

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

IA No. 340/CB/2020
in
TP No. 33/CTB/2019
[earlier CP (IB) No.94/KB/2018]

In the Matter of:

An application under Section 33 read with Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 for initiation of Liquidation Process;

-And-

In the Matter of:

Sangeeta Aviation Services Private Limited having its Registered Office situated at: 5B-34, Akshay Mittal Ind. Estate, Saki Naka, Andheri (E), Mumbai – 400 059.

... Financial Creditor

-Versus-

Air Odisha Aviation Private Limited having its Registered Office situated at: Plot No. Mig – 99, Rajiv Nagar, P.O. – Aiginia, Bhubaneswar – 751 019.

... Corporate Debtor

-And-

In the Matter of:

Mr. Manoj Kumar Jain, R/o – 11, Friends Union Premises CHS, 2nd Floor, 227 P'D Mello Road, Next to Hotel Manama, Fort, Mumbai – 400 001.

... Applicant/Interim Resolution Professional

Order reserved on: 06.08.2021

Order pronounced on: 13.09.2021

Coram:

Shri Rajasekhar V.K.	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

Sd _____



Appearances (through video conferencing)

For the applicant :

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This application is filed under Section 33 read with Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (*hereinafter referred as "Code"*) by Mr. Manoj Kumar Jain, Interim Resolution Professional (*hereinafter referred as "Applicant"*) seeking order of liquidation of the Corporate Debtor and to direct the Sangeeta Aviation Services Pvt. Ltd., Financial Creditor to pay the professional fees and expenses of ₹3,97,576/- (Rupees three lakh ninety-seven thousand five hundred and seventy-six only) incurred by him while carrying out the Corporate Insolvency Resolution Process of the Corporate Debtor.
2. This Adjudicating Authority vide Order dated 27.09.2019 initiated the Corporate Insolvency Resolution Process against the Corporate Debtor. Mr. Manoj Kumar Jain having Registration No. IBBI/IPA-001/IP-P00535/2017-18/10960 was appointed as Interim Resolution Professional. The Interim Resolution Professional made public announcement on 30.09.2019 as per Section 15 in "Form A" in *The New Indian Express* (English) and *Pratidin* (Odia). The applicant states that he had received only one claim i.e., from the Sangeeta Aviation Services Pvt. Ltd, Financial Creditor. The 1st Meeting of the Committee of Creditors was held on 30.10.2019. In the said meeting, the applicant informed the Committee of Creditors about his inability to act as Resolution Professional due to ill health and difficulty to carry out the function as Resolution Professional efficiently as he is based in Mumbai. Hence, he requested the Committee of

Sd.



Creditors to suggest the name of any other Insolvency Professional to be appointed as Resolution Professional in his place and he placed the details of his remuneration and expenses incurred by him while carrying out his duties as IRP of the Corporate Debtor.

3. The applicant states that the 2nd Meeting of the Committee of Creditors was held on 20.12.2019. In the said meeting, Authorized Representative of the Financial Creditor placed before the Committee of Creditors a copy of Settlement Agreement dated 10.12.2019 wherein the Terms of Settlement arrived at between the Financial Creditor and the Corporate Debtor have been recorded and a Cheque bearing No. 000846 dated 24.12.2019 drawn in ICICI Bank of ₹ 50,00,000/- (Fifty Lakh) issued by Aeroserv Odisha Pvt. Ltd. and was received by the Financial Creditor.
4. The applicant states that the 3rd Meeting of Committee of Creditors was held on 07.01.2020. In the said meeting, the Committee of Creditors informed the applicant that pursuant to Settlement Agreement dated 10.12.2019, Cheque of ₹ 50,00,000/- (Fifty Lakh) was dishonored due to "funds insufficient". Accordingly, The Settlement between the Financial Creditor and the Corporate Debtor deemed as failed. The Committee of Creditors decided to go for liquidation of the Corporate Debtor to save the valuable assets and resources of the Corporate Debtor as the Corporate Insolvency Resolution Process cannot be carried any further in view of non-cooperation from the Suspended Director and also in view of the fact that the Corporate Debtor has not been carrying any business activity since past one year. Accordingly, the Committee of Creditors passed with 100% voting share the following resolutions: -

***"RESOLVED THAT** consent of the COC of the Corporate Debtor be and is hereby accorded to proceed for Liquidation of the Corporate Debtor i.e., Air Odisha Aviation Pvt. Ltd. U/s. 33 (2) of the Insolvency and*

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Bankruptcy Code, 2016, subject to the approval of the Adjudicating Authority.

RESOLVED FURTHER THAT an application U/s. 33 (2) of the Insolvency and Bankruptcy Code, 2016, before the Adjudicating Authority for Liquidation of the Corporate Debtor i.e., Air Odisha Aviation Pvt. Ltd. be filed by the Interim Resolution Professional and is hereby authorized to do all such deed(s)/act(s)/action(s) to give effect to it.”

5. The applicant states that in the 3rd Meeting of the Committee of Creditors expressed his inability to be appointed as the Liquidator of the company due to his health and difficulty to carry out the assignment being based in Mumbai. Hence, the applicant requested the Committee of Creditors to propose the name of the Liquidator. Accordingly, the Committee of Creditors prayed to appoint an Insolvency Professional from the panel of the I.B.B.I. who can act as Liquidator of the Corporate Debtor.
6. The applicant further submits that he had engaged services of Mr. Suresh Pattanayak for his assistance and also had engaged services of Adv. Patit Pawan Biswal in order to report before this Adjudicating Authority with regard to progress of Corporate Insolvency Resolution Process. The applicant submits that he has incurred expenses for carrying out the Corporate Insolvency Resolution Process for which he has not received any reimbursement/consideration from the Financial Creditor till date. The Financial Creditor had denied to make payment to the applicant. He submits the details of expenses incurred during Corporate Insolvency Resolution Process are as under: -

Sl. No.	Particulars	Amount (₹)
1.	Expenses of Public Announcement in Form A	14,036/-
2.	Appearance fees of Adv. Patit Pawan Biswal before the NCLT, Cuttack Bench	78,540/-
3.	Invoices of Mr. Suresh Pattanayak for assisting the IRP	30,000/-

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4.	Professional fees of IRP from October, 2019 to January, 2020 at ₹ 50,000/- P.M.	2,00,000/-
5.	Drafting and filing of application of Liquidation and application U/s. 19 (2), appearance of Adv. Yahya Batatawala and out of pocket expenses.	75,000/-
Total		3,97,576/-

7. In view of the above stated facts and circumstances of the case, the material on record and in the interest of all the stakeholders, this Adjudicating Authority is inclined to pass an Order of Liquidation of the Corporate Debtor as follows: -

ORDER

- (i) This Adjudicating Authority order for liquidation of the Corporate Debtor viz. Air Odisha Aviation Private Limited.
- (ii) This Adjudicating Authority appoints **Mr. Gagan Bihari Bhuyan** Resolution Professional having Registration No. IBBI/IPA-002/IP-N00928/2020-21/13029 resident of Flat No. 2162, 15th Floor, 2nd Tower, DN Oxy Park, Dumuduma, Bhubaneswar (M.C), Khordha, Dumuduma Housing Board Colony, Odisha- 751019, Bhubaneswar, email-id gaganbhuyan@gmail.com as the Liquidator who shall issue a public announcement stating therein that the Corporate Debtors is in liquidation in one of the leading English newspapers as well as one in vernacular newspaper having wide circulation where the Registered Office of the Corporate Debtor is situated as per Section 33 (1) (b) (ii) of the Code read with Reg. 12 (1) of I.B.B.I. (Liquidation Process) Regulations, 2016.
- (iii) The moratorium declared under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have effect from the date of the Order of Liquidation.

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- (iv) Subject to Section 52 of the Insolvency and Bankruptcy Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor with the prior approval of this Adjudicating Authority.
- (v) This Adjudicating Authority makes it clear that para (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
- (vi) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
- (vii) All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall to have effect and shall be vested with the Liquidator viz., Mr. Gagan Bihari Bhuyan.
- (viii) The personnel of the Corporate Debtor shall extent all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- (ix) The Company Liquidator shall be entitled to charge such fees as stated under para 4 hereinabove for the conduct of the liquidation proceedings or in such a proportion to the value of the liquidation estate assets as specified under Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- (x) Considering the expenses incurred by the applicant with regard to progress of Corporate Insolvency Resolution Process, the Financial

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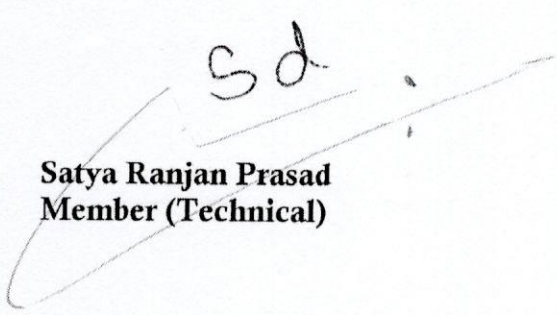
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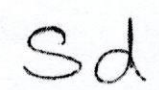
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Creditor is directed to pay the sum of ₹ 3,97,576/- as stated above within 30 days from today.

- (xi) Copy of this Order shall be sent to the concerned Registrar of Companies, Regional Director of Eastern Region, and Registered Office of the Corporate Debtor, by the company Liquidator viz., **Mr. Gagan Bihari Bhuyan** for information and compliance.
- (xii) The Registry is directed to send a copy of this Order to the Liquidator, Financial Creditor, Corporate Debtor, concerned R.O.C. and to the I.B.B.I., New Delhi by Speed Post as well as by E-mail with immediate effect for information and compliance.


Satya Ranjan Prasad
Member (Technical)


Rajasekhar V.K.
Member (Judicial)

Signed on this, the 13th day of September, 2021.

Santosh_P.S.