

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

**IA(IBC)/1019(KB)2023
in
CP(IB)/127(KB)2021**

In the matter of:

An application under section 33(2) of the Insolvency and Bankruptcy Code, 2016;

And

In the matter of:

Shubh Mohini Enterprises Private Limited, CIN: U32109DL1998PTC148221, having registered office at X-37, Pratap Street, Gandhi Nagar, Delhi East, Pin – 110031;

....Financial Creditor

-Versus-

Naman Ispat Private Limited, CIN: U27109WB2005PTC101589, having registered office at 235/2A, A.J.C. Bose Road, Kolkata 700020, West Bengal;

....Corporate Debtor

And

In the matter of:

Sudipta Ghosh, Resolution Professional of Naman Ispat Private Limited.

....Applicant

And

**IA(IBC)/1095(KB)2023
in
CP(IB)/127(KB)2021**

In the matter of:

An application u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016;

And

In the matter of:

Shubh Mohini Enterprises Private Limited, CIN: U32109DL1998PTC148221, having registered office at X-37, Pratap Street, Gandhi Nagar, Delhi East, Pin – 110031;

....Financial Creditor

-Versus-

Naman Ispat Private Limited, CIN: U27109WB2005PTC101589, having registered office at 235/2A, A.J.C. Bose Road, Kolkata 700020, West Bengal;

....Corporate Debtor

And

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court I)

IA(IBC)/1019(KB)2023
&
IA(IBC)/1095(KB)2023
in CP (IB)/127(KB)2021

In the matter of:

Pratap Mukherjee, Liquidator of Radission Resources Private Limited, having registration no. IBBI/IPA-001/IP-P02515/2021-2022/13851 and office at 27A, Bhattacharjee Para Road, Kolkata 700063;

....Applicant

-versus-

In the matter of:

Sudipta Ghosh, Resolution Professional of the Corporate Debtor, having its registration no. IBBI/IPA-001/IP-P00484/2017-2018/10872 and office at 8, N. N. Mukherjee 3rd Lane, Uttarpara, Hooghly, West Bengal 712258

....Respondent

Order pronounced on: 23/11/2023

Coram:

Shri Rohit Kapoor

: **Member (Judicial)**

Shri Balraj Joshi

: **Member (Technical)**

Appearances (through hybrid mode):

For RP

: Ms. Urmila Chakraborty, Adv.
Ms. Pallavi Ray, Adv.

For applicant in IA/1095/2023

: Ms. Rakhi Purnima Paul, Adv.
Ms. Vedika Sureka, Adv.
Mr. Pratap Mukherjee, Liquidator of
Radission Resources Private Limited

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.

IA(IBC)/1019(KB)2023

2. This is an application filed under section 33(2) of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) by the Interim Resolution Professional (“**IRP**”) of **Naman Ispat Private Limited**, the Corporate Debtor, praying for liquidation of

the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by Mr. Sudipta Ghosh, 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 Shubh Mohini Enterprise Private Limited, the Financial Creditor, *vide* order² dated 11/11/2022 in CP(IB)/127(KB)2021, had ordered initiation of CIRP against Naman Ispat Private Limited, the Corporate Debtor. Mr. Sudipta Ghosh was appointed as the Interim Resolution Professional (“**IRP**”).
4. In terms of regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (“**CIRP Regulations**”) Public Announcements³ in **Form A** was published on 13/11/2022 in “*Financial Express*” (English) and “*Ekdin*” (Bengali) inviting claims from the creditors. Committee of Creditors (in short “**CoC**”) was duly formed with the sole petitioning Financial Creditor.
5. At the 1st meeting of the CoC held on 09/12/2022, the CoC had approved appointment of IRP as Resolution Professional (“**RP**”). Minutes of the 1st CoC meeting forms **Annexure C**⁴. RP has altogether conducted five CoC meetings. Copies of Minutes of the second to fifth meetings form **Annexure D**⁵. The applicant has filed three Progress Reports on 20/12/2022, 28/02/2023 and 14/04/2023 respectively.
6. In terms of regulation 36A(1) of the CIRP Regulations, Form G⁶ was published on 12/01/2023 in “*Financial Express*” (English) and “*Ekdin*” (Bengali) inviting Expression of Interest (“**EoI**”) from prospective resolution applicants (“**PRA**”). However, in response no EoI was received. CoC had discussed over non-receipt

¹ At pages 19 and 21 of the application

² Annexure A at pages 22 to 31 of the application

³ Annexure B at pages 32 to 33 of the application

⁴ At pages 34 to 43 of the application

⁵ At pages 44 to 79 of the application

⁶ Annexure E at pages 80 to 81 of the application

of EoI at its third meeting held on 06/02/2023 and resolved to re-issue Form G. Pursuant to the decision taken by the CoC, the applicant reissued Form G⁷. However, the applicant did not receive any EoI from any PRAs this time also.

7. Two Registered Valuers, Mr., Pranab Kumar Chakraborty and Mr. Shyamal Mukherjee were appointed to determine and ascertain the Fair Value and Liquidation Value, who have submitted their reports to the applicant. Copies of valuation reports form **Annexure G**⁸.
8. The applicant has admitted the claim of Income Tax Department and reconstituted the CoC and updated the List of Creditors on 16/01/2023 and submitted the same to the Adjudicating Authority on 27/01/2023. Copies of the report on the re-constitution of CoC and updated list of stakeholders forms **Annexure H**⁹.
9. The applicant has appointed M/s. TKR & Associates, Chartered Accountants as the Transaction Auditor to audit under the relevant provisions of the IBC who has submitted its report dated 10/04/2023 to the applicant. It is stated in the report that none of the transactions during the relevant period, fall within the category of Preferential, Undervalued, Extortionate and Fraudulent transaction. The said report has been approved by the members of the CoC with 100% voting share at the 5th CoC meeting held on 14/04/2023. Copy of the said transaction audit report forms **Annexure I**¹⁰.
10. As no resolution plan u/s. 30(6) of the IBC was received, the CoC at its 5th meeting held on 14/04/2023 with 100% voting share has passed the following resolution to liquidate the Corporate Debtor:

“RESOLVED THAT in the event of non-receipt of Resolution Plan, Liquidation Process in the matter of Corporate Debtor be and is hereby

⁷ Annexure F at pages 82 to 83 of the application

⁸ At pages 84 to 110 of the application

⁹ At pages 111 to 123 of the application

¹⁰ At pages 124 to 137 of the application

approved by the Committee of Creditors and necessary application be moved to the Adjudicating Authority.”

Minutes of the 5th CoC meeting was placed at pages 68 to 79 of the application (Annexure D).

11. The applicant has given his written consent¹¹ along with AFA to act as the Liquidator of the Corporate Debtor subject to the confirmation by this Adjudicating Authority.
12. It is stated in the application that vide order¹² dated 17/04/2023, this Adjudicating Authority condoned the delay in filing claim by the Punjab National Bank with direction to the applicant to consider the claims of the applicant bank on its merit uninfluenced by the fact that delay in filing the same has been condoned. The applicant in order to verify and consider the claim of the Punjab National Bank asked for certain documents vide e-mail dated 04/05/2023. The Bank has reverted back by an e-mail dated 08/05/2023. However, the applicant did not receive proper information for consideration of their claim. As such the applicant has not been able to admit the claim of the Bank till date. Copies of e-mails dated 04/05/2023 and 08/05/2023 form Annexure L¹³
13. It is to be noted here that the 180 days CIRP period has ended on 09/05/2023 and no application for extension of the CIRP period has been filed.
14. 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 Annexure J t pages 138 to 143 of the application

¹² At page 144 of the application

¹³ At pages 145 and 146 of the application

15. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
16. This Bench, therefore, hereby orders as follows: -
- a. IA(IBC)/1019(KB)2023 filed by **Mr. Sudipta Ghosh, RP** of **Naman Ispat 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 direction of the IBBI Circular dated 18/07/2023 vide no. Liq-12011/214/2023-IBBI/840 for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the Code, we are appointing Ms. SARIKA JAIN, Regn. No.IBBI/IPA-001/IP-P-02666/2022-2023/14071 having e-mail i.d. jsarika2750@gmail.com mobile no. 9874182810 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. 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, 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**.
17. The application bearing **IA(IBC)/1019(KB)2023** shall stand disposed of in accordance with the above directions.
18. **CP(IB)/127(KB)2021** is to come up for filing of Periodical Progress Report on **08-01-2024**.

IA(IBC)/1095(KB)2023

19. This is an application filed under section 60(5) of the IBC read with rule 11 of the National Company Law Tribunal Rules, 2016 by Mr. Pratap Mukherjee, Liquidator of Radission Resources Private Limited, the applicant herein against Mr. Sudipta Ghosh, Resolution Professional of Naman Ispat Private Limited, the Corporate Debtor, praying for condonation of delay of 104 days in submission of Form C under regulation 8 of the CIRP Regulations, 2016. This application is duly supported by an affidavit affirmed by the Liquidator.
20. Since the Naman Ispat Private Limited, the Corporate Debtor herein, has been admitted under liquidation *vide* order of even date the present application has become infructuous and is **dismissed 'as infructuous'**. However, liberty is given to the applicant in IA(IBC)/1095(KB)2023 to file its claim before the Liquidator appointed in Naman Ispat Private Limited.
21. 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.
22. 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 23rd day of November, 2023.

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