

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

IA (IB) No. 284/KB/2023

IA(IB) No. 420/KB/2023

in

CP (IB) No. 921/KB/2020

*An application under section 33 (2) of the Insolvency and Bankruptcy Code,
2016*

And

*An application under Section 12(2) and (3) of the the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of the National Company Law
Tribunal Rules, 2016*

In the matter of:

Highrank Commercial Private Limited

...Financial Creditor

-Versus-

Suashish Capital Private Limited

(U67120WB1996PTC112002)

...Corporate Debtor

-And-

In the matter of:

Sudipta Ghosh, Resolution Professional of Highrank Commercial Private
Limited

...Applicant

Date of pronouncing the order: 06/10/2023

Appearances (through hybrid mode):

For the Resolution Professional : Ms. Urmila Chakraborty, Advocate
: Ms. Pallavi Ray, Advocate
: Mr. Sudipta Ghosh, RP in person

Coram:

Rohit Kapoor : **Member (Judicial)**

Balraj Joshi : **Member (Technical)**

ORDER

Per Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. **I.A.(I.B.C) No. 420/KB/2023** is an application filed by the Applicant for extension of period of CIRP. It is stated by the Applicant that an application being I.A.(I.B.)No.1286 of 2022 was filed by the Applicant for extension of CIRP period from 17.10.2022 upto a further period of 45 days, but it was observed by this Hon'ble Tribunal on 24.11.2022 that 45 days period would end on 01.12.2022 therefore it would not be possible to conclude the CIRP within such time, therefore the said application was withdrawn so that a fresh application could be filed. Hence, the applicant has now filed I.A.(I.B.C) No. 420/KB/2023 praying for the following reliefs:
 - a. *To allow the present application;*
 - b. *To pass necessary order/orders for exclusion of CIRP period for 45(Forty Five) days from 17.10.2022 to 01.12.2022;*
 - c. *To pass necessary order/orders for exclusion of CIRP period for 45(Forty Five) days from 02.12.2022 to 16.01.2022;*
 - d. *Ad-interim orders in terms of prayers above;*
 - e. *Costs;*
 - f. *To pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*
3. **I.A.(I.B.C) No. 284/KB/2023** is an application filed under Section 33 (2) of the Insolvency Bankruptcy Code, 2016 (in short "IBC") by the Resolution Professional ("RP") of **Suashish Capital Private Limited**, the Corporate Debtor, praying for liquidation of the Corporate Debtor.

This application is supported by an affidavit¹ duly affirmed by Mr. Sudipta Ghosh, the RP.

4. The 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 Highrank Commercial Private Limited, the Financial Creditor, *vide* order dated 20.04.2022 in C.P.(I.B.) No. 921/KB/2020, had ordered initiation of CIRP against Suashish Capital Private Limited, the Corporate Debtor. Mr. Sudipta Ghosh was appointed as the Interim Resolution Professional (“**IRP**”).
5. It is stated in the application 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 23.04.2022 inviting claims from the creditors in two newspapers, viz., “*Financial Express*” (English) and “*Ekdin*” (Bengali) mentioning the last date of submission of claims as 04.05.2022. Committee of Creditors (“**CoC**”) was duly formed on 13.05.2022. At first CoC meeting held on 20.05.2022, the IRP was appointed as Resolution Professional (“**RP**”).
6. It is also stated in the application that the IRP/RP has altogether held five CoC meetings on 20.05.2022, 30.06.2022, 16.09.2022, 17.10.2022 and 29.11.2022 respectively and also submitted four Progress Reports on 18.07.2022, 24.08.2022, 11.10.2022 and 10.01.2023 respectively.
7. It is stated in the application that in terms of regulations 36A(1) of the CIRP Regulations, Expression of Interest (“**EoI**”) was published in **Form G** on 27.09.2022 in leading newspapers namely “*Financial Express*” in English and “*Ekdin*” (Bengali). The last date for the submission of **EoI** expired on 12.10.2022 wherein two **EoIs** were

¹ Pages 16 to 18 of the Application

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received on the last date for submission of EoI and the last date for submission of Resolution Plan was 26.11.2022.

8. It is stated in the application that two registered valuers i.e., Mr. Ankush Garg and Mr. Pranab Kumar Chakraborty were appointed to determine and ascertain the Fair Value and Liquidation Value of Securities or Financial Assets of the Corporate Debtor and valuation reports² have been sent by the respective valuers to the applicant herein.
9. It is also stated in the application that one M/s Banerji Abhijit & Associates , Chartered Accountants who was appointed as Transaction Auditor, has completed the Transaction Audit for the last two years and the applicant has received the said report dated 14.11.2022³ and the same has been approved by the CoC with 85.53% voting right in the 5th CoC meeting dated 29.11.2022.
10. It is stated in the application that CIRP period expired on 17.10.2022 and it was discussed in the 4th CoC meeting held on 17.10.2022 that since the Applicant has received two EoIs, two Demand Drafts of Rupees Two Lakhs each, therefore the chance of receipt of Resolution Plan was bright, hence CoC decided to extend the period of the CIRP for a further period of 45 days from 17.10.2022.
11. It is stated by the Applicant that in accordance with the decision of the CoC, the Applicant filed an application being I.A.(I.B.)No.1286 of 2022 under Section 12(2) of the Code for extension of CIRP period whereby it was noted by this Hon'ble Tribunal on 24.11.2022 that the 45 days from 17.10.2022 would end on 01.12.2022 within which it would not be possible to conclude the CIRP. Therefore, based on such observation, the Applicant convened the 5th CoC meeting on 29.11.2022 to decide further course of action of CIRP. The CoC passed a resolution with 85.53%

² Annexure F at Pages 73-97 of IA (IB) No. 284/KB/2023

³ Annexure G at Pages 98-114 of IA (IB) No. 284/KB/2023

voting share to initiate liquidation process of the Corporate Debtor as no resolution plan was received from the Prospective Resolution Applicants till the last date for submission of resolution plans i.e., 26.11.2022.

12. It is stated by the Applicant that as no Resolution Plan was received from the Prospective Resolution Applicants, and in view of the Resolution passed in the 5th CoC meeting on 29.11.2022, the Applicant sought to withdraw the I.A.(I.B.)No.1286 of 2022 so that a fresh application could be filed for extension of CIRP period. Consequently, the said application being I.A.(I.B.)No.1286 of 2022 was dismissed as withdrawn by an order dated 01.12.2022.
13. The CoC in its 5th meeting held on 29.11.2022 had passed the following resolution by a majority of 85.53% voting share to liquidate the Corporate Debtor since no resolution plan was received from the Prospective Resolution Applicants till the expiry of the last date for such submission i.e., 26.11.2022. The following resolutions were taken in the 5th CoC meeting which are as follows:

Agenda Item No.8:

“RESOLVED that, in the event of non-receipt of Resolution Plan, Liquidation Process in the matter of Corporate Debtor be and is hereby approved by the Committee of Creditors and necessary application be moved to the Adjudicating Authority.”

AND

“RESOLVED further that, authorization of Mr. Sudipta Ghosh, Resolution Professional for filing necessary Application before the Adjudicating Authority for initiating Liquidation Process in the matter of Corporate Debtor be and is hereby approved by the Committee of Creditors.”

14. The applicant has submitted his consent⁴ under the provisions of Section 34(1) of the Insolvency and Bankruptcy Code, 2016 to act as the liquidator of the Corporate Debtor.
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)/284(KB)2023 filed by Mr. Sudipta Ghosh, RP of Suashish Capital 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. Soumitra Bhose**, Reg No. IBBI/IPA-002/IP-N00793/2019-2020/12486 e-mail: s_bhose@hotmail.com, Mobile no. 9836828815, as Liquidator as provided under section 34(1) of the Code, subject, however, to his

⁴ Annexure J at Pages 134-138 of IA (IB) No. 284/KB/2023

possessing a valid Authorization 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, 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 him 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.

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- 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 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**.
2. The application bearing **I.A.(I.B.C) No. 284/KB/2023** shall stand disposed of in accordance with the above directions.
 3. In view of the above observations, **I.A.(I.B.C) No. 420/KB/2023** is **allowed and disposed of**.
 4. **CP(IB)/921(KB)2020** is to come up for filing of Periodical Progress Report on **10.11.2023**.
 5. 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.
 6. 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)

This order is pronounced on the 6th day of October, 2023

FA_LRA