



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

**IA(IBC)/973(KB)2021
in
CP(IB)/644(KB)2019**

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

In the matter of:

Indiabulls Consumer Finance Limited (Formerly IVL Finance Limited)

.... Financial Creditor

Versus

Aawrun Furnishing Man-Tra Private Limited
(U17299WB2005PTC103259)

.... Corporate Debtor

And

In the matter of:

Mr. Shashi Agarwal,

Interim Resolution Professional of Aawrun Furnishing Man-Tra Private Limited

... Applicant

Order reserved on: 28/07/2023

Order pronounced on: 18/08/2023

Coram:

Smt. Bidisha Banerjee

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (through hybrid mode):

For RP

: Mr. Kuldip Mallik, Adv.
Mr. Arun Kumar Mishra, Adv.
Mr. Shashi Agarwal, IRP in person

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.




2. **IA(IBC)/973(KB)2021** is an application filed under section 33(2) of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) by the Interim Resolution Professional (“**IRP**”) of **Aawrun Furnishing Man-Tra Private Limited**, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by Mr. Shashi Agarwal, the IRP.
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 Indiabulls Consumer Finance Limited (Formerly IVL Finance Limited), the Financial Creditor, *vide* order² dated 21/10/2019 in CP(IB)/644(KB)2019, had ordered initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against Aawrun Furnishing Man-Tra Private Limited, the Corporate Debtor. Mr. Shashi 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 regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”), Public Announcements³ in **Form A** was published in “*Financial Express*” (English) and “*Aajkal*” (Bengali) on 24/10/2019 inviting claims from the creditors. CoC was duly formed comprising of Financial Creditors only.
5. It is stated in the application that subsequent to public announcement, the IRP, applicant visited the Registered Office of the Corporate Debtor situated at 7B & C, Tiljala Road, 2nd Floor, Kolkata 700046. Books of account, statutory records like fixed assets register, minutes, etc. were not available at the Registered Office. The accounts of the Corporate Debtor were audited up to 31/03/2018 and for subsequent periods accounts were never audited and statutory records are not

¹ At pages 23 and 24 of the application

² Annexure A at pages 25 to 29 of the application

³ Annexure B at pages 30 to 31 of the application




available at the Registered Office. List of immovable assets were prepared based on the documents made available to the IRP. Two valuers were appointed for valuation of each class of assets, who have submitted their reports. Security Personnel were deployed at the Factory, Shop Outlets and the Godown situated at 7B & C, Tiljala Road, Kolkata 700046.

6. In terms of regulation 36(1) of the CIRP Regulations, Form G⁴ was published one in English and one in Bengali newspapers inviting Expression of Interest (“**EoI**”) on 27/01/2020 from prospective resolution applicants (“**PRAs**”). In response no EoI was received from anyone.
7. An application u/s. 19(2) of the IBC being IA(IB) No. 771/KB/2020 was filed against the suspended members of the Board of Directors of the Corporate Debtor for non-cooperation seeking necessary direction to immediately give access to the books of accounts and other statutory records of the Corporate Debtor as well as to provide all the information as sought for. *Vide* order⁵ dated 21/10/2020, the said application was disposed of directing “*the respondents to handover all the assets pertaining to the Corporate Debtor along with all necessary documents and books of account to the RP within 7 days from today, without fail, so that the RP could complete the CIRP Process as per the Code and Regulations*”.
8. *Vide* order⁶ dated 18/02/2021 in IA/105(KB)2021, this Adjudicating Authority had excluded the period from 23/03/2020 to 18/02/2021 on account of lockdown due to COVID-19 pandemic and allowed extension of 90 days from 19/02/2021, thereby the CIRP period would come to an end on 19/05/2021.
9. It is stated in the application that the applicant had called 13th CoC meeting on 26/08/2021, members at the time of discussion for status/steps taken, proposed and discussed for Liquidation of the Corporate Debtor. As all members were not present it was discussed that the resolution proposed for liquidation of the said

⁴ Annexure C at pages 32 to 33 of the application

⁵ Annexure D at page 34 of the application

⁶ Annexure E at pages 35 to 36 of the application



corporate debtor including remuneration and expenses, be put for e-vote. A copy of the minutes of the 13th CoC meeting dated 26/08/2021 forms **Annexure ‘F’**⁷. As per discussion at the 13th CoC meeting, e-voting facility was provided to the members of the CoC to exercise their right to vote on resolutions through e-voting and the following resolution was approved by 100% (equivalent to 83.86% of CoC voting)⁸:

“RESOLVED THAT consent of the committee of creditors be & is hereby accorded to Liquidate Aawrun Furnishings Man-Tra Private Limited (Corporate Debtor) u/s.33(2) and other applicable provisions of IBC read with Relevant Rules and Regulation, not as a going concern, as the company is not carrying any business activity at present.”

Copy of e-voting results forms **Annexure ‘G’**.

10. IRP has submitted an affidavit affirmed on 29/03/2022 stating¹⁰ as follows:-

“I say that CoC approved my name as a Liquidator. But due to unavoidable circumstances I am not interested in accepting any new assignment. Accordingly, any other Insolvency Professional may be appointed as Liquidator by this Hon’ble Tribunal as deem fit and proper.”

11. In compliance of the order dated 31/03/2022, the IRP has submitted a supplementary affidavit affirmed on 25/04/2022 stating that the CoC at its 14th adjourned meeting held on 18/04/2022 has passed the following resolution :

“RESOLVED that the Hon’ble NCLT, Kolkata Bench may appoint any Insolvency Professional as a Liquidator as deem fit and proper.”

Copy of the minutes of the 14th CoC meeting forms **Annexure ‘C’**¹¹.

12. IRP has filed another supplementary affidavit affirmed on 08/08/2022 enclosing


⁷ At pages 37 to 41 of the application

⁸ Paragraph 15 at pages 17 and 18 of the application

⁹ At pages 42 to 49 of the application

¹⁰ Paragraph 3 at page 2 of the SA affirmed on 29/03/2022

¹¹ At pages 23 to 30 of the SA affirmed on 25/04/2022



minutes¹² of the adjourned 15th CoC meeting held on 15/07/2022 along with voting results wherein the approval of the CoC has been accorded with 67.61% to appoint Mr. Arun Kumar Gupta, as Liquidator of the Corporate Debtor. By a supplementary affirmed by the IRP on 11/08/2022 submitted the written consent¹³ given by Mr. Arun Kumar Gupta.

13. As per the order of this Adjudicating Authority dated 27/12/2022, IRP in compliance of the said order has filed a **supplementary affidavit affirmed on 09/01/2023** disclosing the voting percentage of all the CoC members regarding appointment of Mr. Arun Kumar Gupta as Liquidator and approval of CIRP cost in addition to earlier approved CIRP cost. However, having been not satisfied with the said supplementary affidavit affirmed on 09/01/2023, vide order dated 11/01/2023, this Adjudicating Authority directed the IRP to furnish fresh chart by way of an affidavit clearly showing voting percentage of all the CoC members.
14. In compliance of the said order dated 11/01/2023, the IRP has submitted supplementary affidavit affirmed on 18/02/2023 clearly showing voting percentage of each of the CoC members. The matter came up for consideration on 22/02/2023 and after hearing **IA(IBC)/973(KB)2021** was reserved for order.
15. *Vide* order dated 16/05/2023, this Adjudicating Authority has directed the IRP to clarify how the CoC on 26/08/2021 could be requested to consider the matter without seeking further enlargement of time when the 270 days' CIRP period had ended on 19/05/2021.
16. In compliance of the aforesaid order, the IRP has filed an affirmed on 31/05/2023 annexing the minutes of the 10th reconvening adjourned CoC meeting on 18/01/2021 along with 12th meeting of the CoC held on 12/04/2021 which form Annexure "A"¹⁴ and Annexure "B"¹⁵ respectively.
17. The IA came up for hearing on 16/06/2023, when after hearing the following

¹² Annexure C at pages 26 to 40 of the SA affirmed on 08/08/2022

¹³ Annexure A at pages 3 and 4 of the SA affirmed on 11/08/2022

¹⁴ At pages 7 to 15 of the SA affirmed on 31/05/2023

¹⁵ At pages 16 to 22 of the SA affirmed on 31/05/2023



order was passed: -

*“We have gone through the Supplementary Affidavit filed in response to our order dated 16/05/2023 and are not satisfied with the submissions made in the Supplementary Affidavit on the point **“how the CoC on 26/08/2021 could be asked to consider the matter further without seeking further enlargement of time when the period had ended on 19/05/2021”**”.*

18. In compliance of the aforesaid order the IRP has filed an affidavit affirmed on 06/07/2023 explaining the matter and annexing the minutes of the 11th and 12th CoC meetings held on 10/02/2021 and 12/04/2021 being Annexure B¹⁶ and Annexure C¹⁷ to the affidavit.
19. It is to be noted here that the 270 days CIRP period after taking into exclusion and extension has already ended on 19/05/2021.
20. It appears that in this case the CoC has neither confirmed the appointment of IRP as RP nor applied to this Adjudicating Authority for appointment of another Insolvency Professional as RP to conduct the CIRP. It is apparent from the minutes of the CoC that CoC are not at all serious in taking decisions appropriately. Be that as it may, the fact is that there was no resolution plan in hand and the CIRP period has ended on 19/05/2021.
21. 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.
22. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.

¹⁶ At pages 7 to 11 of the SA affirmed on 06/07/2023

¹⁷ At pages 12 to 15 of the SA affirmed on 06/07/2023



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

a. IA(IBC)/973(KB)2021 filed by Mr. Shashi Agarwal, RP of Aawrun Furnishing Man-Tra 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 Mr. Arun Kumar Gupta 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. Umesh Poddar (Reg. No. IBBI/IPA-001/IP-P01912/2019-2020/12962)** having e-mail i.d. capoddarumesh@gmail.com mobile no. 9874444660 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. The Liquidator is directed to submit his consent to act as Liquidator within **10 days** of receipt of this order. The erstwhile IRP 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 “*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**.

24. The application bearing **IA(IBC)/973(KB)2021** shall stand disposed of in accordance with the above directions.
25. **CP(IB)/644(KB)2019** is to come up for filing of Periodical Progress Report on **16/10/2023**.
26. 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.
27. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

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

IA(IBC)/973(KB)2021
in CP (IB)/644(KB)2019



Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 18th day of August, 2023.

hb.