



DIVISION BENCH
COURT - II

M-2

(MENTIONING)

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/42(KB)2023
IA(I.B.C)(LIQ)/24(KB)2024

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SMT. MADHU SINHA**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 13th JANUARY 2025

IN THE MATTER OF	ADITYA BIRLA FINANCE LIMITED VS RKDS EXPORTS PRIVATE LIMITED
UNDER SECTION	IBC UNDER SEC 7

Appearance (via video conferencing/physically)

CORRIGENDUM ORDER

1. This matter was not on Board today. Upon mentioning, the matter is taken on Board today.
2. In the order dated 19th December, 2024, in **para 7b.. "Mr. Umesh Poddar"** will be replaced by **"Mr. Rajesh Lihala** having **registration no. IBBI/IPA-001/IP-P00186/2017-2018/10950 email ID: lihalaco@gmail.com; Mobile No. 9830160201"**,
3. Rest of the order dated 19th December, 2024 will remain unchanged.

**Madhu Sinha
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

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

IA(IBC)(LIQ.)/24(KB)2024

C.P. (IB)/42(KB)2023

***An application under Section 33(1)(a) of the Insolvency and
Bankruptcy Code, 2016.***

In the matter of:

(1) RKDS Exports Private Limited, a company incorporated under the provision of The Companies Act, 1956 having its registered office at 100A, N. S. C. Bose Road Kolkata – 700 040;

... Corporate Debtor

-And-

(2) JITENDRA LOHIA, son of Late Shri Rajendra Kumar Lohia, aged about 48 years, having registration number IBBI/IPA-001/IP-P00170/2017-18/10339 and office at 2/7 Sarat Bose Road, Vasundhara Building, Kolkata – 700 020;

... Applicant/Resolution Professional

Date of pronouncement of the Order: 19.12.2024

CORAM:

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

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

Appearance (via video conferencing/physically):

Ms. Ranjabati Ray, Adv. : **For the Financial Creditor**

Ms. Ritika Ghosh, Adv. :

Mr. Shaunak Mitra, Adv. : **For the Resolution Professional**

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The Court convened through hybrid mode.



2. Ld. Counsel appearing on behalf of the parties were heard *in extenso*.
3. This application being **IA(IBC)(LIQ.)/24(KB)2024** has been preferred to seek the following relief(s), inter alia: -


(a) The Tribunal may graciously be pleased to pass an order requiring the corporate debtor to be liquidated in the manner as laid down in Chapter III as provided under Section 33 of the Insolvency and Bankruptcy Code, 2016; and

(b) Any other directions which the National Company Law Tribunal, Kolkata Bench may deem fit in the facts and circumstances of the matter.

4. **Factual matrix of the case is as under: -**

(a) This is an application for initiating CIRP under section 7 of the Insolvency and Bankruptcy Code, 2016 (for short 'IBC 2016') was filed by the **Aditya Birla Finance Limited** against Corporate Debtor, i.e., **RKDS Exports Private Limited**. The application was admitted by the NCLT and CIRP was initiated against the Corporate Debtor on 10.11.2023 and also accepted the proposal for moratorium under Section 14 of the IBC 2016 appointing the applicant the Insolvency Professional as Interim Resolution Professional (in short "IRP").


(b) The IRP started performing his duties as per the provision of the IBC 2016 and IBBI (Insolvency Resolution process for corporate persons) Regulations, 2016 (for short "CIRP Regulations") and subsequently made the Public Announcement on 23.11.2023 as per Regulation 6 of CIRP



Regulations and the same was uploaded on the designated website of the IBBI.


(c) Thereafter, the Applicant constituted the COC. The report on Constitution of COC along with the List of Creditors was submitted by the applicant on 13.12.2023 before the Tribunal. Upon the constitution of the Committee of Creditors and on the date of the first CoC meeting i.e., 18th December 2023, the appointment of the applicant as the IRP was also confirmed as the Resolution Professional in the 1st COC meeting.

(d) The suspended board of directors, despite being updated and/or aware regarding the commencement of the CIRP, were also immediately informed by the applicant herein regarding the initiation of CIRP and requested them to provide requisite information and documents pertaining to CIRP *vide* emails dated 22.11.2023 and 27.11.2023. The applicant had also sent an email stating all the required documents and information elaboratively to be provided by the CD for necessary compliance. That several emails were sent to the CD one after another to remind them the compliance to be made as per the order passed by the Tribunal provide all the information and to handover all the documents with respect to the corporate debtor on an urgent basis and even calls were made on the mobile number available with the applicant. It was surprised that the CD or its suspended board of directors did not pay any heed to such emails even after repetitive follow-ups. The office of the CD has been kept lock and key and even after the applicant's intimation of taking action under section 19(2) of the IBC,



there has been no response received from the CD. Further, after so many attempts an information was provided by the chartered accountant of the corporate debtor there are eight bulkers of the corporate debtor in which for Four Bulker (Ashok Leyland Make) had been financed by HDFC Bank Limited and another Four Bulker (Tata Make) had been financed by ICICI Bank which had not been handed over till date.

- (e) In light of the above circumstances, the applicant herein filed an application on 29.12.2023 under Section 19 of the Code being numbered as I.A. 16/KB/2024, seeking necessary directions upon the Respondents to immediately provide all documents and handover the custody of all the assets, as requested herein of the Corporate Debtor and to provide to the applicant all the information as sought by him in his emails to enable the applicant to carry out his duties and responsibilities as the Resolution Professional. The said application had been listed for nine times as on the date of filing of this application. Only on the first occasion of hearing, the respondent had made appearance. Thereafter, despite notice being issued by the registry time and again, issuance of non-bailable arrest warrant against the Members of the Suspended Board/Respondents they have deliberately chosen to not make appearance. On the date of hearing dated 23rd January, 2024, 19th March, 2024, 03rd May, 2024, 09th May, 2024, 24th May, 2024, 15th July, 2024 and the respondents have been directed to be personally present yet there has been deliberate omission of this Tribunal Orders. Then, the matter was listed on 24th May, 2024.

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- (f) Meanwhile, on 20.01.2024, an Invitation for Expression of Interest ("EOI") was issued by the RP in 'Form G' in leading newspapers i.e., Financial Express (Kolkata), English edition, Ekdin (Bengali paper) for inviting the Resolution Plans from the interested and eligible prospective resolution applicants. However, only one EOI was received which was withdrawn thereafter. The COC decided to reissue Form G and the same was reissued on 19.03.2024 and pursuant to that no EOI was received. Lastly, Form G was reissued on 11.05.2024 and no EOI was received. Thereafter, the COC did not find it feasible to keep on re-issuing Form G and wanted the corporate debtor to go into liquidation directly, as had the CIRP process if continued would have only increased the CIRP cost without any fruitful outcome which would have ultimately created burden on the stakeholders.
- (g) That there was diversion of funds by the suspended board of directors during the moratorium period which had been duly informed to the COC members, and as such, that a suitable application be filed before this Tribunal for the remittance of such funds as diverted by the suspended board. Accordingly, the applicant had filed an application under Section 60(5) of Insolvency & Bankruptcy Code, 2016, read with Section 14 of Insolvency & Bankruptcy Code, 2016 on 22.05.2024 being numbered as I.A. No. 1107(KB)2024.
- (h) The applicant had regularly reported the progress of the CIRP before this Tribunal. The applicant had filed 2 (Two) progress reports before this Tribunal, which contains all the developments during the CIRP of the Corporate Debtor.

- (i) The applicant during the CIRP period held a total of Seven (7) Committee of Creditors meetings. The details of dates of meeting of Committee of Creditors meetings, which is reproduced, for the sake of convenience, as under: -

Date of Meeting	Particulars
18.12.2023	1 st Committee of Creditor meeting
16.01.2024	2 nd Committee of Creditor meeting
15.03.2024	3 rd Committee of Creditor meeting
24.04.2024	4 th Committee of Creditor meeting
02.05.2024	5 th Committee of Creditor meeting
04.07.2024	6 th Committee of Creditor meeting
05.08.2024	7 th Committee of Creditor meeting

- (j) The details of the assets for the year ended 31.03.2023 can be seen from the balance sheet of the corporate debtor.
- (k) In the 07th COC meeting it was decided by the committee that since there is no EOI received within the maximum permissible CIRP period and as there was no information about the assets of the corporate debtor, no one is going to participate for the resolution of the company, there was no other option but to Liquidate the company under Section 33(1)(a) of the IBC, 2016. Furthermore, the COC members were of the opinion that possibility of resolution is negligible since the company had no business as well as the suspended board had not handover the custody of the assets of the corporate debtor to the RP, and therefore, advised the RP to file an appropriate application before this Tribunal under Section 33 of the IBC, 2016 to liquidate the corporate debtor. However, email confirmation with regards to the

same had been received from one of the COC members, namely, Aditya Birla Finance Limited having voting percentage of 94.37%.

- (l) However, the COC unanimously stated that no decision is currently required to be taken to sell the company as per regulation 32E or 32F of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the same may be taken in the first SCC meeting to be held after liquidation commencement of the Corporate Debtor.
- (m) Following resolution was also taken and recorded in the 07th CoC meeting held on 05th August, 2024 and it was decided by the CoC that the decision to liquidate the CD be recorded in the minutes and the same would be further confirmed through email and request the RP to prepare for filing of the application on or before the CIRP conclusion date: -

Item No 5, Resolution No. 1;

"RESOLVED THAT, the COC were of the opinion that since no EOI was received even after issue of 3rd Form-G, no business as well as in absence of the custody of the assets of the corporate debtor, there is no other option left but to liquidate the CD and requisite application to be filed with Hon'ble NCLT in terms of the provisions of the section 33 of the IBC, 2016."

- (n) In the present case, the statutory period for the CIRP had been exhausted, and no EOI had been received, therefore, the applicant prefers to file an application under Section 33(1)(a) before this Adjudicating Authority seeking initiation

of Liquidation Process of the Corporate Debtor as per Section 33 of the Code.

5. Hence, the rival contentions were noted.

6. **Analysis and Findings: -**

(a) We have considered the submission made by the Ld. Counsel and perused the record(s).

(b) Section 33(1) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor when there is a contravention of the approved Resolution Plan. However, even before approval of the plan, Resolution failed due to reason mentioned in para's (k) & (n) of this Order.

(c) Hence, we do find merit in the prayers made in **IA(IBC)(LIQ.)/24(KB)2024**, and deem it fit to Order liquidation of the Corporate Debtor.

7. **This Bench, therefore, hereby Orders as follows: -**

a. Prayers as sought for in **IA(IBC)(LIQ.)/24(KB)2024** filed by RP, is allowed and **RKDS Exports Private Limited**, the Corporate Debtor is Ordered to be liquidated in terms of section 33(1) of the Code;

b. **Mr. Umesh Poddar** having registration no. **IBBI/IPA-001/IP-P01912/2019-2020/12962**, email ID: capoddarumesh@gmail.com, Mobile No. **9874444660** 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) 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 & 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 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.
8. The application bearing **IA(IBC)(LIQ.)/24(KB)2024** shall stand **disposed of** in accordance with the above directions.
9. List the main **C.P. (IB)/42(KB)2023** for reporting progress on **12.03.2025**.
10. 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.
11. Urgent certified copies of this Order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.
12. File be consigned to records.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on: 19th day of December, 2024.

Ar. [steno]