

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

IA(IBC)/(LIQ.)/34(KB)2024

In

C.P. (IB)/98(KB)2021

*An application under Section 33 of the Insolvency and Bankruptcy
Code, 2016*

In the matter of:
State Bank of India.

... .. Operational Creditor

Versus

Dynametic Overseas Private Limited, (CIN:
U01409WB1988PTC045536) having its registered office at 85,
Ballygunge Gardens, Kolkata- 700019.

... .. Corporate Debtor

And

In the matter of:
Yogesh Gupta, the Resolution Professional of Dynametic Overseas
Private Limited, having his office at C/o. S. Jaykishan, 12, Ho Chi Min
Sarani, 2nd Floor, Suit No.2D, Kolkata- 700071.

... .. Applicant

Date of pronouncement: 21st November, 2024

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearance (via video conferencing/physically)

Mr. Rahul Auddy, Adv.] For the Resolution Professional

Mr. Aditya Gooptu, Adv.]

Mr. Ankan Rai, Adv.] For the Corporate Debtor

Mr. Ratnesh Kumar Rai, Adv.]

ORDER

Per: D. Arvind, Member (Technical)

1. This Court convened through hybrid mode of conferencing.
2. Learned Counsel for the parties were heard *in extenso*.

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- 3.** This IA(IBC)(LIQ.)/34(KB)2024 has been preferred by Mr. Yogesh Gupta, the Resolution Professional of the Corporate Debtor of Dynametic Overseas Private Limited to seek the following reliefs, inter alia:
- (a)** *This Hon'ble Tribunal be pleased to pass necessary orders of Liquidation of the CD under section 33 of the Code;*
 - (b)** *Appointment of any Insolvency Professional as Liquidator as this Hon'ble Bench deems fit and proper;*
 - (c)** *Such further and/or other order or orders as this Hon'ble Court may deem fit and proper;*
- 4. Brief facts of the case:**
- 4.1.** An application was filed by the State Bank of India (hereinafter referred to as the "Financial Creditor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 read Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against Dynametic Overseas Private Limited (hereinafter referred to as the "Corporate Debtor").
- 4.2.** This Tribunal vide its order dated 12th September, 2022 admitted the application being C.P. (IB)/98(KB)2021 for initiation of Corporate Insolvency Resolution process against the Corporate Debtor and appointed Mr. Yogesh Gupta as the Interim Resolution Professional ("IRP").
- 4.3.** The same was challenged before the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi being Company Appeal (AT) (Ins) No.1349 of 2022 and the Hon'ble National Company Law Appellate Tribunal dismissed the appeal filed by the Appellant on 18th September, 2024 and consequently

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confirmed the order of Adjudicating Authority admitting the Corporate Debtor into Corporate Insolvency Resolution Process.

- 4.4.** In terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation, 2016 (“CIRP Regulations”), public announcement in Form A was published on 14th September, 2022 in “The Financial Express” in English and “Aajkal” in Bengali for inviting filing of claims within 26th September, 2022.
- 4.5.** The Resolution Professional followed the process and procedure prescribed. The Committee of Creditors constituted on 1st October, 2022 with State Bank of India and Bank of Baroda as Secured Financial Creditors having 51.44 per cent and 48.56 per cent voting shares respectively.
- 4.6.** The Applicant had issued Form G inviting Expression of Interest under Regulation 36A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation, 2016 on 11th November, 2022 in three newspapers namely, (i) The Hindu, Tamil and Tuticorin (ii) Aajkal, Bengali, Kolkata Edition and (iii) The Financial Express, English, All India Edition and the last date of receiving the invitations was 22nd November, 2022, however, there were no Expression of Interest received.
- 4.7.** On the 6th CoC meeting held on 17th February, 2023, a resolution was passed by the members of CoC unanimously for liquidation of the Corporate Debtor.
- 4.8.** The Applicant from time to time filed extension/exclusion application of time period spent in the litigation before the Hon’ble National Company Law Appellate Tribunal.

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4.9. Since then, the Hon'ble National Company Law Appellate Tribunal decided the appeal filed against the order of CIRP passed by this Adjudicating Authority. On 18th September, 2024, dismissing the appeal filed.

4.10. In view of the above, the CoC and the Resolution Professional are free to proceed with the resolution for liquidation and accordingly, this application has been filed.

5. Analysis and findings:

5.1. We have considered the submission made by the learned Counsel for the parties and perused the record.

5.2. As per the minutes of the meeting of the CoC held on 17th February, 2023, the CoC members had unanimously passed resolution for the liquidation of the Corporate Debtor. Since, the Resolution Professional did not receive any Expression of Interest for resolution of the Corporate Debtor.

5.3. Hence, there is no impediment in ordering the liquidation of the Corporate Debtor.

5.4. Accordingly, this Bench, therefore, hereby orders as follows:

(a) Prayers as sought for in IA(IBC)(LIQ.)/34(KB)2024 filed by RP, is allowed and Dynametic Overseas Private Limited, the Corporate Debtor is ordered to be liquidated in terms of Section 33(1) of the Code;

(b) Mr. Anil Kumar Dubey having Registration No. IBBI/IPA-002/IP-NO1187/2022-2023/14249, email: anil@mandaassociates.in, Mobile No.: 9883039240 is hereby appointed as Liquidator is hereby appointed as Liquidator as provided under Section 34(1) of the Code subject to a valid Authorisation for Assignment (AFA)

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issued by the Insolvency Professional Agency (IPA) of which she is a professional member;

- (c)** The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- (d)** Public Notice shall be issued in the 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

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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 Applicant is registered.

6. The application being **IA(IBC)(LIQ.)/34(KB)2024** shall stand **disposed of** in accordance with the above directions.
7. List the main **C.P. (IB)/98(KB)2021** for reporting progress on **5th March, 2025**.
8. 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.
9. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order signed on this, the 21st day of November, 2024.

Sayon (Steno)