



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

**IA(IBC)/1615(KB)2022
in
CP(IB)/910(KB)2018**

*Under section 33(1)(a) of the Insolvency & Bankruptcy Code, 2016
Read with Rule 11 of the National Company Law Tribunal Rules, 2016*

In the matter of:

Bitumen Corporation India Private Limited

.... Operational Creditor

Versus

**Jangipur Bitumen Private Limited
(CIN: U24100WB2015PTC204818)**

.... Corporate Debtor

And

In the matter of:

Ms. Savita Agarwal,
Interim Resolution Professional of Jangipur Bitumen Private Limited

... Applicant

Order reserved on: 17/04/2023

Order pronounced on: 08/06/2023

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances (through video conferencing):

For IRP : Mr. Rishav Banerjee, Adv.
Mr. Rajarshi Banerjee, Adv.
Ms. Savita Agarwal, IRP in person

For suspended board : Ms. Urmila Chakraborty, Adv.
Mr. Pratyush Ghosh, Adv.



ORDER

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/1615(KB)2022** is an application filed by the Interim Resolution Professional (“**IRP**”) of **Jangipur Bitumen Private Limited**, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by Ms. Savita Agarwal, the IRP.
3. This Adjudicating authority *vide* order² dated 04/02/2020 in CP(IB)/910(KB)2018, had ordered initiation of CIRP against the Corporate Debtor. Ms. Savita Agarwal was appointed as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry, NCLT *vide* e-mail³ dated 24/02/2020.
4. In terms of regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, **Regulations 2016**), Public Announcements⁴ in **Form A** was published on 25/02/2020 in “*Business Standard*” (English) and “*Aajkal*” (Bengali) inviting claim from the creditors stipulating last date of submission of claims on 09/03/2020.
5. Immediately on receipt of the said communication dated 24/02/2020 from the Registry, the applicant (IRP) sent e-mail⁵ dated 24/02/2020 to the suspended members of the Board of Directors of the Corporate Debtor seeking assistance and cooperation from them in managing the affairs of the Corporate Debtor.
6. Soon after the appointment of IRP, the applicant wrote a letter⁶ dated 25/02/2020 to the Registrar of Companies, West Bengal requesting to change the status of

¹ At pages 34 to 37 of the application

² Annexure “A-1” at pages 38 to 43 of the application

³ Annexure “A-1” at page 44 of the application

⁴ Annexure “A-1” at pages 45 to 46 of the application

⁵ Annexure “A-2” at pages 47 to 49 of the application

⁶ Annexure “A-3” at page 50 of the application



the Corporate Debtor from “Strike Off” to “Active” as the name of the Corporate Debtor was struck off for non-filing of financial statements and annual returns since its inception.

7. It is stated that since no reply has been received to the e-mail dated 24/02/2020 from the suspended members of the Board of Directors of the Corporate Debtor, the applicant visited the registered office of the Corporate Debtor on 01/12/2020, but could not trace the members of the suspended Board of Directors and/or relevant records pertaining to the Corporate Debtor at the given address. The applicant could only contact one Mr. Saddam Rahaman, stated to be the son of the one of the members of the suspended Board of Directors over telephone number, provided by the petitioning Operational Creditor, who informed that his father Mr. Muzibur Rahaman, one of the Directors of the Corporate Debtor had brain stroke in 2015 as a result of which Mr. Muzibur Rahaman suffered partial paralysis and loss of speech and since then no one looked after the affairs of the Corporate Debtor. The other Director of the Corporate Debtor is Mrs. Mariyam Bibi, a housewife, and not aware about anything of the Corporate Debtor.
8. It is stated that an application being IA(IB) No.1064(KB)2020 was filed for an early dissolution of the Corporate Debtor as the Corporate Debtor was not a going concern for a long period of time and not amenable to a fruitful CIRP in terms of assets, information, records etc. The said application was dismissed vide order dated 14/12/2020 as premature and the applicant was directed to take further steps in accordance with applicable Regulations. Accordingly, the applicant constituted the Committee of Creditors (“CoC”) comprising of the petitioning Operational Creditor and the Commissioner, Commercial Taxes, Government of West Bengal.
9. The applicant states that no documents of the Corporate Debtor were available to her. In the absence of any documents/information, the CIRP process could not progress further. The members of the CoC, which comprises of Govt. departments, did not take any definitive decision in the meetings of the CoC



regarding the future course of action in the instant CIRP.

10. The applicant further states that she has been paid only a sum of Rs.50,000/- by the petitioning Operational Creditor at the time of her appointment as IRP in terms of the said admission order dated 04/02/2020 and has no funds for incurring any significant CIRP costs and that she had written to the Operational Creditor on 19/02/2021 seeking a consolidated payment⁷ of Rs.1,00,000/- for the works performed and expenses incurred by her, which forms **Annexure A-12**, but there was no response.
11. The applicant also states that she had filed an application u/s. 19(2) of the Code being IA(IB)/394(KB)2021, which has become infructuous for the reason of submissions by the suspended members of the Board of Directors of the Corporate Debtor that “*whatever information they have possessed, have been given to the RP and nothing is available with them, which can be shared with the RP*”.
12. It is submitted that the Corporate Debtor, Jangipur Bitumen Private Limited, has so far provided a bank statement in respect of Current Account No.1533113100976 being maintained by the Corporate Debtor with the Oriental Bank of Commerce (presently merged with Punjab National Bank) which shows that the aforesaid account was opened on 17/04/2015 and became ‘Dormant’ since 16/03/2018 with a closing balance Rs.5,095/-.
13. The applicant states that she had sent an e-mail dated 30/11/2021 and a letter⁸ dated 21/12/2022 to the Manager, Punjab National Bank, Jangipur, Raghunathganj, Dist Murshidabad 742225, West Bengal in respect of the aforesaid Current Account maintained by the Corporate Debtor with the said Branch being Current Account No.1533113100976 along with its enclosures to provide Bank Statement in respect of the aforesaid current account from

⁷ Annexure A-12 at page 397 of the application

⁸ Annexure A-14 at page 454 to 457A of the application



17/04/2015 till date. But the IRP did not receive any response from them.

14. The applicant further states that meanwhile the CIRP period has expired long back on 02/08/2020 and has written a letter⁹ to the members of the CoC on 29/07/2022 informing them that she was going to pray for initiation of liquidation in respect of the Corporate Debtor on account of expiry of the insolvency period but has not received any reply; objecting to the same or suggesting any alternative course of action.
15. It is further stated that the applicant upon online searching at wbregistration.gov.in (Official Website of the Directorate of Registration, Govt of West Bengal) to find out whether any land is registered in the name of the Corporate Debtor since its incorporation and found that the Corporate Debtor does not *prima facie* own any valuable asset whose value is capable of maximization. It is also stated that the Corporate Debtor can be reasonably assessed to have entirely eroded share capital, 'nil' assets and 'nil' bank/cash balance as per the current, perceptible state of affairs including its "strike off" status and the absolute absence of any financial statements and books of accounts whatsoever and that the Corporate Debtor was not a going concern when it was admitted under CIRP.
16. Meanwhile, the 180 days CIRP period had expired on 02/08/2020 and no extension was sought.
17. We have heard the Ld. Counsel for the IRP, perused the application and the documents attached therewith.
18. 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.

⁹ Annexure A-15 at page 458 to 461 of the application



19. Section 54 of the Codes reads as follows: -

“54(1) Where the assets of the Corporate Debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

(2) The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.”

Rule 14 of the IBBI (Liquidation Process) Regulations, 2016 reads as follows: -

*“Rule 14. **Early dissolution** - Any time after the preparation of the Preliminary Report, if it appears to the liquidator that –*

(a) The realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and

(b) The affairs of the corporate debtor do not require any further investigation; he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution”.

Rule 11 of the NCLT Rules, 2016 confers inherent powers on NCLT, which reads as follows: -

“Rule 11 : Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”

Section 12 of the Code stipulates time-limit for completion of insolvency resolution process, which reads as follows: -

“12(1) Subject to sub-section (2) the corporate insolvency resolution process shall be completed within a period of one hundred and eighty



days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent of the voting shares;

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eight days by such further period as it thinks fit, but not exceeding ninety days.

***Provided** that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.”*

20. Upon a conjoint reading of the above provisions, the ultimate objective of the Code is either to resolve the issue by way of approval of Resolution Plan or to liquidate and then to dissolve the Corporate Debtor, as expeditiously as possible. Since the Corporate Debtor does not prima facie own any valuable asset whose value is capable of maximization and have entirely eroded share capital, ‘nil’ assets and meagre bank/cash balance as per the current, perceptible state of affairs including its “strike off” status and the absolute absence of any financial statements and books of account whatsoever and that the Corporate Debtor was not a going concern when it was admitted under CIRP, no useful purpose would be served by ordering liquidation of the Corporate Debtor.
21. Since the Corporate Debtor does not have any assets, as stated at page 23 of the IA, no useful purpose would be served by instituting liquidation process as required under section 33 of the code. It is submitted by the Ld. Counsel for the IRP that the CoC, which comprises of the Commissioner, Commercial Taxes,



Government of West Bengal and the petitioning Operational Creditor, is not interested in spending more money and hence the hesitation in taking any decision in the meetings and providing direction to the IRP. This fact is clear from the fact that it has not even confirmed the IRP to act as a RP and from the submissions of the IRP, who was present in person it is clear that it would be in order to resort to direct dissolution of the Corporate Debtor rather than first sending it to liquidation fruitlessly and then attempting to liquidate non-existent assets and then dissolving the Corporate Debtor, particularly when it is clear that even the fees of the IRP has not been paid by the CoC. In view of the “nil” assets it is presumed that the assets have been liquidated. As regards the compliance regarding bank account, the subject bank is directed to release the amount outstanding in the account (albeit dormant) of the Corporate Debtor in favour of the IRP.

22. In view of the above facts and circumstances, it is prudent to **dissolve the Corporate Debtor, and it is ordered accordingly**. However, personal liability/Guarantee of any Director/Promoter of the Corporate Debtor, if any, would not absolve them of their liability by virtue of this order. Aggrieved party/parties, if any, shall be at liberty to continue or to take appropriate legal remedies against them.
23. The Interim Resolution Professional is further directed to serve a copy of this order upon the Registrar of Companies, West Bengal, immediately and, in any case, within fourteen days of receipt of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.
24. The Interim Resolution Professional shall stand discharged from her responsibilities, subject to procedural compliance.
25. **IA(IBC)/1615(KB)2022** in **CP(IB)/910(KB)2018** is allowed with the above directions and the **IA(IBC)/1615(KB)2022** and **CP(IB)/910(KB)2018** are hereby **disposed of** accordingly.



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in CP (IB)/910(KB)2018

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.
28. File be consigned to records.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 8th day of June, 2023.

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