

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

IA (IB) No. 125/KB/2021
in
CP (IB) No. 1385/KB/2018

Under section 33 of Insolvency & Bankruptcy Code, 2016

In the matter of

Dena Bank

... Financial Creditor

Versus

Texas Textiles and Industries Limited

... Corporate Debtor

-And-

In the matter of:

Sanjai Kumar Gupta,

Resolution Professional of Texas Textiles and Industries Limited

... Applicant

Order reserved on : 26th August, 2022

Order pronounced on : 5th September, 2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (through video conferencing):

For the CoC:

1. Mr. Avishek Guha, Adv
2. Mr. Chitresh Saraogi, Adv

For the Resolution Professional:

1. Mr. Rahul Auddy, Adv
2. Mr. Sanjai Kumar Gupta, Adv

ORDER

Per: Balraj Joshi, Member (Technical)

1. This court was convened via video conferencing.
2. This is an application filed by the Resolution Professional with the approval of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, viz., Texas Textiles and Industries Limited [CIN: U72200WB1999PLC089954], on the ground that the Committee of Creditors ('CoC') has decided to liquidate the Corporate Debtor by 100 % votes. The Applicant has sought for the following reliefs:
 - a. *Liquidation of the Corporate Debtor as per Section 33 of the Insolvency and Bankruptcy Code, 2016;*
 - b. *Appointment of the Applicant Mr. Sanjai Kumar Gupta as the Liquidator of the Corporate Debtor;*
 - c. *Such further and/or other order or orders as this Court may deem fit and proper.*
3. This Adjudicating Authority *vide* its order dated 19th June 2019 on a Petition filed by Dena Bank ('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. Sanjai Kumar Gupta** (the applicant) as the Interim Resolution Professional ('IRP'). The applicant was later appointed as the Resolution Professional ('RP').

4. The Applicant submits that in terms of section 15 of the Code, public announcement was made on 22nd June 2019, in **Financial Express** (English)(Kolkata Edition) and **Aajkal** (Kolkata Edition) (Bengali) newspapers, thereby inviting claims from creditors of the Corporate Debtor. The public announcement was uploaded on the website of IBBI.
5. After the commencement of CIRP on 19th June 2019, the applicant visited the registered office of the Corporate Debtor on 27th June 2019. The applicant carried out the CIRP of the Corporate Debtor amidst the non-cooperation from the directors of the Corporate Debtor.
6. The 180 days time period was expiring on 16th December 2019. Further, the directors of the Corporate Debtor had approached the Financial Creditor with an OTS settlement proposal and the same was under the consideration of the Bank.
7. Due to the aforesaid absolute non-cooperation from the directors of the Corporate Debtor, Information Memorandum could not be published, valuers could not be appointed, advertisement for Expression of Interest could not be published. In short, no steps for resolution of the Company through Resolution Plan could be taken by the Applicant.
8. The CIRP of the Corporate Debtor was extended by this Tribunal for a further period of 90 days and the said 270 days was expiring on 14th March 2020.
9. The matter was listed on 13th March 2020 when the Corporate Debtor represented that they are in settlement talks with the COC member. This Tribunal considered the submission of the counsels of the Corporate Debtor and directed the matter to appear next on 24th March 2020 when the decision about settlement or liquidation was to be taken.

10. Due to the ensuing lockdown thereafter, the matter could not be heard on 24th March 2020. During the lockdown period, COC Meeting was held wherein it was decided that settlement talks are still on. Subsequently in September 2020, the OTS Scheme was approved by the Bank and the Corporate Debtor, made certain payments in terms of the OTS Scheme. However, the Corporate Debtor failed to make the payments in terms of the OTS Scheme and further failed to regularize the default in spite of certain opportunities being given to them. The default continued till December 2020.
11. In the beginning of January 2021, the situation was such that both time periods of 270 and 330 days have expired, the settlement had not worked out and no Form FA was submitted with the applicant herein or any steps taken in accordance with section 12A of the Code were taken and no resolution plan was received in the CIRP period.
12. A COC meeting was held on 4th January 2021 wherein the progress in the CIRP and the abovementioned circumstances were discussed in details and it was decided that considering the said circumstances of no plan, no settlement, CIRP period having been expired, liquidation was the only option. Accordingly, it was decided that the resolution for liquidation of the COC will be put up for voting through the e-voting mechanism.
13. The e-voting was done from 8th January 2021 till 20th January 2021 wherein the sole COC member voted for liquidation of the Company. Thus, the resolution for liquidation of the CD was passed by the COC with 100% voting.
14. Hence, the RP has filed an application under section 33(2) of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor on expiry of the CIRP period.

15. The Applicant/Resolution Professional, **Mr. Sanjai Kumar Gupta** [Reg. No. IBBI/IPA-001/IP-P00592/2017-2018/11045], has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator, in terms of section 34(1) of the Code and has a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member.
16. We have considered the submission made by the learned Counsel on behalf of the Applicant/RP and perused the record.
17. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six percent of voting share to liquidate the corporate debtor
18. This Bench, therefore, hereby orders as follows: -
- a. Prayers as sought for in **I.A. (IB) No. 125/KB/2021** filed by Mr. Sanjai Kumar Gupta, Resolution Professional of Texas Textiles and Industries Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code;
 - b. **Mr. Sanjai Kumar Gupta** [Reg. No. IBBI/IPA-001/IP-P00592/2017-2018/11045], is hereby appointed as Liquidator is hereby appointed as Liquidator as provided under section 34(1) of the Code.

- 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., **Financial Express** (English)(Kolkata Edition) and **Aajkal** (Kolkata Edition) (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,

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Kolkata, 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, Kolkata.

19. The application bearing **IA (IB) No. 125/KB/2021** shall stand disposed of in accordance with the above directions.
20. 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.
21. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
22. List the main **CP (IB) No. 1385/KB/2018** for reporting progress on 18/10/2022.

[Balraj Joshi]
Member [Technical]

[Rohit Kapoor]
Member [Judicial]

Signed on this, the 5th day of September, 2022

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