



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

**I.A. (IB) No. 475/KB/2024
in
C.P. (IB) No. 1231/KB/2019**

An application under Rule 11 of the National Company Law Tribunal Rules,
2016;

In the matter of:

Allahabad Bank (now Indian Bank, w.e.f. 01/04/2020)

... Financial Creditor

versus

Jharkhand Mega Food Park Private Limited

... Corporate Debtor

And

In the matter of:

Mr. Niraj Agrawal, acting as the Chairperson of the Monitoring Agency in
respect of the Corporate Debtor (Erstwhile Resolution Professional);

... Applicant

-Versus-

Indian Ocean Group PTE Ltd.

... Respondent

Order pronounced on: 03.04.2024

Coram:

Shri Rohit Kapoor

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (through hybrid mode):

For Applicant

:Mr. Kumarjit Banerjee, Advocate
Mr. Niraj Agrawal, Chairperson
Mr. Aadil Naushad, Advocate

For the SRA

:Mr. Mainak Bose, Advocate
Mr. Farooque Ali, Advocate
Mr. Shahrukh Raja, Advocate

For Financial Creditor

:Mr. Ramesh Chandra Prusti, Advocate

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Ms. Alisha Kar, Advocate

ORDER

Per: Coram

1. This Adjudicating Authority convened through hybrid mode.
2. I.A. (IB) No. 475/KB/2024 is filed by Mr. Niraj Agarwal, in the capacity of being the Chairperson of the Monitoring Agency, under rule 11 of the National Company Law Tribunal Rules, 2016 seeking the following reliefs:
 - a. *Direction be passed by this Hon'ble Adjudicating Authority for modification of its order dated 19th January, 2024 passed in I.A(IBC) 672/KB/2022, such as, to pass necessary orders and/or reliefs as prayed for in prayer (b) of the aforementioned application being IA (IBC) 672/KB/2022.*
 - b. *Such further order or orders as to which this Hon'ble Tribunal may deem fit and proper.*
3. *Vide* an order dated 10 January 2020, Jharkhand Mega Food Park Private Limited (“Corporate Debtor”) was appointed in Corporate Insolvency Resolution Process (“CIRP”), Mr. Niraj Agarwal was appointed as the Interim Resolution Professional and thereafter the Resolution Professional.
4. Subsequently, Mr. Niraj Agarwal, was appointed on 01 March 2022 as the Chairperson of the Monitoring Agency to oversee the implementation of the Resolution Plan submitted by Indian Ocean Group PTE Ltd., (“Respondent”) which was approved by this Adjudicating Authority *vide* its order dated 10 February 2022.
5. The learned Counsel appearing on behalf of the Applicant submitted that the Respondent did not disburse the upfront payment despite several reminders. The 3rd meeting of the Monitoring Agency convened on 11 May 2022, wherein the Applicant noted that despite expiry of the payment date the Respondent has not made the upfront payment. It is further submitted that the representative of the Respondent sought to

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change the source of funds and to modify the payment timeline of the approved Resolution Plan, the same would amend the entire approved resolution plan.

6. It is submitted that in view of the above the Applicant filed I.A. (IB) No. 672/KB/2022 seeking the following reliefs:

- a. *Direction be passed by the Hon'ble Adjudicating Authority for recommencement of the CIRP of the Corporate Debtor in accordance with and under the provisions of IBC and CIRP Regulations with object and purpose of reviving the corporate debtor as a going concern and issuance of a fresh Invitation for Expression of Interest under Section 25(2)(h) of IBC in furtherance thereof.*
- b. *In the alternative, in view of the persistent refusal to implement the terms of the approved Resolution Plan by the successful resolution applicant and its continued conduct in patent derogation of the terms of the binding approved Resolution Plan in grave contraventions of the provisions of the Code, the Adjudicating Authority be pleased to pass an order directing the Corporate Debtor to be liquidated.*
- c. *An order directing forfeiture of the performance security, viz., the Performance Guarantee furnished by the successful resolution applicant, the Respondent herein, and forfeiture of all payments made and/or sums disbursed by the successful resolution applicant till date on account of the persistent refusal and/or failure on the part of the Respondent successful resolution applicant to implement the approved Resolution Plan in accordance with the terms of such Resolution Plan;*
- d. *Such further order or orders as to which this Hon'ble Tribunal may deem fit and proper.*

7. The learned Counsel submitted that this Adjudicating Authority by an order dated 19 January 2024 disposed of I.A. (IB) No. 672/KB/2022,



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wherein this Adjudicating Authority observed that there is no provision of recommencement of the CIRP of the Corporate Debtor but inadvertently not adjudicated upon prayer “b” that had been sought in I.A. (IB) No. 672/KB/2022, which sought for liquidation of the Corporate Debtor, thereby creating an apprehension as to whether upon the persistent failure of the Respondent to abide by the terms of the approved resolution plan, the Corporate Debtor is liable to be liquidated.

8. Heard the learned Counsel and perused the records along with the order dated 19 January 2024.
9. Due to an error occurred inadvertently, prayer “b” was missed out in I.A. (IB) No. 672/KB/2022. In view of the order dated 19 January 2024, we deem it fit to order liquidation of the Corporate Debtor and modify the order dated 19 January 2024. The following order shall be a part of the order dated 19 January 2024.
10. This Bench, therefore, hereby orders as follows: -
 - a. Prayers as sought for in prayer “b” in I.A. (IB) No. 672/KB/2022 filed by Mr. Niraj Agarwal, is allowed and Jharkhand Mega Food Park Private Limited, the Corporate Debtor is ordered to be liquidated in terms of section 33(3) of the Code read with sub-section (1) thereof;
 - b. In view of the IBBI 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 hereby appoint Mr. Pankaj Kumar Tibrewal (Reg. No. IBBI/IPA-001/IP-P01577/2018-2019/12410) having e-mail i.d. tibrewalpankaj@yahoo.com, mobile no. 9836929297 as given at Sl.No. 10 of the Insolvency and Bankruptcy Board of India, Panel for January 1, 2024 to June 30, 2024 – Kolkata Bench, as Liquidator in terms of section 34(1) of the Code. His appointment shall be subject to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional

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- 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**.
- 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, 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,

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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, Jharkhand, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, Jharkhand.

11. The application bearing **I.A. (IB) No. 475/BK/2024** shall stand disposed of in accordance with the above directions.
12. **C.P. (IB) No. 1231/KB/2019** is to come up for filing of Periodical Progress Report on **16 May 2024**.
13. 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.
14. 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]

Order pronounced on the 03rd day of April 2024.

GGRB[LRA]