

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

IA(IBC)/1682(KB)2022
in
CP(IB)/1671(KB)2019

Under section 33(2) of the Insolvency & Bankruptcy Code, 2016

In the matter of:

Anmol Feeds Private Limited

.... Operational Creditor

Versus

Dynamic Hatcheries Private Limited
(U05000WB2011PTC161169)

.... Corporate Debtor

And

In the matter of:

Tarun Kumar Ray,
Resolution Professional of Dynamic Hatcheries Private Limited

... Applicant

Order reserved on: 13/06/2023

Order pronounced on: 25/07/2023

Coram:

Shri Rohit Kapoor

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (through hybrid mode):

For RP

: Mr. Shaunak Mitra, Adv.
Ms. Pallavi Ray, Adv.

For Erstwhile IRP

: Mr. Rahul Parasrampurua, PCS
Mr. Vijay Kumar Goel, Erstwhile IRP
in person

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/1682(KB)2022** is an application filed under section 33(2) of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) by the Resolution Professional (“**RP**”) of **Dynamic Hatcheries Private Limited**, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by Ms. Tarun Kumar Ray, the RP.
3. When the application for liquidation was taken up for consideration on 23/02/2023, this Adjudicating Authority *vide* its order² dated 23/02/2023 directed the Liquidator to file an affidavit *clearly explaining as to what steps were taken by him for seeking the documents and cooperation from Corporate Debtor*”. In compliance of the said order dated 23/02/2023, the Liquidator has filed a Supplementary Affidavit duly affirmed on 27/03/2023.
4. This Adjudicating authority, on a petition filed u/s. 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Anmol Feeds Private Limited, the Operational Creditor *vide* order³ dated 30/06/2022 in CP(IB)/1671(KB)2019, had ordered initiation of CIRP against Dynamic Hatcheries Private Limited, the Corporate Debtor. Mr. Vijay Kumar Goel was appointed as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry.
5. On an application filed by the Indian Bank u/s. 22(3)(b) read with section 27 of the IBC being IA(IBC)1272(KB)2022, this Adjudicating Authority *vide* order⁴ dated 06/12/2022 had replaced Mr. Vijay Kumar Goel, IRP with Mr. Tarun Kumar Ray, as RP.

¹ At pages 15 to 17 of the application

² Annexure “A” at page 8 of the Supplementary Affidavit affirmed on 27/03/2023

³ Annexure “A” at pages 18 to 25 of the application

⁴ Annexure “B” at pages 26 to 27 of the application

6. The erstwhile IRP had duly intimated the suspended members of the Board of Directors of the Corporate Debtor through e-mail⁵ dated 18/07/2022 about initiation of CIRP against the Dynamic Hatcheries Private Limited, Corporate Debtor.
7. In terms of section 15 of the IBC, Public Announcements⁶ in **Form A** was published by the erstwhile IRP in “*Business Standard*” (English) and “*Aajkal*” (Bengali) on 04/07/2022 inviting claims from the creditors, stipulating last date of submission of claims on 14/07/2022.
8. The first meeting of the Committee of Creditors (“**CoC**”) was held on 27/07/2022 wherein non-submission of information and documents by the suspended members of the Corporate Debtor was discussed. One of the suspended members of the Board of Directors of the Corporate Debtor (“**suspended directors of the Corporate Debtor**”) was present at the said 1st meeting of the CoC and assured to provide all relevant and necessary documents at the earliest. A copy of the minutes of the 1st CoC meeting⁷ has been annexed to the Supplementary Affidavit.
9. Despite assurances given by the suspended directors of the Corporate Debtor, they had failed and neglected to provide any documents as requested by the IRP. The erstwhile IRP had issued several e-mails and letters to the Statutory Auditor as well as the suspended directors of the Corporate Debtor requesting them to provide relevant documents as requested. Copies of communications⁸ made by the erstwhile IRP to the suspended directors and the Statutory Auditor requesting for documents are annexed to the Supplementary Affidavit.
10. Meanwhile, the present applicant, after stepping into the shoes of the erstwhile IRP vide order dated 06/12/2022, convened the sixth meeting of the CoC on 19/12/2022. In the said meeting, the applicant brought to the notice of the

⁵ Annexure “B” at page 9 of the Supplementary Affidavit affirmed on 27/03/2023

⁶ Annexure “C” at pages 10 and 11 of the Supplementary Affidavit affirmed on 27/03/2023

⁷ Annexure “D” at pages 12 and 23 of the Supplementary Affidavit affirmed on 27/03/2023

⁸ Annexure “E” at pages 24 to 43 of the Supplementary Affidavit affirmed on 27/03/2023

members of the CoC that though the CIRP was started on 30/06/2022, none of the essential steps, viz., publication of Form G, preparation of Information Memorandum, Identification of Prospective Resolution Applicants (PRA), and Invitation of Request for Resolution Plan (RFRP) and other related action could not be initiated due to non-availability of necessary documents, information, papers, etc. from the suspended directors of the Corporate Debtor. The information and papers in the public domain was also not available adequately. The Audited Accounts and Annual Reports from the Ministry of Corporate Affairs site was also not available after 31/03/2018. The Corporate Debtor has no business, no regular office, no assets except a piece of land situated in the district of Bankura. Under the aforesaid circumstances, the RP informed the CoC that the 180 days' CIRP period would expire on 26/12/2022. So, options that are left: (1) to make an application to the Adjudicating Authority for extension of CIRP period or, (2) to take a call on liquidation. The CoC, considering the business realities, took the commercial decision to file an application for liquidation since the Corporate Debtor has no business, no assets and other infrastructure, which would fetch a resolution plan from PRAs. The entire substratum of Corporate Debtor stood eroded and no useful purpose would be served by pursuing CIRP and liquidation is the only option available to realise any value. The members of the CoC, with 100% voting share *decided to make an application to the Competent Authority for liquidation of the Corporate Debtor since there is no possibility of revival of the Corporate Debtor through resolution plan.* Accordingly, the instant application u/s. 33(2) being IA(IBC)/1682(KB)2022 was filed on 23/12/2022.⁹ A copy of the minutes¹⁰ of the 6th CoC meeting forms **Annexure D** to the main application.

11. The erstwhile IRP has filed an application u/s. 19(2) of the IBC being IA(IBC)999(KB)2022, which came up for hearing on 17/10/2022, 23/11/2022, 12/12/2022 and lastly on 02/01/2023. Since, the members of the CoC at its 6th

⁹ Averments in Para 4(viii) at page 5 of the Supplementary Affidavit affirmed on 27/03/2023

¹⁰ Annexure "D" at pages 37 to 40 of the application

meeting in its commercial wisdom took decision to file liquidation application and the same was filed on 23/12/2022, the applicant upon legal advice through his Counsel seeks to withdraw the section 19(2) application. If required, steps u/s. 34(3) of IBC could be pursued during liquidation process. Accordingly, IA was dismissed as withdrawn vide order¹¹ dated 02/01/2023.

12. It is stated that the CoC at its 3rd meeting held on 08/09/2022 had deliberated upon the estimated liquidation costs under regulation 39B read with regulation 39D of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and approved estimated liquidation cost amounting to Rs.2,05,000/- excluding Liquidator's fees, which was proposed to be paid as per regulation 4(2)(b) of the IBBI (Liquidation Process) Regulations, 2016. Copy of the minutes of the 3rd CoC meeting forms **Annexure E**¹².
13. IRP/RP has altogether held six CoC meetings and filed two progress reports so far. Copy of 2nd Progress Report forms **Annexure C**¹³.
14. In the meantime, the 180 days CIRP period has ended on 26/12/2022 and no application for extension of the CIRP period has been filed.
15. In compliance of the order dated 31/01/2023, the RP has filed a Supplementary Affidavit duly affirmed on 03/02/2023 annexing his Written Consent¹⁴ in Form AA along with his valid AFA in Form B issued by the Indian Institute of Insolvency Professionals of ICAI dated 25/11/2022.
16. 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 Committee of Creditors approved by not less than

¹¹ Annexure "J" at page 50 of the Supplementary Affidavit affirmed on 27/03/2023

¹² Annexure "E" at pages 41 to 46 of the application

¹³ Annexure "C" at pages 28 to 36 of the application

¹⁴ Annexure "G" at pages 4 and 5 of the Supplementary Affidavit affirmed on 03/02/2023

66% of the voting share to liquidate the Corporate Debtor.

17. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.

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

a. IA(IBC)/1682(KB)2022 filed by **Mr. Tarun Kumar Ray, RP of Dynamic Hatcheries 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. **Mr. Tarun Kumar Ray [Reg. No. IBBI/IPA-001/IP/P-01411/2018-2019/12228] having e-mail i.d. tarun.ray123@yahoo.com, telephone no. +91 89027 59069** 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., in "*Business Standard*" (English) and "*Aajkal*" (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.

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**.

19. The application bearing **IA(IBC)/1682(KB)2022** shall stand disposed of in accordance with the above directions.
20. **CP(IB)/1671(KB)2019** is to come up for filing of Periodical Progress Report on **11/09/2023**.
21. 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.
22. 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)

Signed on this, the 25th day of July, 2023.

hb.