

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

IA No. 1155 of 2023
C.P. (IB) No. 2046/KB/2019

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

And

In the matter of:

M/S Orbit Towers Private Limited,

...FINANCIAL CREDITOR

Versus

Sampurna Suppliers Private Limited,

...CORPORATE DEBTOR

And

In the matter of:

Sudipta Ghosh, Resolution Professional, Professional of Sampurna Suppliers Private Limited, working for gain at 8, N. N. Mukherjee 3rd Lane, Uttarpa, Hooghly-712258, West Bengal.

...APPLICANT

In the matter of:

1. M/S Orbit Towers Private Limited.
2. Sampurna Suppliers Private Limited.
3. Sudipta Ghosh, Resolution Professional,
(Liquidator-in-person).

...FINANCIAL CREDITOR

...CORPORATE DEBTOR

...APPLICANT

Date of pronouncing of the order: 05/03/2024

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearances (via Video Conferencing/Physical):

Mr. Kuldip Mallik, Adv.] For the RP

Mr. Aniket Chaudhury, Adv.]

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- e. The Applicant started collating the claims from the stakeholders and upon verification, duly constituted the Committee of Creditors (hereinafter referred to as the 'CoC') of M/S Orbit Towers Private Limited on 20th July, 2022.
- f. The Applicant submitted the progress reports from time to time before this Tribunal to update the ongoing CIRP. The Applicant filed 3 progress reports as follows:

| Progress Report | Date of e-filing |
|---------------------------------|-------------------------|
| 1 st Progress Report | 10.08.2022 |
| 2 nd Progress Report | 15.10.2022 |
| 3 rd Progress Report | 23.02.2023 |

- g. The CoC in its First meeting held on 27th July, 2022 approved and confirmed the appointment of the Applicant as the **RP** of the Corporate Debtor.
- h. The Applicant/RP has submitted that he duly complied with all the Rules and Regulations framed under the Code from time to time to revive the Corporate Debtor in the best possible manner.
- i. The Applicant/RP states that he has conducted 8 CoC meetings from time to time to discuss on each and every possibility to revive the Corporate Debtor and further to update the progress in the CIRP of the Corporate Debtor to the CoC members, as mentioned hereunder:

| CoC meeting. | Date of Meeting. |
|---------------------|-------------------------|
| 1 st CoC | 27.07.2022 |
| 2 nd CoC | 07.09.2022 |
| 3 rd CoC | 21.09.2022 |
| 4 th CoC | 11.11.2022 |
| 5 th CoC | 07.12.2022 |
| 6 th CoC | 08.02.2023 |
| 7 th CoC | 13.03.2023 |

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| | |
|---------------------|------------|
| 8 th CoC | 20.05.2023 |
|---------------------|------------|

- j.** The Applicant/RP published Form G inviting Expression of Interest (hereinafter referred to as “**EOI**”) from Prospective Resolution Applicants (hereinafter referred to as “**PRA**”) on 9th September, 2022 in the newspapers, namely “Financial Express” in English and “**Ekdin**” in Bengali, both Kolkata edition.
- k.** The RP received emails from few interested applicants requesting him to provide various information regarding EoI, and replied to all the queries put forward by the interested parties. The Applicant replied to all the queries put forward by the interested parties, no EoI was received by the undersigned. Copies of the Form G are annexed as **Annexure D** to the petition.
- l.** The CoC discussed over the matter in its fifth meeting and resolved to re issue Form G. RP reissued Form G in the newspapers being ‘Financial Express’ in English and ‘Ekdin’ in Bengali, both Kolkata edition, on 12th January, 2023.
- m.** The RP received two EoIs on 28th January, 2023, which was the last date for submission of EoI as per re-issued Form G. That the last date for submission of the Resolution Plan was 14th March, 2023.
- n.** Two registered valuers, Mr. Shyamal Mukherjee and Mr. Pranab Kumar Chakraborty were appointed to determine and ascertain the Fair value and Liquidation Value of Financial Assets of the Corporate Debtor. Copies of the valuation reports are annexed as **Annexure “F”** to the petition.
- o.** M/s. Sunil Kumar Agrawal & Associates, Chartered Accountants, who was appointed as the Transaction Auditor in the matter of the Corporate Debtor, completed the Transaction Audit under the relevant provisions of the Code, for the period of last 2 years from the date of commencement of CIRP of the Corporate Debtor, and submitted its report dated 10th March, 2023 to the **RP**, The reports states that several

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transactions during the relevant period, fall within the category of Transactions under Sections 43 and 66. Copy of the Transaction Audit report is annexed as **Annexure “G”** to the petition

- p.** 180 days of CIRP expired on 23rd December, 2022. As discussed in the Fifth meeting of Committee of Creditors held on 07th December, 2022, since the Applicant received EoI and relevant documents relating to Expression of Interest, the Applicant/RP filed an application under Section 12(2) of the Code for extension of CIRP period. This Tribunal was pleased to extend the CIRP period by 90 days from the end of 180 days of CIRP period.
- q.** At the Eight Meeting of the Committee of Creditors (CoC) of Sampurna Suppliers Private Limited, Corporate Debtor (CD) held on 20th May, 2023 at 4:00 p.m. The CoC decided *vide* agenda Item No.7 to approve initiation of Liquidation Process of the Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code, 2016 as mentioned in **Annexure ‘I’** to the petition.
- r.** Outcome of Mr. Sudipta Ghosh bearing Registration No. IBBI/IPA-001/IP-P00484/2017-18/10872 has given his consent for being appointed as the Liquidator of the Corporate Debtor, subject to the confirmation of the same by this Tribunal. Copy of the said written consent of the Applicant along with Authorisation for Assignment is annexed herewith and marked as **Annexure “J”**.
- s.** The CoC in consultation with the Applicant made a best estimate under Regulation 39B(1) of the CIRP regulations of the amount required to meet Liquidation Costs, in the event by an Order of Liquidation under Section 33 of the Code is passed by this Tribunal, which is as follows:

| Cost | Amount(Rs) |
|--|-------------------|
| Fees of Liquidator at the same rate as RP was entitled to, i.e. @ ₹ 1,00,000 per month (assuming the Liquidation | 6,00,000/- |

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| | |
|-----------------------------------|-------------------|
| process to conclude in 6 months) | |
| Cost of Public Announcement, etc. | 30,000/- |
| Legal Charges | 2,00,000/- |
| Other Expenses | 75,000/- |
| Auditor Remuneration | 30,000/- |
| Total | 9,35,000/- |

3. We have considered the pleadings and we are satisfied that all procedural formalities have been completed by the RP, efforts have been taken to get the company revised through resolution but due to lack of any EoI from substantial bidders, a decision to seek liquidation has been taken. The Seventh CoC minutes confirm the same.
4. This Bench, therefore, hereby orders as follows: -
- a. IA(IBC)/1155(KB)2023 filed by Mr. Sudipta Ghosh, RP of Sampurna Suppliers 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 vide Circular no. Liq-IBBI/IPA-001/IP-P00484/2017-18/10872 dated 27/07/2022 for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the Code, we are appointing **Mr. Sandip Mitra** (Reg. No. **IBBI/IPA-001/IP-P00497/2017-18/10885**) having e-mail i.d: sasoso@gmail.com having mobile no. **9433074450** as Liquidator as provided under section 34(1) of the Code, subject, however, to **his/her** possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which **he/she** is a professional member, in terms of regulation 7A of the Insolvency and

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Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. The Liquidator is directed to submit **his/her** 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 "*Ekdin*" (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.

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- 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**.
5. The application bearing **IA(IBC)/1155(KB)2023** shall stand disposed of in accordance with the above directions.
6. **CP(IB)/2046(KB)2019** along with **IA(IBC)/987/(KB)2023** is to come up for filing for further consideration on **10/04/2024**.
7. 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.
8. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Signed on this, the 05th of March, 2024.

SG, Steno.