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

IA(IBC)/833(KB)2022
in
CP(IB)/430(KB)2019

Under section 33 of the Insolvency & Bankruptcy Code, 2016

In the matter of

Bank of Baroda (erstwhile Dena Bank)

...Financial Creditor

Versus

M/s. Aryavrat Trading Private Limited.
(CIN: U70200WB1995PTC071258)

...Corporate Debtor

And

In the matter of

Mrs. Rachna Jhunjhunwala,
Resolution Professional of Aryavrat Trading Private Limited

… Applicant

Order reserved on: 15/09/2022

Order pronounced on: 21/09/2022

Coram:

Shri Rohit Kapoor	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (through video conferencing):

For the Applicant	:	Mr. Mr. Shaunak Mitra, Adv. Ms. Shreya Choudhary, Adv. Ms. Rachna Jhunjhunwala, RP in person

For respondent in IA/978/2022 : Mr. R. K. Mitra, Adv.
Ms. Urmila Chakraborty, Adv.
Mr. I. Basu, Adv.

O R D E R

Per: Rohit Kapoor, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.

2. IA(IBC)/833(KB)2022 is an application filed by the Resolution Professional of Aryavrat Trading Private Limited, the Corporate Debtor, on the ground that the Committee of Creditors (in short **"CoC")** at its 2nd meeting held on 06/07/2022 has passed a Resolution with 100% voting share for liquidation of the Corporate Debtor. This application is duly supported by an affidavit affirmed by Ms. Rachna Jhunjhunwala, RP.

3. In this matter, the Section 7 application was originally filed by the Dena Bank against the Corporate Debtor. However, subsequently Dena Bank was amalgamated with Bank of Baroda. After the aforesaid amalgamation, Bank of Baroda had filed an application being CA(IB) No.1178(KB)2019 praying for substitution of their name in place of Dena Bank. *Vide* order dated 11/12/2019, passed in CA(IB) No. 1178(KB)2019 amendments had been allowed to be carried to the main petition by substituting the name of Dena Bank with that of Bank of Baroda.

4. This Adjudicating authority *vide* order[1] dated 01/04/2022 in CP(IB)/430(KB)2019 had ordered initiation of CIRP against the Corporate Debtor and appointed Mr. Pranab Kumar Chakraborty as the Interim Resolution Professional. Public Announcement[2] was published on 04/04/2022 one in "*Financial Express*" (English) and one in "*Aajkal*" (Bengali) and

[1] Annexure "A" at pages 22 to 45 of the application
[2] Annexure "B" at pages 46 and 47 of the application

Committee of Creditors[3] was duly constituted on 23/04/2022.

5. The CoC at its first meeting[4] held on 30/04/2022 had approved appointment of Ms. Rachna Jhunjhunwala, Insolvency Professional, as RP with 68.32% voting[5] share.

6. Pending approval of appointment of the applicant, Ms. Rachna Jhunjhunwala, as the Resolution Professional of the Corporate Debtor by this Adjudicating Authority, the IRP continued to perform the duties of the Resolution Professional. Public announcement[6] in **Form G** was published on 16/06/2022 inviting Expression of Interest **("EoI")** from prospective resolution applicants. The last date of submission of EoI was 01/07/2022. However, no EoI was received from any prospective resolution applicants.

7. The CoC at its 2nd meeting[7] held on 06/07/2022 has recommended liquidation of the Corporate Debtor with 100% voting share[8] on the ground that the Corporate Debtor has no asset except one flat and there was no response from any prospective resolution applicants in response to EoI published.

8. *Vide* order[9] dated 11/07/2022 this Adjudicating Authority approved replacement of Mr. Pranab Kumar Chakraborty IRP with Ms. Rachna Jhunjhunwala, Resolution Professional. Accordingly, the erstwhile IRP has handed over all the documents to the applicant only on 20/07/2022. Pursuant to her appointment as the Resolution Professional of the Corporate Debtor, the 3rd meeting[10] of the CoC was held on 27/07/2022. At the said 3rd CoC meeting, the members of the CoC were of the opinion that the applicant should file an application for liquidation of the Corporate Debtor and should explore the

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[3] Paragraph 3 at page 12 of the application
[4] Annexure "C" at pages 48 to 52 of the application
[5] Annexure "D" at pages 53 to 57 of the application
[6] Annexure "F" at pages 59 to 60 of the application
[7] Annexure "H" at pages 62 to 67 of the application
[8] Annexure "I" at pages 68 to 75 of the application
[9] Annexure "J" at pages 76 to 77 of the application
[10] Annexure "K" at pages 78 to 81 of the application

option of selling the Corporate Debtor as a ‘going concern’.

9. The Resolution Professional has given her consent[11] to act as Liquidator of the Corporate Debtor along with her Authorisation of Assignment valid till 06/12/2022.

10. The 180 days CIRP period will come to an end on 27/09/2022 and no application for extension has been filed by the RP.

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. On conjoint reading of these two provisions, this Adjudicating Authority is left with no option but to order liquidation of the Corporate Debtor.

13. This Bench, therefore, hereby orders as follows: -

a. IA(IBC)/833(KB)2022 filed by **Ms. Rachna Jhunjhunwala, RP** of **Aryavrat Trading 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;

b. **Ms. Rachna Jhunjhunwala, RP [Reg. No. IBBI/IPA-001/IP-P00389/2017-18/10707]**, having e-mail i.d. rachnamurarka@rediffmail.com and telephone nos. +91 98311 41167 and 033 4005 6681 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 she is a professional

[11] Annexure “L” at pages 82 to 85 of the application

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

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) and "*Aajkal"* (Bengali) of Kolkata edition of the said 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, 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.

14. The application bearing **IA(IBC)/833(KB)2022** shall stand disposed of in accordance with the above directions.

15. **CP(IB)/430(KB)2019** is to come up for filing of periodical report on **28/11/2022.**

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)

Rohit Kapoor
Member (Judicial)

Signed on this, the 21st day of September, 2022.

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