

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

**IA(IBC)/579(KB)2023
in
CP(IB)/458(KB)2019**

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

In the matter of:

RASPL Industries Private Limited

.... Operational Creditor

Versus

Harihar International Private Limited
(U00500JH1997PTC008277)

.... Corporate Debtor

And

In the matter of:

Meera Prasad,
Resolution Professional of Harihar International Private Limited

... Applicant

Order reserved on: 08/05/2023

Order pronounced on: 02/08/2023

Coram:

Smt. Bidisha Banerjee

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (through hybrid mode):

For RP

: Mr. Rachit Lakhmani, Adv.
Mr. Siddhanth Makkar, Adv.
Ms. Pooja Sah, Adv.

For respondent in IA/570/2023

: Mr. Tapan Bhanja, Adv.

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/579(KB)2023** 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 **Harihar International Private Limited**, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by Ms. Meera Prasad, the IRP.
3. 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 RASPL Industries Private Limited, the Operational Creditor, *vide* order² dated 31/08/2022 in CP(IB)/458(KB)2019, had ordered initiation of CIRP against Harihar International Private Limited, the Corporate Debtor. Ms. Meera Prasad was appointed as the Interim Resolution Professional (“**IRP**”).
4. In terms of regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Public Announcements³ in **Form A** was published on 03/09/2022 inviting claims from the creditors. In response, only two creditors, viz., (i) Assistant Commissioner, CGST & CX, Division – V, Jamshedpur and (ii) RASPL Industries Private Limited, petitioning Operational Creditor, both being Operational Creditors have filed their proof of claim before the IRP and their entire claims were admitted. Committee of Creditors (in short “**CoC**”) was duly formed comprising of only two Operational Creditors, i.e., (i)

¹ At pages 15 and 17 of the application

² Annexure A at pages 18 to 23 of the application

³ Annexure B at pages 24 to 25 of the Supplementary Affidavit

Assistant Commissioner, CGST & CX, Division – V, Jamshedpur having 94.68% voting share and (ii) RASPL Industries Private Limited having 5.32% voting share.

5. In the first five CoC meetings, though the CoC members were present, they did not take any decisions whatsoever with respect to the CIRP. No substantial decisions could be taken particularly in view of the inability on the part of the Assistant Commissioner, CGST & CX, Division – V, Jamshedpur owing to lack of instructions from his superiors in the GST Department. The applicant herein duly informed the CoC members about the timeline within which certain actions are to be taken which are delayed since the CoC members are not been able to take any decision, e.g., calling for EoI, etc. and sought reasons for delay on the part of the CoC. In reply, members of the CoC mentioned that since there are no assets in the company and the CoC comprises of the Operational Creditors only, therefore, the CoC will soon decide to initiate liquidation of the Corporate Debtor.
6. At the 6th CoC meeting⁴ held on 13/02/2023, the CoC in its commercial wisdom finally opined that since the Corporate Debtor had no assets and/or any revenue, it is prudent to liquidate the Corporate Debtor considering the nature of business of the Corporate Debtor.
7. The applicant/IRP duly prepared an estimate of liquidation cost amounting to Rs.7,20,000/- excluding the Liquidator's fees and GST, which would be over and above the aforesaid estimated liquidation cost and apprised the CoC members that the liquidation expenses would have to be provided for either by raising interim finance or from the contributions from the stakeholders, i.e., two CoC members.
8. At the 7th CoC⁵ meeting held on 22/02/2023, CoC with 94.68% voting share⁶ has passed the following resolutions: -

⁴ Annexure C at pages 26 to 41 of the application

⁵ Annexure D at pages 42 to 56 of the application

⁶ Annexure E at page 57 of the application

“RESOLVE THAT, Liquidation process be commenced against Harihar International Private Limited.”

“RESOLVE FURTHER THAT Mrs. Meera Prasad being the IRP/RP in this matter is hereby authorized to file an application with the National Company Law Tribunal, Kolkata Bench; paying for commencement of the Liquidation process against Harihar International Private Limited.”

The minutes of the 7th CoC meeting and voting results has been duly communicated to both the CoC members over e-mails⁷ dated 22/03/2023 and 24/02/2023 respectively.

9. Ms. Meera Prasad, Interim Resolution Professional has not submitted her consent to act as the Liquidator of the Corporate Debtor.
10. It is to be noted here that the 180 days CIRP period has ended on 26/02/2023 and no application for extension of the CIRP period has been filed.
11. 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.
12. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
13. This Bench, therefore, hereby orders as follows: -
 - a. IA(IBC)/579(KB)2023 filed by **Ms. Meera Prasad, RP of Harihar International 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;

⁷ Annexure F at pages 26 to 41 of the application

- b. **Sh. Abhit Kumar Singh [Reg. No. IBBI/IPA-001/IP-P-02380/2021-2022/13564] having e-mail i.d. abhit1981@hotmail.com, Mobile no. 9681999675** 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. 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 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, 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, Jharkhand**, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the **Registrar of Companies, Jharkhand**.

14. The application bearing **IA(IBC)/579(KB)2023** shall stand disposed of in accordance with the above directions.
15. **CP(IB)/458(KB)2019** is to come up for filing of Periodical Progress Report on **19/09/2023**.
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.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 2nd day of August, 2023.

hb.