

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

**IA(IBC)(LIQ.)/27(KB)2024**

**C.P. (IB)/152(KB)2023**

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

**In the matter of:**

**(1) M/s. Megapix Commotrade Private Limited**, a Private Non-Government Company, registered under the provisions of the Companies Act, 1956 having its registered office at 9/A/1B, Chetla Road, Kolkata – 700027, West Bengal.

***... Financial Creditor***

***-Versus-***

**(2) M/s. Spasht Marketing Private Limited**, a Private Non-Government Company, registered under the provisions of the Companies Act, 1956, having its registered office at 235/2A, A.J.C. Bose Road, Kolkata – 700020, West Bengal.

***... Corporate Debtor***

***-And-***

**(3) Mr. Anal Basu**, Resolution Professional of Spasht Marketing Private Limited, working for gain at 27, Haladhar Bardhan Lane Kolkata, Pin Code: 700012, West Bengal.

***... Applicant***

**Date of pronouncement of the Order: 04.10.2024**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)  
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**Appearance (via video conferencing/physically):**

Ms. Pallavi Ray, Adv. : **For the Resolution Professional**



**ORDER**

**Per: Bidisha Banerjee, Member (Judicial)**

1. The court convened through hybrid mode.
2. Heard Ld. Counsel Ms. Pallavi Ray appearing on behalf of the Resolution Professional in full.
3. This application being **IA(IBC)(LIQ.)/27(KB)2024** has been preferred to seek the following relief(s), inter alia: -

*(a) To initiate Liquidation Process of Spasht Marketing Private Limited;*

*(b) Direct the Financial Creditors, being Megapix Commotrade Private Limited to contribute the excess of the Liquidation Cost over the Liquid Assets of the Corporate Debtor as estimated by him, in accordance with Regulation 2A(1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;*

*(c) Any other or further Order(s) as this Learned Tribunal may deem fit and proper.*


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

**(a)** This application was filed by **M/s. Megapix Commotrade Private Limited** (hereinafter referred to as “Financial Creditor”) under Section 7 of the Insolvency & Bankruptcy Code, 2016 before this Adjudicating Authority against the **M/s. Spasht Marketing Private Limited** (hereinafter referred to as “Corporate Debtor”) to initiate the Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) along with moratorium under Section 14 of the Code.



This Adjudicating Authority *vide* its Order dated 01<sup>st</sup> January, 2023 admitted the Corporate Debtor into CIRP and appointed Mr. Anal Basu as the Interim Resolution Professional of **M/s. Spasht Marketing Private Limited**.

- (b) The applicant made Public Announcement as per regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (“**CIRP Regulations**”) Public Announcements in **Form A** was published on 05<sup>th</sup> January, 2024 in two newspapers, namely, “*Business Standard*” (English), Kolkata and “*Ekdin*” (Bengali), Kolkata and the same was uploaded in the website of the Insolvency and Bankruptcy Board of India (in short “IBBI”).
- (c) It is submitted that the Applicant had sent several follow up mails containing a detailed list of documents and information required to conduct the CIRP of the Corporate Debtor in a time bound manner to the suspended directors for submission of the said documents to the Applicant.
- (d) Thereafter, the Applicant had started collating the claims from the Creditors and upon verification, duly constituted the Committee of Creditors (hereinafter referred to as the “CoC”) on 24<sup>th</sup> January, 2024. Later on, the Applicant had updated the List of Creditors and Reconstitution Report of CoC.
- (e) The CoC in its 1<sup>st</sup> meeting held on 30<sup>th</sup> January, 2024 approved and confirmed the appointment of the Applicant as the Resolution Professional of the Corporate Debtor.
- (f) The Applicant had duly complied with all the Rules and Regulations framed under the Code from time to time to revive the Corporate Debtor in the best possible manner for



the best interest of all the stakeholders of the Corporate Debtor. The Applicant has conducted the CoC meetings from time to time to discuss each and every possibility to revive the Corporate Debtor and further to update the progress in the CIRP of the Corporate Debtor to the CoC members.

**(g)** The Applicant further submitted that the Progress Reports filed from time to time before this Adjudicating Authority to update on the ongoing Corporate Insolvency Resolution Process. The Applicant had prepared 3 Progress Reports till date. The First and the Second Progress Reports had been filed by different Interlocutory Applications before this Tribunal. Both the aforesaid applications had been disposed of after taking on record the Progress Reports filed by the Applicant and the Third and Final Progress Report had also been filed by the Applicant before this Tribunal.

**(h)** The Applicant had published **Form G** for invitation of **Expression of Interest** (hereinafter referred to as "EOI") from Prospective Resolution Applicants (hereinafter referred to as "PRA") on 01<sup>st</sup> March, 2024 in the newspapers, namely "Business Standard" in English and "Ekdin" in Bengali, both Kolkata edition. The Applicant received emails from few interested applicants requesting him to provide various information regarding EOI, Eligibility Criteria for PRA, brief teaser and information about the Corporate Debtor and the last date for submission of Resolution Plan. Accordingly, the Applicant replied to all the queries put forward by the interested parties. But ultimately one EOI was received by the undersigned. Copies of the paper cuttings of newspaper publication of Form G are annexed to Annexure "F" of the application.



- (i) Thereafter the Resolution Professional received one EOI on 15<sup>th</sup> March, 2024, which was the last date for submission of EOI as per the Form G issued. The last date for submission of the Resolution Plan was 14<sup>th</sup> May, 2024. Copy of the EOI received by the Applicant is annexed to Annexure "G" of the application.
- (j) Resurgent Property Ventures Private Limited being the PRA, *vide* mail dated 18<sup>th</sup> April, 2024, expressed their inability to submit Resolution Plan and requested the Applicant to refund the security deposit of Rs. 2 lakhs. Since the PRA expressed their inability to submit Resolution Plan, the CoC discussed over the matter in its Third meeting and resolved to re-issue Form G. Pursuant to the decision taken by the CoC, the Applicant reissued Form G in the newspapers being "Business Standard" in English and "Ekdin" in Bengali, both Kolkata edition on 30<sup>th</sup> April, 2024. Despite issuance of Form G twice, no Resolution Plan was received by the Applicant.
- (k) It is pertinent to note that two Registered Valuers, Mr. Ankush Garg and Mr. Pranab Kumar Chakrabarty were appointed to determine and ascertain the Fair Value and Liquidation Value of Securities and Financial Assets of the Corporate Debtor. The Valuers have sent their respective Valuation Reports to the Applicant. As per the said two Valuation Reports, the Fair Value and Liquidation Value of the Corporate Debtor is as follows: -

<b>Particulars</b>	<b>Book Value (in INR)</b>	<b>Fair Value (in INR)</b>	<b>Liquidation Value (in INR)</b>
<b>Valuation Report of Shri Pranab Kumar Chakraborty</b>	417,149,018	66,854	66,854



<b>Valuation Report of Mr. Ankush Garg</b>	662,816,724	36,027	36,027
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- (l) The Applicant stated that TKR & Associates, Chartered Accountants, appointed as the Transaction Auditor, had completed the Transaction Audit under the relevant provisions of the Code, for the period of last 2 years from the date of commencement of CIRP of the Corporate Debtor. The Applicant had received the Transaction Audit Report dated 26<sup>th</sup> June, 2024, wherein it had stated that none of the transactions during the relevant period, fall within the category of Preferential, Undervalued, Extortionate and Fraudulent transactions. The said Report had been approved by the CoC with 100 percent voting share in the Seventh meeting of CoC held on 28<sup>th</sup> June, 2024.
- (m) Since, 180 days of CIRP expired on 28<sup>th</sup> June, 2024 no Resolution Plan had been received by the Applicant, the CoC in its Seventh meeting held on 28<sup>th</sup> June, 2024 resolved to submit an Application before this Tribunal for initiation of Liquidation Process of the Corporate Debtor.
- (n) The CoC in its Seventh Meeting in consultation with the Applicant made a best estimate under Regulation 39B(1) of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the amount required to meet Liquidation Costs, in the event an Order for Liquidation under Section 33 of the Code was passed by this Tribunal, which is as follows: -



<b>Cost</b>	<b>Amount</b>
<b>Fees of Liquidator for the entire period of Liquidation Process</b>	<b>50,000/-</b>
<b>Cost of Public Announcement etc.</b>	<b>10,000/-</b>
<b>Legal Charges</b>	<b>30,000/-</b>
<b>Other Expenses</b>	<b>15,000/-</b>
<b>Auditors Remuneration</b>	<b>10,000/-</b>
<b>Total</b>	<b>1,15,000/-</b>

- (o) The CoC thereafter under Regulation 39B(2) of the CIRP Regulations made a best estimate NIL as value of Liquid Assets available to meet the estimated Liquidation Costs as aforesaid. Since, the estimated value of Liquid Assets under Regulation 39B(2) of the CIRP Regulations is less than the estimated Liquidation Costs under Regulation 39B(1), a plan under Regulation 39B(3) with respect to contribution for meeting the difference of Rs. 1,15,000/- between Liquidation Costs and Liquid Assets available was proposed by the Applicant in Seventh Meeting of CoC.
- (p) The CoC approved the said Plan for contribution towards payment of the said differential amount of Rs. 1,15,000/- by 100% voting right in the Seventh Meeting of CoC.
- (q) Since no Resolution Plan under Section 30(6) of the Code was received by the Applicant and under the aforesaid facts and circumstances, the Applicant states that Order for initiation of the Liquidation Process of the Corporate Debtor is required to be passed in the interest of the Corporate Debtor in conformity with the provisions 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.

(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 4(q) of this Order.

(c) Hence, we do find merit in the prayers made in **IA(IBC)(LIQ.)/27(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.)/27(KB)2024** filed by RP, is allowed and **M/s. Spasht Marketing Private Limited**, the Corporate Debtor is ordered to be liquidated in terms of section 33(1) of the Code;

b. **Mr. Swarup Ghosh** having registration no. **IBBI/IPA-003/IP-N00438-C01/2017-2018/11661**, **email ID:** [swarupghosh1@yahoo.co.in](mailto:swarupghosh1@yahoo.co.in), 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.)/27(KB)2024** shall stand **disposed of** in accordance with the above directions.
9. List the main **C.P. (IB)/152(KB)2023** for reporting progress on **26.11.2024**.
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. 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: 04<sup>th</sup> October, 2024.**

*Ar. [steno]*