



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

**IA(IBC)/795(KB)2021  
in  
CP(IB)/1568(KB)2019**

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

*In the matter of:*

Onemax Yarn Merchants Private Limited

.... Financial Creditor

*Versus*

Nandlal Kamal Kishore Vyapaar Private Limited  
(U51109WB2006PTC107233)

.... Corporate Debtor

*And*

*In the matter of:*

Mr. Ajay Kumar Agarwal,

Resolution Professional of Nandlal Kamal Kishore Vyapaar Private Limited

... Applicant

**Order reserved on: 03/07/2023**

**Order pronounced on: 10/08/2023**

*Coram:*

**Smt. Bidisha Banerjee**

**: Member (Judicial)**

**Shri Balraj Joshi**

**: Member (Technical)**

*Appearances (through hybrid mode):*

For RP

: Mr. Sourojit Dasgupta, Adv.

For respondents in IA(IBC)/371(KB)2021  
& IA(IBC)/900(KB)2021

: Mr. Arani Guha, Adv.

For R-3

: Mr. Nikunj Berlia, Adv.  
Ms. Saloni Bose, Adv.



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**ORDER**

*Per: Bidisha Banerjee, Member (Judicial)*


1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/795(KB)2021** is an application filed under section 33(2) of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) by the Resolution Professional (“**RP**”) of **Nandlal Kamal Kishore Vyapaar Private Limited**, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit<sup>1</sup> duly affirmed by Mr. Ajay Kumar Agarwal, the RP.
3. This Adjudicating authority, on a petition filed u/s. 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Onemax Yarn Merchants Private Limited, the Financial Creditor, *vide* order<sup>2</sup> dated 02/02/2021 in CP(IB)/1568(KB)2019, had ordered initiation of CIRP against Nandlal Kamal Kishore Vyapaar Private Limited, the Corporate Debtor. Mr. Ajay Kumar Agarwal was appointed as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry.
4. In terms of section 15 of the IBC, Public Announcements<sup>3</sup> in **Form A** was published in “*Financial Express*” (English) and “*Aajkal*” (Bengali) on 05/02/2021 inviting claims from the creditors.
5. In response, the applicant received several claims from various financial creditors of the Corporate Debtor and after collation of all the claims had duly formed Committee of Creditors (in short “**CoC**”) comprising of the Financial Creditors of the Corporate Debtor in accordance with provisions of the IBC. A report on the constitution of the CoC was filed before this Adjudicating Authority on

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<sup>1</sup> At pages 27 and 28 of the application

<sup>2</sup> Annexure A at pages 30 to 37 of the application

<sup>3</sup> Annexure B at pages 38 to 41 of the application



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25/02/2021. The CoC was reconstituted and a report certifying reconstitution of CoC was filed before this Adjudicating Authority on 24/03/2021. 1<sup>st</sup> meeting of the CoC was held on 04/03/2021. At the said 1<sup>st</sup> meeting of the CoC, appointment of IRP was confirmed as RP<sup>4</sup>.

6. During the CIRP period of the Corporate Debtor, eight CoC meetings were held on 04/03/2021, 09/04/2021, 16/04/2021, 17/05/2021, 17/06/2021, 05/07/2021, 23/07/2021, 26/07/2021 and 23/08/2021 respectively. Copies of the minutes and voting results of the aforesaid CoC meetings form **Annexure D**<sup>5</sup>.
7. The applicant had filed an application u/s. 19(2) of the IBC being IA(IBC)/371(KB)2021 against the suspended members of the Board of Directors of the Corporate Debtor for non-cooperation. The said application is pending for adjudication before this Adjudicating Authority. The applicant has also filed another application u/s. 19(2) of the IBC being IA(IBC)/554(KB)2021 against the Statutory Auditor for non-cooperation. The said application is also pending for adjudication before this Adjudicating Authority. Another application being IA(IBC)/900(KB)2021 was filed u/s. 43(1) read with section 44(1) of the IBC, which is pending for adjudication also.
8. In terms of regulation 36A(1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”), Form G<sup>6</sup> was published in “*Financial Express*” (English) and “*Ekdin*” (Bengali) inviting Expression of Interest (“**EoI**”) on 17/04/2021 from prospective resolution applicants (“**PRAs**”). In response, only one EoI was received from one PRA, D. B. Machine Tools Private Limited. The applicant had duly issued Provisional and Final List of PRAs<sup>7</sup> on 07/05/2021 and 17/05/2021 respectively. However, they did not file any Resolution Plan within the stipulated time.

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<sup>4</sup> Annexure C at pages 42 of the application

<sup>5</sup> at pages 43 to 195 of the application

<sup>6</sup> Annexure F at pages 197 to 200 of the application

<sup>7</sup> Annexure G at pages 205 to 206 of the application




9. As per instructions of the CoC at its 5<sup>th</sup> meeting held on 17/06/2021 Form G<sup>8</sup> was published again in “*Financial Express*” (English) and “*Ekdin*” (Bengali) inviting Expression of Interest (“**EoI**”) on 02/07/2021. This time in response no EoI was received from any PRAs till the last date of submission of EoI, i.e., 17/07/2021.
10. Accordingly, the applicant called 7<sup>th</sup> CoC meeting on 23/07/2021. At the adjourned 7<sup>th</sup> CoC meeting held on 26/07/2021, the members of the CoC has approved publication of Form G 3<sup>rd</sup> and final time subject to extension of CIRP period beyond 180 days. An application being IA(IBC)/677(KB)2021 was filed u/s. 12(2) seeking extension of 90 days on 28/07/2021. *Vide* order dated 16/08/2021 in IA(IBC)/677(KB)2021, this Adjudicating Authority had extended the CIRP period till 31/08/2021.
11. Form G<sup>9</sup> was published 3<sup>rd</sup> time in “*Financial Express*” (English) and “*Ekdin*” (Bengali) inviting Expression of Interest (“**EoI**”) on 29/07/2021 fixing last date of receipt of EoI on 13/08/2021. This time also in response no EoI was received from any PRAs.
12. *Vide* supplementary affidavit affirmed on 11/10/2022, the applicant has submitted the valuation reports<sup>10</sup> submitted by two Registered Valuers – one by Mr. Pratim Kumar Nag and other by Mr. Prodipta Das respectively.
13. The CoC at its 8<sup>th</sup> meeting held on 23/08/2021 had passed the following resolution by a majority of 97.52% voting share to liquidate the Corporate Debtor since no EoI has been received even after publication of Form G thrice and the extended CIRP period would come to an end on 31/08/2021:

**“RESOLVED THAT**, in pursuant to section 33(2) of *Insolvency and Bankruptcy Code, 2016* and the rules made thereunder, the consent of members of the Committee of Creditors be and is hereby accorded to approve the initiation of liquidation process of Corporate Debtor (CD).”

<sup>8</sup> Annexure F at pages 201 to 204 of the application

<sup>9</sup> Annexure K at pages 214 to 217 of the application

<sup>10</sup> Annexure A at pages 4 to 86 of the Supplementary Affidavit affirmed on 11/10/2022



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Copy of Minutes of the 8<sup>th</sup> CoC meeting along with voting results forms **Annexure D**<sup>11</sup> at pages 184 and 185 of the application.

14. The RP has submitted his written communication<sup>12</sup> to act as the Liquidator of the Corporate Debtor.
15. It is to be noted here that the CIRP period has already ended on 31/08/2021.
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 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)/795(KB)2021 filed by Mr. Ajay Kumar Agarwal, RP of Nandlal Kamal Kishore Vyapaar 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 Circular dated 18/07/2023 vide no. Liq-12011/214/2023-IBBI/840 for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the Code, we are appointing **Mr. Soumendra Podder** (Reg. No. IBBI/IPA-001/IP-P00446/2017-2018/10789) having e-mail i.d. [soumenpodder@hotmail.com](mailto:soumenpodder@hotmail.com) mobile no. 9831085179 as Liquidator as provided under section 34(1) of the Code, subject,

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<sup>11</sup> At pages 171 to 195 of the application

<sup>12</sup> Annexure L at pages 218 to 225 of the application



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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. The Liquidator is directed to submit his consent to act as Liquidator within **10 days** of receipt of this order. 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**.

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.

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)/795(KB)2021** shall stand disposed of in accordance with the above directions.
20. **CP(IB)/1568(KB)2019** is to come up for filing of Periodical Progress Report on **16/10/2023**.
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)**

**Bidisha Banerjee**  
**Member (Judicial)**

Signed on this, the 10<sup>th</sup> day of August, 2023.

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