

DIVISION BENCH O-133

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/1694(KB)2018
IA/141(KB)2021, IA/946(KB)2020,
IA/201(KB)2020, IA/1104(KB)2020,
IA/1174(KB)2020, IA/1428(KB)2020

**Present: 1. Hon'ble Member(J), Shri Rajasekhar V.K.
2. Hon'ble Member(T), Shri Harish Chander Suri**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 12th July, 2021, 10:30 A.M

Name of the Company	SENDOZ COMMERCIALS PRIVATE LIMITED Vs. KOHINOOR PAPER AND NEWSPRINT PRIVATE LIMITED		
Under Section	IBC Under Sec 9 (CIRP)		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

Counsel / Authorised Representative appeared through video conference:

1. Mr. Rishav Banerjee, Advocate] For applicant
2. Mr. Abir Lal Chakravorti, Advocate]

1. Ms. Urmila Chakraborty, Advocate] For applicant in IA/141(KB)2021 &
2. Mr. Debabrata Ganguly, Advocate] IA/1104(KB)2020 (Rare Asset
] Reconstruction Limited)

1. Mr. Jishnu Saha, Sr. Advocate] For applicant in IA/946(KB)2020
2. Mr. Madhu Sudan Sarkar, Advocate] & IA/201(KB)2020
3. Mr. Deepanjan Dutta, Advocate]
4. Mr. Mousamjit Sarkar, Advocate]

1. Mr. Abhrajit Mitra, Sr. Advocate] For RP
2. Mr. Shaunak Mitra, Advocate]
2. Mr. Avik Chaudhuri, Advocate]

ORDER

1. Ld. Senior Counsel/Ld. Counsel for the parties present.
2. **IA/1174(KB)2020**

(a) This is an application filed by the Resolution Professional u/s. 33 of the Insolvency and Bankruptcy Code, 2016 seeking liquidation of the Corporate Debtor.

(b) Ld. Counsel for the Resolution Professional submits that CIRP was commenced on 26/09/2019. Thereafter, the process was conducted and resolution plans were also submitted. However, the resolution plan that was under consideration by the Committee of Creditors (CoC) was revised on several occasions by the Resolution Applicant but ultimately the resolution plan under consideration was not approved by the CoC at its 11th CoC¹ meeting held on 04/09/2020 and 05/09/2020. The CoC at the said meeting has passed a resolution with 86.51% voting share to liquidate the Corporate Debtor. The CoC at its 12th CoC² meeting held on 01/01/2020 with 90.73% voting share authorised the Resolution Professional to file the present application for liquidation of the Corporate Debtor.

(c) Though the CoC has recommended the appointment of Mrs. Mamta Binani as the Liquidator, this Adjudicating Authority has no discretion to appoint anyone else except the Resolution Professional as the Liquidator, for which he has given his consent³ for the same.

(d) We have considered the submission made by the Ld. Counsel appearing for the Applicant and perused the records.

(e) This is a case where no Resolution Plan was approved by the CoC and the 330 days period of CIRP has expired on 21/08.2020. Therefore, there is no alternative but to order the liquidation of the Corporate Debtor.

(f) This Bench, therefore, hereby orders as follows: -

(i) IA No. 1174/KB/2020 filed by Mr Uday Narayan Mitra, RP of Kohinoor Paper and Newsprint Private Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof.

(ii) In the present case Mr. Uday Narayan Mitra, Resolution Professional has given his consent to act as the Liquidator of the Corporate Debtor in terms of section 34(1) of the Insolvency and Bankruptcy Code, 2016, this Adjudicating Authority hereby appoints Mr. Uday Narayan Mitra [Reg. No. IBBI/IPA-001/IP-P00793/2017-2018/11360], E-mail ID: udaynarayanmitra@yahoo.co.uk, telephone no. 94335 32994, as liquidator as provided under section 34(4)(c) 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

¹ Annexure "A" at pages 16 to 52 of the application

² Annexure "B" at pages 53 to 63 of the application

³ Annexure "C" at page 64 of the application

professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.

(iii) 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.

(iv) Public Notice shall be issued in the same newspapers as was done during the CIRP process, i.e., "*Financial Express*" (English) and "*Ek Din*" (Bengali) stating that the Corporate Debtor is in liquidation.

(v) 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.

(vi) 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.

(vii) 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.

(viii) 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.

(ix) In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, 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.

(g) The application bearing **IA No. 1174/KB/202** shall stand disposed of in accordance with the above directions.

(h) **CP (IB) No. 1694/KB/2018** to come up for filing of periodical report on **25/10/2021**

3. **IA/1428(KB)2020**

(a) This is an application filed by one Mr. Chandra Sekhar Soni seeking a direction for restarting the factory of the Corporate Debtor.

(b) In view of the fact that IA/1174(KB)2020 for liquidation of the Corporate Debtor has been ordered, this IA has become infructuous and is **dismissed** as such.

4. **IA/141(KB)2021 & IA/1104(KB)2020**

(a) These applications are filed by Rare Assets Reconstruction Limited seeking a direction to the CoC and RP for considering the revised bid submitted by the applicant.

(b) Approval or rejection of the resolution plan is solely within the domain of the CoC as has been held by the Hon'ble Supreme Court in various judgments including **Kalpraj Dharmshi and Another v. Kotak Investment Advisors Ltd. and Another** dated **10/03/2021 [2021 SCC OnLine SC 204]**. Therefore, directions sought for by the applicant in IA/141(KB)2021 & IA/1104(KB)2020 cannot be granted. The result is that the application shall **stand dismissed** as devoid of merit.

5. **IA/946(KB)2020 & IA/201(KB)2020** – These IAs are wrongly on Board today. List these matters as already listed on **06/09/2021** for further consideration.

5. 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.

6. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rajasekhar V.K.)
Member (Judicial)

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