

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA
(Special Bench)

IA (IB) No. 1371/KB/2020

in

CP (IB) No. 723/KB/2019

Under section 33 of Insolvency & Bankruptcy Code, 2016

In the matter of

Rishav Coke Product Private Limited...

Operational Creditor

Versus

Modern India Con Cast Limited ...

Corporate Debtor

Samir Kumar Bhattacharyya

RP of Modern India Con Cast Limited

... Applicant

Order reserved on: 23rd December, 2020

Order pronounced on: 05th January, 2021

Coram:

Shri Rajasekhar V.K. : Member (Judicial)

Appearances (through video conferencing):

For the Applicant : Mr Vikash Singh, Advocate

Ms Vipra Gang, Advocate

Mr Samir Kumar Bhattacharyya,
RP in person.

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This court convened *via* video conference today.
2. This is an application filed by the Resolution professional upon the instructions of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, *viz.*, Modern India Con Cast Limited [CIN: U27106WB1987PLC042166], on the ground that no Expression of Interest (EoI) has been received.
3. This Adjudicating Authority *vide* its order dated 22.10.2019 on a Petition filed by Rishav Coke Product Private Limited (Operational Creditor) under section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed Ms. Jayashree Bhandari having registration no. IBBI/IPA-001/IP-P01174/2018-19/11838 as the Interim Resolution Professional (IRP).
4. The IRP made public announcement in terms of section 15 of the Code on 26.10.2019 in *Financial Express* (English) and *Aajkal* (Bengali) newspapers, fixing 5.11.2019 as the last date for submitting the claim.
5. The Committee of Creditors (CoC) was duly constituted on 14.11.2019 with five Financial Creditors and the Report certifying the constitution of the CoC was filed with the Adjudicating Authority.

6. Mr. Samir Kumar Bhattacharyya, the Applicant herein, was appointed as the Resolution Professional (RP) by replacing Ms. Jayashree Bhandari by a voting share of 100%. The said appointment was confirmed by this bench vide an order dated 13.12.2019.
7. The period of 180 days of CIRP expired 19.04.2020. In the 4th CoC meeting held on 07.03.2020, the extension of CIRP period by 90 days was approved by the CoC with 100% vote. Accordingly, RP had filed an Application before this bench on 07.08.2020. However, in the meantime, the CoC decided to liquidate the Corporate Debtor and advised the RP not to pursue the said application. The said application was therefore withdrawn by the RP.
8. In the 9th CoC meeting held on 17.10.2020 the members of CoC with 100% vote in favour have decided that the Corporate Debtor be liquidated as no EoI had been received till extended cut-off date. Accordingly, the CoC with 100% votes directed the RP to file an application for Liquidation of the Corporate Debtor.
9. Name of Mr. Sanjai Kumar Gupta Insolvency Professional bearing Registration No. IBBI/IPA-001/IP-P00592/2017-2018/11045 was proposed by the RP to the CoC for appointing him as the Liquidator. The CoC with 100% votes approved the appointment of Mr. Sanjai Kumar Gupta as the Liquidator.
10. Mr. Sanjai Kumar Gupta [IBBI/IPA-001/IP-P00592/2017-2018/11045] has agreed to act as Liquidator to carry on the process of liquidation and given his consent dated 04.11.2020 to act as

Liquidator, in the prescribed Form AA, in terms of section 34(1) of the Code.

11. We have considered the submission made by the Applicant/RP in person and perused the record.
12. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating authority of the decision of the CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 100% voting share to liquidate the Corporate Debtor.
13. This Bench, therefore, hereby orders as follows: -
 - a. IA (IB) No. 1371/KB/2020 filed by Samir Kumar Bhattacharyya, RP of Modern India Con Cast 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. Sanjai Kumar Gupta [Reg. No. IBBI/IPA-001/IP-P00592/2017-2018/11045], 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.
 - 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), 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 been 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 (IB) No. 1371/KB/2020** shall stand disposed of in accordance with the above direction.
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 be issued, if applied for, upon compliance of all requisite formalities

Rajasekhar V.K.
Member (Judicial)

05.01.2021

SR (LRA)