

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

IA(I.B.C.)/829(KB)2023

C.P. (IB)/802(KB)2019

***An application under Section 33(2) of the Insolvency and
Bankruptcy Code, 2016.***

-And-

In the matter of:

(1) Shiv Lalit Barter Private Limited (CIN: U51909WB1995PTC074980), having its registered Office at 57/15, Ballygunge Circular Road, Kolkata – 700019, West Bengal;
... Operational Creditor

-Versus-

(2) Dev R Nil Design Private Limited (CIN: U74900WB2014PTC204686), having its registered Office at 42P, Raja Santosh Road, Kolkata – 700027, West Bengal;
... Corporate Debtor

-And-

(3) Mr. Surya Kanta Satapathy, the Resolution Professional of Dev R Nil Design Private Limited, having IP Registration No. IBBI/IPA-001/IP-P00598/2017-18/11050, Chamber No. I – 2, MMS Chambers, 4A, Council House Street, Kolkata – 700001, West Bengal;
... Applicant/RP

-Versus-

(4) Mr. Navonil Das, the Resolution Applicant and one of the promoters and the members of the suspended Board of Directors of the Corporate Debtor, 42P, Raja Santosh Road, Kolkata – 700027, West Bengal;
... Resolution Applicant



Date of pronouncing of the Order: 11/06/2024

Coram:

SMT. BIDISHA BANERJEE HONOURABLE MEMBER (JUDICIAL)

SHRI D. ARVIND HONOURABLE MEMBER (TECHNICAL)

Appearances (via video conferencing/physically):

Mr. Rishav Banerjee, Adv.	:	For the Applicant
Mr. Sourojit Dasgupta, Adv.	:	in IA(I.B.C)/1442(KB)2023
Mr. Ashis Kumar Mukherjee, Adv.	:	and
Mr. Santosh Prasad, Adv.	:	in IA(I.B.C)/1442(KB)2023
Mr. Shaunak Mitra, Adv.	:	For the R.P.
Mr. Amardeep Singh, Adv.	:	
Mr. Suryakant Sathpathy, RP	:	

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The court convened through hybrid mode.
2. Ld. Counsels/Authorised Representative appearing on behalf of the parties were heard in extenso.
3. This application **IA(I.B.C.)/829(KB)2023** has been preferred to seek the following reliefs, inter alia: -

(a) *To pass an Order for liquidation of the Corporate Debtor under the facts and circumstances of the instant case;*

(b) *Pass an Order appointing a Liquidator other than the applicant/Resolution Professional herein for conducting the liquidating proceedings of the Corporate Debtor;*

(c) *To pass an Order to liquidate the performance guarantee deposit and payment of the CIRP costs as per the terms of the*

RFRP and Resolution Plan by the Resolution Professional as the Resolution Applicant has not complied the RFRP & Resolution Plan submitted by him;

(d) To pass such other Order/directions as to this Adjudicating Authority may deem fit and proper in view of the facts and circumstances of the case;

4. Factual matrix of the case are as under: -

- (a)** The Corporate Debtor herein Dev R Nil Design Private Limited has been admitted into the Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) *vide* Order dated 22.03.2022 being C.P.(IB)/802(KB)2019 (Shiv Lalit Barter Private Limited *vs.* Dev R Nil Design Private Limited).
- (b)** It is stated that the IRP, namely, Mr. Dhruva Mazumder made Public Announcement on 25.03.2022 in terms of Section 15 of the IBC Code, 2016, in “*Financial Express*” (English) and in “*Aajkal*” (Bengali).
- (c)** Thereafter, on 12.04.2022 the CoC of the Corporate Debtor was constituted and on 14.04.2022 the Constitution of the CoC was duly reported to this Adjudicating Authority.
- (d)** The 1st meeting of the Committee of Creditors (in short “CoC”) of the Corporate Debtor was convened on 21.04.2022, the 2nd meeting of the CoC of the Corporate Debtor was convened on 21.05.2022 and the 3rd meeting of the CoC of the Corporate Debtor was convened on 04.06.2022.



- (e)** On 30.06.2022, the applicant herein was appointed as the Resolution Professional in respect of the CIRP of the Corporate Debtor, took over the charge on and from 05.07.2022 from the erstwhile Interim Resolution Professional and took control of the management of the affairs of the Corporate Debtor.
- (f)** The 4th meeting of the Committee of Creditors (in short “CoC”) of the Corporate Debtor was convened on 16.07.2022.
- (g)** The 1st EoI was published on 05.06.2022, but nobody has shown any interest. Thereafter, on 17.07.2022, the 2nd EoI was published & the 3rd EoI was published on 01.08.2022.
- (h)** In the meantime, the meetings of the CoC were convened from time to time and progress report of the CIRP of the Corporate Debtor was filed from time to time before the Adjudicating Authority.
- (i)** On 05.09.2022 being IA(I.B.C)/961(KB)2022, under Section 12(2) of the IBC Code, 2016 was filed for praying extension of the CIRP period and by an Order dated 26.10.2022 allowed the application and extended the CIRP period till 17.12.2022.
- (j)** On 16.12.2022 another application being IA(I.B.C)/1636(KB)2022 under Section 12(2) of the IBC Code, 2016 was filed for another extension of the CIRP period. By an Order dated 16.01.2023 allowed to withdraw the application with liberty to file a fresh application and second application for extension of CIRP period was not maintainable.



- (k) On 29.12.2022, the resolution was received from the prospective Resolution Applicant Mr. Navonil Das. After receiving the resolution plan, the RP examined the resolution plan in terms of Section 30(2) of the IBC Code, 2016 and after such examination the RP found the resolution plan was to be in conformity with the conditions as laid down under Section 30(2) of the IBC Code, 2016. On 30.12.2022 the resolution plan was submitted before the CoC. Thereafter on 05.01.2023 Resolution Professional (in short “RP”) received the complied resolution plan and shared the same with the CoC.
- (l) The Resolution Plan was approved by the CoC on 17th January, 2023 with 83.79% voting share. The Letter of Intent (in short “LoI”) was issued on the same day, i.e., 17.01.2023 itself in which the last date of receiving the Performance Guarantee amount was on 20.01.2023. Photocopy of minutes and voting result of the 8th CoC meeting, approved the resolution plan, RFRP, IM, Valuation Report with summary, Bank account statement, BSBG FD, accepted LoI has been annexed as **Annexure – P4**.
- (m) The resolution plan was approved by the CoC subject to the condition that the Resolution Applicant (RA) shall deposit the entire Performance Guarantee (PG) amount of Rs. 25 lakhs by 20.01.2023. Whereas, the total amount received was Rs. 17.08 lakhs against Rs. 25 lakhs Performance Guarantee amount.
- (n) Further, 80 days had lapsed from the last date of receiving the Performance Guarantee amount, but till date only a

sum of Rs. 17.08 lakhs (including BSBG amount) has been received out of Rs. 25 lakhs.

- (o) 330 days of the CIRP was already over on 14th February, 2023. However, only a sum of Rs. 7.08 lakhs and 10 lakhs as BSBG amount had been received. So, the total amount received was Rs. 17.08 lakhs against Rs. 25 lakhs as Performance Guarantee (PG) amount.
- (p) As such, in the 9th CoC meeting convened on 14.03.2023, the CoC approved with 83.79% voting shares for liquidation of the Corporate Debtor and filing of liquidation application under Section 33 of the IBC Code, 2016.
- (q) The RP did not wish to continue as the Liquidator of the Corporate Debtor and duly intimated the same to the CoC and requested the CoC to choose the proposed liquidator.
- (r) It is further stated that the CoC needs to decide as per Regulations 39D of the CIRP Regulations, 2016, and fix a fee for the liquidator, if an Order for liquidation under Section 33 is passed. After detailed discussion and through e-voting the CoC had disapproved that “the proposed liquidator be and hereby entitled to consolidated professional fees of Rs. 6 lakhs for the entire period of liquidation excluding out of pocket expenses such as expenses to be incurred for public advertisement, auction, appointment of professionals as per the provision under IBC, Legal Expenses, travelling, lodging, boarding etc.” Further, CoC has not taken any decision under Regulation 39C for sale of the business of the Corporate Debtor as a going concern.



5. We have considered the submission made by the Ld. Counsel and perused the record.
6. Section 33(2) of the Code enjoins the Adjudicating Authority with the power to pass an Order for liquidation of the Corporate Debtor when the CoC with 66% approves the Liquidation of Corporate Debtor.
7. Hence, we do find merit in the prayers made in **IA(I.B.C.)/829(KB)2023**, and deem it fit to order liquidation of the Corporate Debtor.
8. **This Bench, therefore, hereby orders as follows: -**
 - a. Prayers as sought for in **IA(I.B.C.)/829(KB)2023** filed by RP, is allowed and **Dev R Nil Design Private Limited**, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code;
 - b. **Ms. Sneh Maheswari** having registration no. **IBBI/IPA-001/IP-P01751/2019-2020/12691**, **email: sneh.maheswari@gmail.com**, is hereby appointed as Liquidator is hereby appointed as Liquidator as provided under section 34(1) of the Code subject to a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which she is a professional member;
 - 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 newspapers 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 Applicant is registered.
9. In the aforesaid backdrop, the application bearing No. **IA(I.B.C.)/829(KB)2023** shall stand **disposed of**.



10. List the main **C.P. (IB)/802(KB)2019** for reporting progress on **03.09.2024**.
11. 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.
12. Certified copy of this Order may be issued, if applied for, upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on: 11th of June, 2024.

Ar. [steno]