IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH (Court - I)

KOLKATA

IA (IB) No. 1424/KB/2023
in
CP (IB) No. 991/KB/2019

An application under section 33(2) of Insolvency & Bankruptcy Code, 2016

In the matter of

Rungta Business Private Limited

... Financial Creditor

Versus

Shradha Agencies Private Limited

... Corporate Debtor

-And-

In the matter of

Mr. Siddhartha Mukhopadhyay, Resolution Professional of Shradha Agencies Private Limited

… Applicant

Order pronounced on : 28.02.2024

Coram:

Shri Rohit Kapoor, Member (Judicial)
Shri Balraj Joshi, Member (Technical)

Appearances (through video conferencing):

Mr. Siddhartha Mukhopadhyay, RP
Mr. Siddhant Makkar, Adv] For RP

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.
2. This application has been filed under section 33(2) of the Insolvency and Bankruptcy Code, 2016 (in short "IBC") by the Resolution Professional ("RP") of Shradha Agencies Private Limited, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit duly affirmed by the RP.
3. This application filed by the Resolution Professional with the approval of the Committee of Creditors ('CoC') seeking liquidation of the Corporate Debtor, viz., Shradha Agencies Private Limited [CIN: U51909WB1996PTC078810], on the ground that the CoC has decided to liquidate the Corporate Debtor by **99.39% votes**. The applicant has sought for the following reliefs:

   (a) Allow the Present Application;

   (b) Pass an order requiring the corporate debtor to be liquidated in the manner as laid down in Chapter III of the IBC, 2016.

   (c) Pass an order appointing Mr. Siddhartha Mukhopadhyay as the Liquidator in the matter.

   (d) Issue such order and /or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper for the interest of justice.

   This Adjudicating Authority *vide* its order[1] dated 13th April 2023 on a Petition filed by Rungta Business Private Limited ('financial creditor') under section 7 of the Insolvency and Bankruptcy Code, 2016 ('the Code') directed initiation of the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and appointed **Mr. Siddhartha Mukhopadhyay** (the applicant) as the

[1] Annexure – A

Interim Resolution Professional ('IRP') vide the same order. The applicant was later appointed as the Resolution Professional ('RP') in the 2nd CoC meeting dated 26.05.2023.

4. The applicant submits that in terms of Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 Code, public announcement[2] was made on 15th April 2023, in ***Business Standard*** (English) and ***Ekdin*** (Bengali) newspapers having wide circulation where the Registered Office of the Corporate Debtor, thereby inviting claims from creditors of the Corporate Debtor. The public announcement was uploaded on the website of IBBI.

5. The applicant, in compliance with Section 18(1)(c) of the Code and Regulations 13(2)(d) and 17(1) of the CIRP Regulations, established the Committee of Creditors (CoC) and submitted a report to this Hon'ble Tribunal on 05/05/2023. Subsequently, additional claims were received, leading to the applicant reconstituting the CoC and submitting a report on the reconstitution to the Tribunal on 22/05/2023. Final list of Creditors is given[3] in Annexure C of the IA.

6. Following the constitution of the Committee of Creditors (CoC), the initial meeting was convened on 11/05/2023. During this session, the undersigned proposed his candidacy for the role of Resolution Professional, but the resolution failed to pass. Additionally, ICICI Bank suggested liquidation due to the company's non-operational status for the past 4 years and its engagement in FMCG trading. ICICI Bank emphasized the presence of only fixed assets unrelated to the corporate debtor's business. State Bank of India, another CoC member, differed, expressing optimism for resolution given the few fixed assets. The Applicant presented both resolutions for voting, one confirming the IRP as RP and the other initiating liquidation. However, none received approval, leading to their deferral for subsequent discussion and voting in the next COC meeting. The minutes of the 1st COC Meeting and the voting sheet are attached[4].

---

[2] Annexure - B
[3] Annexure - C
[4] Annexure - D

7. The Applicant, in the Second Meeting of the Committee of Creditors (COC) held on 26/05/2023, reintroduced the Applicant's candidacy for Resolution Professional. Seven resolutions were proposed and successfully voted upon. All resolutions were passed, confirming the Applicant as the RP. The minutes of the 2nd COC Meeting and the voting sheet are enclosed[5].

8. In the Third Meeting of the Committee of Creditors (COC) convened on 08/06/2023, the Resolution Professional (RP) deliberated on the schedule for Form G Expression of Interest publication and discussed eligibility criteria. Following the discussion, COC members proposed adjustments to the Earnest Money Deposits (EMDs) and eligibility criteria for soliciting Expressions of Interest. These proposed changes were duly approved by the COC members, leading to the publication of Form G on 12/06/2023. The minutes, along with voting results, are attached[6].

9. The applicant published FORM G in prominent publications, ***Business Standard*** (All India Edition) and ***Ekdin*** (West Bengal Edition), on 12/06/2023. The deadline for claim submissions, in accordance with the published FORM G, was set for 27/06/2023. A copy of the FORM G published on 12/06/2023 is attached herewith[7].

10. In the Fourth Meeting of the Committee of Creditors (COC) held on 03/07/2023, the Resolution Professional (RP) informed COC members that no Expressions of Interest (EOI) were received by the deadline of 27/06/2023 after the publication of FORM G. Given this absence of interest, discussions ensued on the next course of action for the resolution process. ICICI Bank, a Financial Creditor, reiterated its initial stance from the 1st COC Meeting, suggesting direct liquidation due to the corporate debtor's trading business closure approximately 4 to 5 years ago, with limited assets like commercial and residential flats and godowns. ICICI Bank expressed concern about the nationwide publication yielding no EOIs. SBI Bank, another financial creditor, proposed calling another

[5] Annexure - E
[6] Annexure - F
[7] Annexure - G

COC Meeting in the next 4-5 days to further deliberate on the matter. The minutes of the 4th COC Meeting are enclosed[8] in the IA.

11. After the unanimous decision of COC Members in the Fifth Meeting on 07/07/2023, the Resolution Professional (RP) scheduled the publication of FORM G in ***Business Standard*** (Kolkata Edition) and ***Ananda Patrika*** (Kolkata Edition) on 10/07/2023. Recognizing the absence of Expressions of Interest (EOI) after the initial publication, COC Members agreed to allow interested parties 15 days to submit EOIs. The subsequent COC Meeting would decide the course of action, potentially leaning towards liquidation if necessary. Key timelines established include Last date for submission of EOI on 25/07/2023, Date of issuing the provisional list of prospective resolution applicants on 04/08/2023, and the last date for submission of objections to the provisional list on 09/08/2023. Minutes of the 5th COC Meeting and FORM G published on 10/07/2023 are attached[9].

12. Following the second publication of FORM G, the Sixth Meeting of the Committee of Creditors (COC) was convened on 31/07/2023. The Resolution Professional (RP) informed COC Members that despite being published in ***Business Standard*** (Kolkata Edition) and ***Ananda Bazar Patrika*** (Kolkata Edition) on 10th July 2023, no Expressions of Interest (EOI) were received by the deadline on 25th July 2023. In line with the previous discussion, COC Members unanimously proposed the resolution for the liquidation of the Corporate Debtor. The consensus was driven by the non-operational status of the company for several years, its engagement in trading FMCG goods, and possession of fixed assets unrelated to its business. With no handover of books of accounts to the RP by the erstwhile management, the COC deemed liquidation as a viable option. The Liquidator Expressed his interest for appointment post the initiation of the liquidation process, and the proposed agenda was approved by the COC Members with a voting share of 99.39%[10].

---

[8] Annexure - H
[9] Annexure - I (Colly)
[10] Annexure - J

13. The Consent of the RP to serve as Liquidator, inclusive of the Insolvency Professional (IP) Authorization for Assignment (AFA), is enclosed[11]. Additionally, a copy of FORM H, serving as the compliance certificate for the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor (CD), is attached herewith[12].

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

a. IA (IB) No. 1424/KB/2023 filed by **Mr. Siddhartha Mukhopadhyay, RP of Shradha Agencies 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 subsection (1) thereof;

b. Though the RP has given his consent to act as the Liquidator of the Corporate Debtor but 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. Manish Jain** having Regn no. as **IBBI/IPA-001/IPP00582/ 2017- 2018/11023** and email id as **manishmahavir@gmail.com** given at SI.No 6 of the Insolvency and Bankruptcy Board of India, Panel for July 1, 2023 to December 31, 2023 - Kolkata Bench, as Liquidator in terms of section 34(1) of the Code. His/Her appointment shall be subject 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 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.

[11] Annexure - K
[12] Annexure - L

c. 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**.

d. 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.

e. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, stating that the Corporate Debtor is in liquidation.

f. 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.

g. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him/her in managing the liquidation process of the Corporate Debtor.

h. 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.

i. 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.

j. 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.

15. The application bearing **IA (IB) No. 1424/KB/2023** shall stand disposed of in accordance with the above directions.

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.

18. List the main **CP (IB) No. 991/KB/2019** for reporting progress on **20-03-2024**

19. 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.

20. Certified Copy of this order may be issues, if applied for, upon compliance of all requisite formalities.

[Balraj Joshi]
Member [Technical]

[Rohit Ka[poor]
Member [Judicial]

Signed on this, the 28th day of February, 2024

AJS [L.R.A]