



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

IA(IBC) No. 510/KB/2022

in

CP (IB) No. 101/KB/2021

An application under Section 33(2) of Insolvency and Bankruptcy Code, 2016

In the matter of:

Shree Sankar Saw Mill Private Limited

(CIN: U20101WB2002PTC094455)

.....Corporate Applicant/Corporate Debtor

And

In the matter of:

Neeraj Kumar Sureka,

Resolution Professional of Shree Sankar Saw Mill Private Limited

.....Applicant

Date of Pronouncement:14.07.2023

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via Hybrid Mode):

For RP

:

Mr. Saurav Jain, Adv

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ORDER

Per: Rohit Kapoor, Member (Judicial)

1. That the court convened through hybrid mode today.
2. IA(IBC) No. 510/KB/2022 is an application filed by the Resolution Professional of Shree Sankar Saw Mill Private Limited, the Corporate Applicant, praying for liquidation of the Corporate Applicant. This application is supported by an affidavit¹ duly affirmed by Neeraj Kumar Sureka, RP.
3. This Adjudicating Authority vide order² dated 27th January 2022 in CP(IB) No. 101/KB/2021 had ordered initiation of CIRP against the Corporate Applicant and appointed Mr. Neeraj Kumar Sureka as the Interim Resolution Professional (IRP). The said order was duly communicated to the IRP.
4. In terms of regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, **Regulations 2016**), Public Announcement³ in **Form A** was published on 29th January 2022 in the following newspapers: -
 5. “Financial Express” (English) in West Bengal
 - “Aajkal” (Bengali) in West Bengal

In accordance with the newspaper publication, the applicant received a claim from a secured financial creditor i.e. State Bank of India. In furtherance to the claim, the Interim Resolution Professional constituted the Committee of Creditors (in short, “CoC”) on 18.02.2022⁴.

¹ At pages 17 to 19 of the application.

² Annexure-“A” at pages 20 to 25 of the application.

³ Averment in paragraph 3 at page 10 of the application.

⁴ Averment in paragraph 4 at page 10 of the application.



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6. Committee of Creditors (in short, “CoC”) at its first meeting held on 24th February 2022, has confirmed the appointment of the IRP as the Resolution Professional (RP)⁵. Further, the Resolution Professional requested the CoC at the 2nd and 3rd meetings⁶, for the issuance of **Form G** inviting Expression of Interest (in short “EoI”) and also to discuss the Eligibility Criteria of Purchase and Resale Agreements but the same was not approved at the meeting and therefore **Form G** was not issued⁷.
7. It has further been observed by the members of the CoC in its 3rd meeting, that the company is closed for more than 7 years and there is no chance of revival of the Corporate Debtor. Also, its entire plant and machinery were sold by SBI to realize part of its outstanding before the commencement of CIRP. Keeping these events in view, the CoC decided to send the corporate debtor into liquidation⁸.
8. At the 4th CoC meeting held on 18th May 2022, the CoC decided to liquidate Corporate Debtor and further resolved to appoint **Mr. Neeraj Kumar Sureka** as **liquidator**. Further, at the meeting, the liquidation of the corporate debtor was approved with 100% voting rights and passed the following resolution, which is at page 14 of the application⁹:-

(A) TO DISCUSS AND APPROVE THE LIQUIDATION OF THE
CORPORATE DEBTOR U/S 33 OF THE CODE:

“RESOLVED THAT the liquidation of M/s Shree Shankar Saw Mill Private Limited be and is hereby approved, as per the provisions of section 33(2) of the Insolvency and Bankruptcy Code, 2016, by the

⁵ Averment in paragraph 5 at page 11 of the application.

⁶ Averment in paragraph 9 at page 12 of the application.

⁷ Averment in paragraph 9 at page 12 and 13 of the application.

⁸ Averment in paragraph 13 at page 13 and 14 of the application.

⁹ Averment in paragraph 14 at page 14 and 15 of the application.



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members of the Committee of Creditors of M/s Shree Shankar Saw Mill Private Limited.

FURTHER RESOLVED THAT *Mr. Neeraj Kumar Surekha, Resolution professional be and is hereby authorized to file necessary application and other documents in connection with the liquidation before the Hon'ble NCLT Kolkata Bench."*

(B) TO DISCUSS AND APPROVE THE APPOINTMENT OF THE LIQUIDATOR IN TERMS OF SECTION 34 OF THE CODE:

"RESOLVED THAT *consent of the members of the CoC be and is hereby accorded to confirm the appointment of Mr. Neeraj Kumar Sureka, the Resolution Professional in the CIR Process matter of Corporate Debtor, as the Liquidator of the Corporate Debtor as per the provision(s) of the Insolvency and Bankruptcy Code, 2016 and IBBI(Liquidation Process)Regulations, 2016."*

9. The CoC has proposed the name of Mr. Neeraj Kumar Sureka, RP, for appointment as Liquidator of the Corporate Debtor in their first CoC meeting dated 24.02.2022, the RP has annexed his consent letter to act as Liquidator of the Corporate Debtor with the application¹⁰.
10. Meanwhile, the 180days CIRP period had expired on **27/07/2022**¹¹.
11. 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

¹⁰ Annexure-"C" at pages 46 and 47 of the application..

¹¹ Averment in paragraph 16 at page 15 of the application.



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Committee of Creditors approved by not less than 66% of the voting share to liquidate the Corporate Debtor.

12. On conjoint reading of these two provisions, this Adjudicating Authority is left with no option to order liquidation of the Corporate Debtor.

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

- a. IA(IBC)/510/KB/2022 filed by **Mr. Neeraj Kumar Sureka, RP** of **Shree Sankar Saw Mill Private Limited**, the Corporate Debtor, is 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. Neeraj Kumar Sureka, RP [Reg.No. IBBI/IPA-001/IP-P01539/2019-2020/12517]**, having e-mail **i.d. ipneerajsureka@gmail.com**, mobile no. **+919831114540** is hereby appointed 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.
- 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) in West Bengal and "Aajkal"(Bengali) in West Bengal, stating that the Corporate Debtor is in liquidation.



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- 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 Oder to the **Registrar of Companies, West Bengal**.
14. The application bearing **IA(IBC)/510/KB/2022** shall stand disposed of in accordance with the above directions.
15. **CP(IB)/101/KB/2021** is to come up for filing of periodical progress report on **3.10.2023**.



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16. 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.
17. 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 signed on the 14th Day of July 2023

A.S. LRA