



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

**IA(IBC)/51(KB)2023
in
CP(IB)/1698(KB)2019**

Under section 33(2) of the Insolvency & Bankruptcy Code, 2016

In the matter of:

J D (India) Corporation

.... Operational Creditor

Versus

Best Bazaar Retail LLP
(LLPIN: AAD-7971)

.... Corporate Debtor

And

In the matter of:

Sarika Jain,
Resolution Professional of Best Bazaar Retail LLP

... Applicant

Order reserved on: 06/02/2023

Order pronounced on: 17/04/2023

Coram:

Smt. Bidisha Banerjee	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (through hybrid mode):

For RP	:	Mr. Siddhanth Makkar, Adv.
For suspended members of BoD of CD	:	Ms. Tanvi Luhariwala, Adv. Mr. Patita Paban Bishwal, Adv.



ORDER

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/51(KB)2023** is an application filed under section 33(2) of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) by the Resolution Professional (“**RP**”) of **Best Bazaar Retail LLP**, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by Ms. Sarika Jain, the RP.
3. This Adjudicating authority, on a petition filed u/s. 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by J D (India) Corporation, the Operational Creditor *vide* order² dated 06/09/2022 in CP(IB)/1698(KB)2019, had ordered initiation of CIRP against Best Bazaar Retail LLP, the Corporate Debtor. Ms. Sarika Jain was appointed as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry.
4. In terms of section 15 of the IBC, Public Announcements³ in **Form A** was published in “*Financial Express*” (English) and “*Ekdin*” (Bengali) on 08/09/2022 inviting claims from the creditors, stipulating last date of submission of claims on 20/09/2022.
5. It is stated in the application by the applicant that as per provisions of section 18(1)(c) of the IBC 2016, a Committee of Creditors⁴ (in short, “**CoC**”) was

¹ At pages 23 to 24 of the application

² Annexure “A” at pages 25 to 29 of the application

³ Annexure “C” at pages 35 to 59 of the minutes of the 1st CoC Meeting dated 06/10/2022

⁴ Annexure “B” at pages 30 to 34 of the application



duly constituted on 29/09/2022 (Ref. Form H – Annexure J) and the 1st meeting of the CoC was held on 06/10/2022. At the said 1st CoC meeting held on 06/10/2022, the IRP was appointed as Resolution Professional (“RP”). 2nd CoC meeting⁵ was held on 02/11/2022 and 03/11/2022 wherein various aspects were discussed in detail and the CoC with 100% voting shares approved the following:

- (a) Publication of Form G inviting Expression of Interest;
- (b) Appointment of transaction auditors;
- (c) Appointment of professionals for the preparation of the books after 01/04/2019; and
- (d) Finalisation of the Evaluation Matrix and Request for Resolution Plan (RFRP) for revival of the Corporate Debtor.

6. In terms of regulation 36A(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 Form G⁶ inviting Expression of Interest (“EoI”) was published in “*Business Standard*” (English) and “*Ekdin*” (Bengali) on 05/11/2022, stipulating last date of receipt of Expression of Interest (“EoI”) as 20/11/2022.
7. At the 3rd CoC meeting⁷ held on 21/11/2022, the RP has informed the CoC members that till the last date of submission of EoI, RP has not received any EoI from any prospective resolution applicant and sought the view of the CoC Members whether to publish the Form G again. After deliberation, the CoC members requested the RP to defer the matter for next CoC meeting.
8. At the 4th CoC meeting⁸ held on 08/12/2022, the RP has apprised the CoC Members that no provisional list of prospective resolution applicant (“PRA”) could be prepared due to non-receipt of any EoI. After due deliberations, the CoC Members were of the view that since no assets have been handed over by the

⁵ Annexure “D” at pages 60 to 73 of the application

⁶ Annexure “E” at pages 74 and 75 of the application

⁷ Annexure “F” at pages 76 to 85 of the application

⁸ Annexure “H” at pages 95 to 101 of the application



erstwhile designated partner and non-receipt of any EoI, it would be better to go for liquidation of the Corporate Debtor.

9. At the 5th CoC meeting⁹ held on 19/12/2022, the CoC with 100% voting share has decided for liquidation of the Corporate Debtor under section 33(2) of the Code and passed the following Resolutions: -

“RESOLVED THAT Liquidation process be commenced against “Best Bazaar Retail LLP as no Resolution Plan has been received by the Resolution Professional.”

“RESOLVED FURTHER THAT, Ms. Sarika Jain being the Resolution Professional in this matter is hereby authorised and instructed to file an Liquidation application with the National Company Law Tribunal, Kolkata Bench under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 praying for commencement of the Liquidation process against Best Bazaar LLP at the request of the COC Members.”

10. In compliance of regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, **Form H**¹⁰ has been duly submitted by the RP.
11. RP has altogether held five CoC meetings and submitted two Progress Report to this Adjudicating Authority so far.
12. The applicant, Mr. Sarikia Jain, RP has expressed her unwillingness¹¹ to act as the Liquidator of the Corporate Debtor praying for direction upon the CoC to pay the CIRP costs.
13. In the meantime, the 180 days CIRP period has ended on 04/03/2023 and no application for extension of the CIRP period has been filed.

⁹ Annexure “I” at pages 102 to 114 of the application

¹⁰ Annexure “J” at pages 115 to 126 of the application

¹¹ Para 27 at page 21 of the application



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.
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)/51(KB)2023 filed by **Ms. Sarika Jain, RP of Best Bazaar Retail LLP**, 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. **Mr. Vasudeo Agarwal [Reg. No. IBBI/IPA-001/IP-P00186/2017-18/10365 having e-mail i.d. vdainfo@gmail.com, telephone no. 9830078378]** 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. **Mr. Vasudep Agarwal** is hereby directed to submit his consent **within seven days of intimation of his appointment as Liquidator of the Corporate Debtor.**
 - c. Ms. Sarika Jain, RP is hereby directed to hand over all documents concerning the Corporate Debtor in her possession to Mr. Vasudeo, Liquidator, within seven days from the date of this order, subject to his filing a valid AFA.
 - d. 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.

e. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., in “*Business Standard*” (English) and “*Ekdin*” (Bengali) stating that the Corporate Debtor is in liquidation.

f. 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.

g. 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.

h. 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.

i. 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.

j. 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)/51(KB)2023** shall stand disposed of in



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accordance with the above directions.

18. **CP(IB)/1698(KB)2019** is to come up for filing of Periodical Progress Report on **3/07/2023**.
19. 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.
20. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 17th day of April, 2023.

hb.