

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Petition No.: IB 569(PB) / 2018

**IA 3125/2020,
CA-1138/2020,
IA-1996/2020,
IA-3489/2020**

**IN THE MATTER OF:
Sh. ANIL KHETRAPAL**

...Petitioner/Applicant

VERSUS

M/s INNOVARI TECHNOLOGIES PVT. LTD. ...Respondent

AND

IN THE MATTER OF IA 3125/2020:

Under rule 11 & Rule 39(2) of NCLT Rules, 2016 and Section 425 of Companies Act, 2013

Mr. PARTHA SARTHY SARKAR

Resolution Professional of Innovari Technologies Pvt. Ltd ...Applicant

VERSUS

Mr. MAYANK MEHTA

Assistant General Manager, IBBI

...Respondent

IN THE MATTER OF CA 1138/2020:

Under rule 11 of NCLT Rules, 2016 r/w Section 17,18,19,23,44,66,70 of IBC, 2016 (for an order of this Tribunal seeking a direction for Police Investigation of the Corporate Debtor and other reliefs)

Mr. PARTHA SARTHY SARKAR

...Applicant

CP No.: IB 569(PB) / 2018, IA 3125/2020, CA-1138/2020, IA-1996/2020 & IA-3489/2020

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AKS



IN THE MATTER OF IA 1996/2020:

For seeking unpaid professional fees of RP

Mr. PARTHA SARTHY SARKAR

...Applicant

IN THE MATTER OF IA 3489/2020:

Under Section 60(5) and 27 of IBC, 2016

Sh. ANIL KHETRAPAL

...Petitioner/Applicant

VERSUS

M/s INNOVARI TECHNOLOGIES PVT. LTD.

...Respondent

And in the matter of:

Mr. PARTHA SARTHY SARKAR

...Resolution Professional

Pronounced on: 02.11.2022

CORAM:

SHRI RAMALINGAM SUDHAKAR

HON'BLE PRESIDENT

SHRI AVINASH K SRIVASTAVA

HON'BLE MEMBER (TECHNICAL)

Present:

For the Perfect Accounting & Shared Services : Mr. Rangnath Jha, Mr. Narendra Siinghania Advs.

For the Petitioner : Ms. Radhika Gupta, Mr. Apporva Jain Advs.

For the Respondent : Mr. Sandeep Bajaj, Ms. Akanksha Nehra, Mr. Ajay Sharma, Mr. Brijesh Kumar Tamber Advs.

Aks



For the HDFC Bank Ltd. : Mr. Aman Lekha, Ms. Anushka
Sharma Advts.

ORDER

PER- AVINASH K SRIVASTAVA MEMBER (TECHNICAL)

1. This Company Petition numbered as **CP IB 569/ND/2018** was filed by one Shri Anil Khetrapal (Operational Creditor), to initiate CIRP under Section 9 of Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor namely Innovari Technologies Private Limited. This Tribunal, vide order dated 21.08.2019, passed an order initiating CIRP against the Corporate Debtor and appointed Mr. Partha Sarathy Sarkar, Insolvency Professional, having Registration No. IBBI/IPA-N00239/2017-18/10690 as the Interim Resolution Professional (IRP). Further, the CoC (*consisting of Operational Creditors only*) confirmed the IRP as Resolution Professional and thereby Mr. Partha Sarathy Sarkar took charge as a Resolution Professional of the Corporate Debtor.
2. It is brought to the notice of this Tribunal that, as on date, no resolution of the Corporate Debtor could be arrived at. Infact, the Corporate Debtor is still in the CIRP, way beyond the set timelines for the completion of the process.

RS



3. Thereafter, an application numbered IA 3489/2020 was filed on 26.08.2020, by the applicant namely Shri Anil Khetrupal, an operational creditor and a member of the CoC for removal and replacement of the RP.
4. Subsequently, the Insolvency and Bankruptcy Board of India, in exercise of its powers under Section 218 of the IBC, 2016, read with the IBBI Inspection Regulations, vide order dated 09.03.2021, on having reasonable grounds to believe that Mr. Partha Sarathy Sarkar had contravened provisions of the IBC, 2016 and Regulations made thereunder, appointed an Inspecting Authority to conduct an inspection.
5. The Inspecting Authority, under sub-regulation (1) of Regulation 4 of the Inspection Regulations served a notice of inspection to Mr. Partha Sarathy Sarkar, vide email dated 17.03.2021 to inform him that the Inspecting Authority will be undertaking an inspection of the assignment (i.e. CIRP of Innovari Technologies Private Limited) handled by him and that all documents pertaining to this assignment may be mailed to the Inspecting Authority on or before 31.03.2021.

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6. Thereafter, a Show Cause Notice (SCN) No. IBBI /IP/INSP/2021/67/3366/ 508 dated 08.04.2022 was issued by IBBI to Mr. Partha Sarathy Sarkar, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) and regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016 (IP Regulations).

7. It is submitted before this Tribunal that Writ Petition No.3067 of 2022 was filed by Mr. Partha Sarathy Sarkar, in the High Court of Bombay (Ordinary Original Civil Jurisdiction), challenging this show cause notice by the IBBI. However, it was withdrawn by the petitioner on 20.07.2022. The order of High Court of Bombay is extracted below:

1 The party in person seeks leave to withdraw the Writ Petition with liberty to challenge the order passed by the Respondents pursuant to the show cause notice.

2 Writ Petition is disposed of as withdrawn.

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3 Petitioner may assail the order dated 24.06.2022 as may be permissible under the law. In that event, all contention of respective parties are kept open.

4 Interim Applications also stand disposed of.

8. In the meanwhile, on 24.06.2022, the Disciplinary Committee (**DC**) of Insolvency and Bankruptcy Board of India, vide notification no. IBBI/DC/108/2022 passed an order suspending Mr. Partha Sarathy Sarkar as Insolvency Professional for a period of three years. The relevant part of the order is as extracted below:

“5. Order

5.1. In view of the submission made by Mr. Partha Sarathy Sarkar, and materials available on record, DC notes that Mr. Partha Sarathy Sarkar has conducted the entire CIRP of the CD in a brazen manner without having due regard the provisions of the Code and the regulations made thereunder. Accordingly, the DC find that the actions of Mr. Partha Sarathy Sarkar as the IRP of the CD are in violation section 12(1), section 12(2), section 25(1), section 25(2)(a), section 25(2) (d), section 208(2)(a), 208(2) (e) of the Code. Regulation 13(1), Regulation 21(3) and (4), Regulation 27, Regulation 35A of the CIRP Regulations, Regulation 4(4), Regulation 4(7) of Inspection Regulation, Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clause 2, 3, 5, 12, 13, 18, 19 of the Code of Conduct specified thereunder. The DC, hereby, considering

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contravention mentioned hereinabove, suspends the registration of Mr. Partha Sarathy Sarkar as Insolvency Professional, having Registration No. IBBI/IPA-002/IP-N00239/2017-2018/10690 for a period of three years.

5.2. The Order shall come into force on expiry of 30 days from the date of its issue.”

9. It is submitted that Writ Petition No. 23436 of 2022 has been filed by Mr. Partha Sarathy Sarkar in the High Court of Bombay, challenging the final order of IBBI *supra* para 7. However, the matter is *sub-judice* and the next date of hearing is 23.12.2022.
10. At this juncture, we also rely upon Section 33 of IBC,2016 read with Section 34(4)(b) of IBC, 2016 which reads as under:

“ Section 33. Initiation of liquidation. -

(1) Where the Adjudicating Authority, -

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30;

or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall -

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;



- (ii) issue a public announcement stating that the corporate debtor is in liquidation; and
- (iii) require such order to be sent to the authority with which the corporate debtor is registered.

Section 34 : Appointment of liquidator and fee to be paid

(4) The Adjudicating Authority shall by order replace the resolution professional, if-

(a)...

(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing; or

Section 3(1)

(1) "Board" means the Insolvency and Bankruptcy Board of India established under sub-section (1) of section 188;

11. In view of the timeline breached and in the absence of a plan as specified, we have no option but to proceed to order liquidation as mandated by Section 33 of IBC, 2016.
12. Accordingly, on perusal of the facts and for reasons aforesaid and invoking the provisions under Section 33 of IBC, 2016 read with Section 34(4)(b) of IBC, 2016, we order to liquidate the Corporate Debtor namely Innovari Technologies Private Limited with the following directions:
 - a. Mr. Atul Mittal, Insolvency Professional, Registration no. IBBI /IPA-001/IP-P00439/2017-2018/10762, registered address being 174, Balco Apartments, Plot No. 58, IP Extn.,



Patparganj, New Delhi, National Capital Territory of Delhi, 110092, email address being a.mittalmc@gmail.com is hereby appointed as the Liquidator;

- b. We grant permission to the Applicant for taking steps as per provisions of Sec 230 of the Companies Act, 2013 and also pursue other modes of liquidation, in addition to liquidating the Corporate Debtor as a going concern;
- c. Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d. The Order of moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- e. This order shall be deemed to be notice of discharge to all the officers, employees and workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- f. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.

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- g. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- h. The Liquidator shall also follow up on the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- i. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- j. Copy of this order be sent to the operational creditors, financial creditors (if any) of the corporate debtor and the Liquidator for taking necessary steps;

13. In light of the above order;

- a) IA **3125/2022**, filed by Mr. Partha Sarathy Sarkar, praying this Tribunal to take action against IBBI official for issuing show cause notice as stated in *supra* para 4 and 5, is not maintainable as the issue is *sub-judice* and hence stands **dismissed**.
- b) CA **1138/2020**, filed mainly for an order of this Tribunal seeking a direction for Police Investigation of the Corporate Debtor and other reliefs; and IA **1996/2020**, filed for RP's

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unpaid Professional Fees and other reliefs, shall be pursued by the Liquidator as per law.

- c) IA **3489/2020**, filed for the removal and replacement of RP, is **dismissed as infructuous.**

RAMALINGAM SUDHAKAR
PRESIDENT

AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)