

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

**IA(IBC)/995(KB)2023
in
CP(IB)/922(KB)2020**

Under section 33(1)(a)(i) of the Insolvency & Bankruptcy Code, 2016

In the matter of:
Manavta Trade-Link Private Limited

.... Financial Creditor

Versus

Deepraj Vinimay Private Limited
(U51109WB1994PTC062352)

.... Corporate Debtor

And

In the matter of:
Mr. Sudipta Ghosh,
Resolution Professional of Deepraj Vinimay Private Limited

... Applicant

Order reserved on: 19/10/2023

Order pronounced on: 14/12/2023

Coram:

Smt. Bidisha Banerjee	:	Member (Judicial)
Shri Arvind Devanathan	:	Member (Technical)

Appearances (through hybrid mode):

For RP	:	Ms. Pallavi Ray, Adv. Mr. Sudipta Ghosh, RP in person
For PNB in IA(IBC)/995(KB)2023	:	Mr. Debasish Chakrabarti, Adv. Mr. Snehasish Chakraborty, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.

2. **IA(IBC)/995(KB)2023** is an application filed under section 33(1)(a)(i) of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) by the Resolution Professional (“**RP**”) of **Deepraj Vinimay Private Limited**, the Corporate Debtor, praying for initiation of liquidation process of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by the RP.
3. This Adjudicating authority, on a petition filed u/s. 7 of the IBC read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Manavta Trade-Link Private Limited**, the Financial Creditor, *vide* order² dated 10/05/2022 in CP(IB)/922(KB)2020, had ordered initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against **Deepraj Vinimoy Private Limited**, the Corporate Debtor appointing Mr. Sudipta Ghosh as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry.
4. In terms of regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (“**CIRP Regulations**”) Public Announcements³ in **Form A** was published on 13/05/2022 in “*Business Standard*” (English) and “*Ekdin*” (Bengali) inviting claims from the creditors of the Corporate Debtor stipulating last date of submission of claims on 24/05/2022.
5. The applicant sent a detailed list of documents and information required to conduct the CIRP of the Corporate Debtor in a time bound manner to the suspended members of the Board of Directors of the Corporate Debtor through email.
6. Thereafter the applicant collated the claims received in response to Public Announcement and upon verification of the same, duly constituted the Committee of Creditors (“**CoC**”) on 01/06/2022. Later on, the applicant has reconstituted the CoC on 25/07/2022. Copies of the reconstitution report of the

¹ At pages 22 to 24 of the application

² Annexure A at pages 25 to 33 of the application

³ Annexure B at pages 34 to 35 of the application

CoC and Final List of Creditors form **Annexure ‘C’**⁴.

7. First meeting of the CoC was held on 09/06/2022 wherein the CoC has approved and confirmed the appointment of the applicant as the Resolution Professional (“**RP**”). Copy of the minutes of the 1st CoC meeting forms **Annexure ‘D’**⁵. The applicant altogether held seven CoC meetings on 09/06/2022, 24/06/2022, 07/07/2022, 23/08/2022, 17/09/2022, 21/01/2023 and 02/02/2023 respectively. Copies of the minutes of the 2nd to 7th CoC meetings form **Annexure ‘E’**⁶. The applicant also filed four Progress Reports from time to time on 30/06/2022, 17/08/2022, 14/10/2022 and 14/03/2023⁷.
8. In terms of regulation 36A(1) of the CIRP Regulations, Form G⁸ was published on 14/07/2022 in “*Financial Express*” (English) and “*Ekdin*” (Bengali) inviting Expression of Interest (“**EoI**”) from prospective resolution applicants (“**PRA**”). However, no EoI was received from anyone. Since no EoI was received, the CoC at its 4th meeting held on 23/08/2022 deliberated over the matter and resolved to re-issue Form G. Accordingly, the applicant re-issued Form G⁹ 2nd time on 26/08/2022 in “*Financial Express*” (English) and “*Ekdin*” (Bengali).
9. In response to publication of Form G (2nd time) on 26/08/2022, one EoI¹⁰ was received from one Nakshatra Corporate Advisors Limited on the last date of submission of EoI on 10/09/2022. The last date for submission of Resolution Plan was on 25/10/2022.
10. Two IBBI Registered Valuers were appointed to determine and ascertain the Fair Value and Liquidation Value of Securities and Financial Assets of the Corporate Debtor. The said Valuers have sent their respective Valuation Reports¹¹ to the applicant. As per their Valuation Reports the liquidation value of the Corporate

⁴ At pages 36 to 50 of the application

⁵ At pages 51 to 60 of the application

⁶ At pages 61 to 114 of the application

⁷ Averments in para 8 at page 14 of the application

⁸ Annexure F at pages 115 and 116 of the application

⁹ Annexure G at pages 117 and 118 of the application

¹⁰ Annexure H at page 119 of the application

¹¹ Annexure I at pages 120 and 145 of the application

Debtor is Rs.8,07,94,116/- and Rs.8,08,68,552/- respectively. Therefore, average liquidation value comes to Rs.8,08,31,334/-.

11. The applicant has appointed one M/s. TKR & Associates, Chartered Accountants, as Transaction Auditor, who has completed the Transaction Audit under the relevant provisions of the IBC, for the period of last two years from the date of commencement of CIRP of the Corporate Debtor. The report of the Transaction Auditor was received on 09/01/2023, wherein it was stated that none of the transactions during the relevant period, fall within the category of Preferential, Undervalued, and Extortionate and Fraudulent transaction.¹²
12. Since 180 days CIRP period would expire on 05/11/2023, the CoC at its 5th meeting held on 17/09/2022 resolved to extend the CIRP period by 90 days. Accordingly, an application being IA(IBC)/1207(KB)2022 under section 12(2) was filed for extension of the CIRP period. This Adjudicating Authority *vide* order¹³ dated 30/01/2023 has granted 90 days extension of the CIRP, thereby the 270 days CIRP period would come to an end on 03/02/2023.
13. Meanwhile, the applicant received an email¹⁴ dated 03/12/2022 from Nakshatra Corporate Advisors Limited, prospective PRA, expressing their inability to submit Resolution Plan requesting refund of the security deposit of Rs.2 Lakhs. Accordingly, the applicant called 6th CoC meeting on 21/01/2023 in order to decide further course of action in the matter. For want of quorum the said meeting was adjourned to 22/02/2023. In the said adjourned 6th CoC meeting only the petitioning Financial Creditor with 6.99% voting share was present. As no Resolution Plan was received from the PRA, the CoC being the only member present, i.e., petitioning Financial Creditor, passed resolution with 6.99% voting share to liquidate the Corporate Debtor.¹⁵
14. Thereafter, the applicant convened 7th CoC meeting on 02/02/2023, so as to give

¹² Averments in para 14 at page 16 of the application

¹³ Annexure J at pages 146 and 147 of the application

¹⁴ Annexure K at page 148 of the application

¹⁵ Averments in para 18 at page 17 of the application

Punjab National Bank (“PNB”) having 93.01% voting share in the CoC to decide on the further course of action. However, PNB abstain from voting on the Agendas of the 7th CoC meeting. In accordance with regulation 26 of the CIRP Regulations, voting line was kept open till 22/02/2023, but none of the members exercised its voting option. The voting results form **Annexure ‘L’**¹⁶. Since, the Agendas of the 7th CoC meeting was not voted upon by the CoC members, the applicant discussed the matter with all the members of the CoC. Accordingly, a request e-mail¹⁷ was sent by the applicant to all the members of CoC regarding e-Voting on 24/02/2023 but no response was received from any of the members of the CoC. The applicant again contacted the members of the CoC and after due consultation with all the members restarted the e-voting process on 28/03/2023 and extended the e-voting process twice, which was ultimately concluded on 18/04/2023. Upon declaration of voting result it was found that only one member having 6.99% voting share voted on the Agendas. The voting results form **Annexure ‘N’**¹⁸.

15. When this application came up for hearing on 04/08/2023 the following order was passed: -

“Issue notice to the Assistant General Manager, Punjab National Bank, Zonal Office, Kolkata to intimate the decision of the Punjab National Bank regarding liquidation of the Corporate Debtor.”

In compliance of the aforesaid order dated 04/08/2023, a supplementary affidavit affirmed on 10/10/2023 has been filed by the PNB stating in paragraph 7 of the said affidavit that *“Punjab National Bank having 93.01% voting rights in the Committee of Creditors also resolves to initiate liquidation proceeding against the corporate debtor. Thus, since the agenda for liquidation has been passed by 100% of the CoC, Punjab National Bank humbly prays this Hon’ble Tribunal that your Lordships may be pleased to pass an order initiating liquidation process of the corporate debtor. The Punjab National Bank is also agreed to*

¹⁶ At pages 149 to 152 of the application

¹⁷ Annexure M at pages 153 of the application

¹⁸ At pages 154 to 157 of the application

bear proportionate liquidation cost.

16. The applicant had given his consent¹⁹ dated 16/05/2023 along with Declaration of Eligibility and Authorisation for Assignment to act as the Liquidator of the Corporate Debtor.
17. It is to be noted here that the 270 days CIRP period has already ended on 03/02/2023.
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.
19. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
20. This Bench, therefore, hereby orders as follows: -
 - a. IA(IBC)/995(KB)2023 filed by Mr. Sudipta Ghosh, RP of Deepraj Vinimay Private Limited, the Corporate Debtor, is allowed. Consequently, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;
 - b. Though the RP has given his consent to act as the Liquidator of the Corporate Debtor but in view of the IBBI Circular no. Liq-12011/214/2023-IBBI/840 dated 18/07/2023 for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the Code, we hereby appoint Mr. Uttam Tekriwal (Reg. No. IBBI/IPA-001/IP-P-02192/2020-2021/13365) having e-mail i.d. ip.uttamtekriwal@gmail.com, mobile no. 9831913569 as given at Sl.No.29 of the Insolvency and Bankruptcy Board of India, Panel for July 1, 2023 to

¹⁹ Nnexuswe 'O' at pages 158 to 162 of the application

December 31, 2023 – Kolkata Bench, as Liquidator in terms of section 34(1) of the Code. His appointment shall be subject 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. The Liquidator is directed to submit his consent to act as Liquidator within **10 days** of receipt of this order. The erstwhile RP shall handover all papers and documents in his possession concerning the Corporate Debtor to the Liquidator appointed in this matter within **10 days**.

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., in “*Financial Express*” (English) and “*Ekdin*” (Bengali) 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) of the IBC, 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**.
21. The application bearing **IA(IBC)/995(KB)2023** shall stand disposed of in accordance with the above directions.
22. **CP(IB)/922(KB)2020** is to come up for filing of Periodical Progress Report on **15/01/2024**.
23. 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.
24. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Arvind Devanathan
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 14th day of December, 2023.

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