had held eleven CoC meetings on 18/04/2022, 27/04/2022, 18/05/2022 & 20/05/2022, 01/06/2022, 23/06/2022, 15/07/2022, 28/07/2022, 12/08/2022, 08/9/2022, 13/09/2022 and 15/09/2022 respectively⁷.

6. The applicant has filed six progress reports on 07/05/2022, 20/06/2022, 20/07/2022, 23/08/2022, 14/11/2022 and 03/03/2023 respectively⁸
7. In terms of regulation 36A(1) of the “**CIRP Regulations** Form G was published on 04/06/2022 and 24/06/2022 respectively in “*Business Standard*” (English) and “*Dainik Statesman*” (Bengali) inviting Expression of Interest (“**EoI**”) from prospective resolution applicants (“**PRAs**”).
8. In response to publication of Form G as above only one resolution plan was received from one of the PRA, AVI Polymers Limited, on 07/09/2022⁹. However, the CoC at its 11th meeting held on 15/09/2022 has not approved the Resolution Plan of AVI Polymers Limited with 100% voting share for the reasons that -

(a) the Resolution Applicant of the proposed resolution plan doesn't have a prior experience of running/managing a skill institute/industry. The experience in the skilling is lacking;

(b) the CoC was of the opinion that NSDC partnership can be shared only with companies who have experience in the skill sector;

⁵ Annexure K at pages 65 to 70 of the Supplementary Affidavit affirmed on 22/08/2023

⁶ Annexure L at pages 71 to 82 of the Supplementary Affidavit affirmed on 22/08/2023

⁷ Averments in paragraph 4 at pages 10 and 11 of the application

⁸ Averments in paragraph 3 at page 4 of the Supplementary Affidavit affirmed on 22/08/2023

⁹ Averments in paragraph 6 at page 11 of the application

and decided to proceed with liquidation of the Corporate Debtor.¹⁰ The resolution passed by the CoC at its 11th meeting is reproduced below: -

“RESOLVED THAT the CoC has decided to proceed for the liquidation proceedings against the Corporate Debtor and have empowered the RP to take necessary steps including the filing of the application before the Hon’ble NCLT since the Resolution Plan submitted by the only Resolution Applicant being AVI Polymers Limited have not been approved.”

A copy of the minutes of the 11th meeting of the CoC forms **Annexure ‘A’**, which is placed at pages 23 to 28 of the application.

9. In compliance of the order dated 23/12/2022 in IA(IBC)/1062(KB)2022, the RP has filed a supplementary affidavit affirmed on 15/02/2023 stating *that the Corporate Debtor has enough balance to the tune of approx.. Rs.55 Lakhs in CIRP Bank Account to take care of the Liquidation Cost¹¹.*
10. The applicant has filed another Supplementary Affidavit affirmed on 22/08/2023 in compliance of our order ‘For Clarification’ dated 18/08/2023 annexing the 1st and 3rd Progress Reports respectively.
11. The RP has submitted her written communication dated 16/09/2022 along with her AFA to act as the Liquidator of the Corporate Debtor which forms **Annexure ‘B’**, placed at pages 29 and 30 of the application.
12. It is to be noted here that the CIRP period has already ended on 16/09/2022 and no extension has been sought by the RP.
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 liquidation order where the Resolution Professional intimates to the Adjudicating

¹⁰ Averments in paragraph 10 at pages 13 and 14 of the application

¹¹ Averments in para 3(i) of the Supplementary Affidavit affirmed on 15/02/2023

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)/1062(KB)2022 filed by Smt. Rashmi Chhawchharia, RP of Aelis Enterprise Learning and Implementation Solutions 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 her consent to act as the Liquidator of the Corporate Debtor but in view of direction of the IBBI vide 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 are appointing **Mr. Udit Agarwal** (Reg. No. IBBI/IPA-001/IP-P-02799/2023-2024/14290) having e-mail i.d. uditagarwal15@gmail.com mobile no. 9681337160 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 her 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 “*Dainik Statesman*” (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)/1062(KB)2022** shall stand disposed of in accordance with the above directions.
17. **CP(IB)/154(KB)2019** is to come up for filing of Periodical Progress Report on **11/12/2023**.

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

**IA(IBC)/1062(KB)2022
in CP(IB)/154(KB)2019**

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.

**Arvind Devanathan
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Signed on this, the 20th day of November, 2023.

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