

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

**IA(IBC)/493(KB)2022
in
CP(IB)/130(KB)2021**

Under section 33(2) of the Insolvency & Bankruptcy Code, 2016

In the matter of

Banger Tech Private Limited
(CIN: U74900WB2014PTC201262)

...Corporate Applicant/Corporate Debtor

And

In the matter of

Aditya Kumar Tibrewal,
Resolution Professional of Banger Tech Private Limited

... Applicant

Order reserved on: 11/11/2022

Order pronounced on: 29/12/2022

Coram:

Shri Rohit Kapoor : **Member (Judicial)**

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

Appearances (through video conferencing):

For RP : Ms. Urmila Chakraborty, Adv.
Mr. Aditya Kumar Tibrewal, RP in person

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. IA(IBC)/493(KB)2022 is an application filed by the Resolution Professional of

Banger Tech Private Limited, the Corporate Applicant/Corporate Debtor, praying for liquidation of the Corporate Applicant. This application is supported by an affidavit¹ duly affirmed by Mr. Aditya Kumar Tibrewal, RP.

3. This Adjudicating authority *vide* order² dated 25/11/2021 in CP(IB)/130(KB)2021 had ordered initiation of CIRP against the Corporate Applicant/Corporate Debtor and appointed Mr. Aditya Kumar Tibrewal as the Interim Resolution Professional (IRP). The said order was duly communicated to the IRP.
4. In terms of regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, **Regulations 2016**), Public Announcement³ in **Form A** was published on 28/11/2021 in the following newspapers: -
 - (a) “*Financial Express*” (English) in West Bengal
 - (b) “Aajkal” (Bengali) in West Bengal
 - (c) “*Financial Express*” (English) in Karnataka
 - (d) “*Samyukta*” (Kannad) in Karnataka
5. Committee of Creditors (in short, “**CoC**”)⁴ was duly constituted comprising of one unsecured financial creditor. The CoC at its 1st meeting held on 27/12/2021, via video conferencing, had confirmed the appointment of the IRP as the Resolution Professional (RP)⁵. Altogether three CoC meetings were held by the IRP/RP. A Copy of the minutes⁶ of the 2nd CoC meeting held on 15/02/2022 is annexed to the application.

¹ At pages 16 to 18 of the application

² Annexure – “A” at pages 19 to 26 of the application

³ Averment in paragraph 3 at page 4 of the application

⁴ Averment in paragraph 4 at page 4 of the application

⁵ Averment in paragraph 4(b) at page 6 of the application

⁶ Annexure – “B” at pages 27 to 35 of the application

6. As per regulation 36A(1) of the said Regulations, 2016 and with the approval of the CoC, **Form G**⁷ was published on 23/02/2022 inviting Expression of Interest (in short “**EoI**”) from prospective resolution applicants in the following newspapers and the last date of submission was fixed on 16/03/2022:

- (a) “*Financial Express*” (English) in West Bengal
- (b) “*Aajkal*” (Bengali) in West Bengal
- (c) “*Financial Express*” (English) in Karnataka
- (d) “*Samyukta*” (Kannad) in Karnataka

But no response to EoI has been received from any prospective resolution applicant. A Copy of the minutes⁸ of the 3rd CoC meeting held on 26/04/2022 is annexed to the application.

7. Since no response to EoI from any prospective resolution applicant has been received despite publication of **Form G** and that there are no realisable assets as well as the Corporate Debtor being non-operational for more than last two years having any tangible or intangible assets, the CoC at its 3rd meeting held on 26/04/2022 with 100% voting share has recommended liquidation of the Corporate Debtor and passed the following resolution, which is at page 41 of the application: -

“RESOLVED that the CoC members with 100% voting power of the Corporate Debtor, Banger Tech (P) Ltd. has decided to liquidate the company u/s. 33(2) of the I. B. Code, 2016, since no resolution plan has been received after the publication of invitation of expression of interest in Form G. The CoC has proposed the name of RP, Mr. Aditya Kumar Tibrewal for the appointment of the liquidator of the Corporate Debtor subject to the passing of the liquidation order by the Ld. Adjudicating Authority. RP shall be responsible to file the relevant application for the liquidation of the Corporate Debtor with the Ld. Adjudicating Authority for passing the liquidation order.”

⁷ Averment in paragraph 8(h) at page 10 and 11 of the application

⁸ Annexure – “C” at pages 36 to 42 of the application

8. Though the CoC has proposed the name of Mr. Aditya Kumar Tibrewal, RP, for appointment as Liquidator of the Corporate Debtor, the RP has not annexed his consent letter to act as Liquidator of the Corporate Debtor with the application.
9. Meanwhile, the 180 days CIRP period had expired on 23/05/2022.
10. 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.
11. On conjoint reading of these two provisions, this Adjudicating Authority is left with no option but to order liquidation of the Corporate Debtor.
12. This Bench, therefore, hereby orders as follows: -
 - a. IA(IBC)/493(KB)2022 filed by **Mr. Aditya Kumar Tibrewal, RP of Banger Tech 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. **Mr. Aditya Kumar Tibrewal, RP [Reg. No. IBBI/IPA-001/IP-P00743/2017-2018/11249]**, having e-mail i.d. adityatibre@gmail.com mobile no. **+91 98310 51818** 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 he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. **He is also directed to submit his consent to act as**

Liquidator of the Corporate Debtor within 7 days of receipt of this order.

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) in West Bengal and Karnataka, “*Aajkal*” (Bengali) in West Bengal and “*Samyukta*” (Kannad), in Karnataka, 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 Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the **Registrar of Companies, West Bengal.**

13. The application bearing **IA(IBC)/493(KB)2022** shall stand disposed of in accordance with the above directions.
14. **CP(IB)/130(KB)2021** is to come up for filing of periodical progress report on **23/01/2023.**
15. 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.
16. 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 29th day of December, 2022.

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