

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

**IA(IBC)/442(KB)2022**

**In**

**CP(IB)/1614(KB)2019**

*Under Section 33 of the Insolvency and Bankruptcy Code, 2016*

***In the matter of:***

**Prism Johnson Limited (RMC India Division)**

....Operational Creditor

Versus

**RNM Infra Private Limited**

**CIN: U45400WB2011PTC156973**

....Corporate Debtor

And

***In the matter of:***

**Mr. Kanakabha Ray, Resolution Professional of RNM Infra Private Limited**

...Resolution Professional/Applicant

**Order reserved on: 21/04/2023**

**Order Pronounced on: 22/06/2023**

**Coram:**

***Shri Rohit Kapoor***

**: *Member (Judicial)***

***Shri Balraj Joshi***

**: *Member (Technical)***

*Appearances through hybrid mode*

For RP

: Mr. Kanakabha Ray, RP in person

For Federal Bank

: Ms. A. Rao, Adv.  
Mr. A. Basu, Adv.

**ORDER**

***Per: Rohit Kapoor, Member (Judicial)***

1. This Adjudicating Authority convened through hybrid mode.

2. **IA (IBC)/442(KB)2023** is an application filed under section 33 of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) by the Resolution Professional (“**RP**”) of **RNM Infra Private Limited**, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit<sup>1</sup> duly affirmed by **Mr. Kanakabha Ray, 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 Prism Johnson Limited (RMC India Division), Operational Creditor, *vide* order dated 21/01/2020 in **CP (IB) No.1614/KB/2019**, had ordered initiation of CIRP against RNM Infra Limited, (Corporate Debtor). **Mr. Kanchan Dutta** was appointed as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry.
4. It is stated in the application that IRP (Mr. Kanchan Dutta) took charge on 08/02/2020 and made public announcement on 11/02/2020. Thereafter, an IA being IA(IBC)/341(KB)2020 was filed by the suspended members of the Board of Directors of the Corporate Debtor for setting aside the *ex parte* order of admission. Upon hearing on 05/03/2020 this Adjudicating Authority directed the IRP not to proceed with the matter till the pendency of the said application. However, the said IA was dismissed on 23/12/2021.<sup>2</sup>
5. This Adjudicating Authority *vide* order dated 24/02/2022 excluded a period of 676 days from calculation of 180 days CIRP period.<sup>3</sup>
6. The IRP formed the CoC on the basis of claims received by him on 31/12/2021. The first CoC meeting was held on 07/01/2022 and the IRP expressed his willingness to act as RP. However, the Federal Bank Ltd. having 74.9% voting share in the CoC, proposed the name of an Insolvency Professional by the name Mr. Saradindu Jena, and this Adjudicating Authority *vide* order dated 08/03/2022 appointed Mr. Kanakabha Ray as the RP of the Corporate Debtor.<sup>4</sup>

---

<sup>1</sup>Affidavit at pages 13 to 15 of the application

<sup>2</sup> Averments in para 2 at page 10 of the application

<sup>3</sup> Averments in para 3 at page 10 of the application

<sup>4</sup> Averments in para 4 at page 10 and 11 of the application

7. The Resolution Professional has published Form G<sup>5</sup> inviting Express of Interest (in short “EoI”) from prospective resolution applicant in “*Morning India*” (English) and “*Duranta Barta*” (Bengali) on 25/03/2022 and also uploaded the same on the IBBI Website<sup>6</sup> on 29/03/2022 and IPE, namely, Intelligent IP Management Solutions P. Ltd.<sup>7</sup> on 25/03/2022. However, the RP has not received any EoI from any prospective resolution applicant.
8. The CoC at its 4<sup>th</sup> meeting held on 19/04/2022 with 81% voting share had resolved to initiate liquidation proceedings against the Corporate Debtor. Copy of the minutes of the 4<sup>th</sup> CoC meeting<sup>8</sup> has been annexed with the application. At the 5<sup>th</sup> CoC meeting held on 20/04/2022, the CoC held that the CD was not going to be sold as a going concern. Minutes of the 5<sup>th</sup> CoC meeting<sup>9</sup> has been annexed with the application. The resolution passed at the 5<sup>th</sup> CoC meeting is as follows: -  

**“RESOLVED THAT** the CoC hereby resolves to invoke section 33(2) of the Code and decides to liquidate the Corporate Debtor.”
9. The RP has agreed to act as a Liquidator and given his written consent<sup>10</sup> to act as Liquidator of the Corporate Debtor under section 34(1) of the IBC along with Authorization for Assignment in **Form B**.
10. 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 that 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. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
12. This Bench, therefore, hereby orders as follows:-

---

<sup>5</sup> Annexure A at pages 16 and 17 of the application

<sup>6</sup> At page 11 of the Supplementary Affidavit

<sup>7</sup> At page 12 of the Supplementary Affidavit

<sup>8</sup> Annexure B at pages 18 to 32 of the application

<sup>9</sup> Annexure C at pages 33 to 44 of the application

<sup>10</sup> Annexure D at pages 45 to 47 of the application

- a. **IA(IBC)/442(KB)2023** filed by **Mr. Kanakabha Ray, RP of RNM Infra 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) thereto;
- b. **Mr. Kanakabha Ray, RP**, having Registration No. **IBBI/IPA-003/IP-N00204/2018-2019/12456** of **RNM Infra Private Limited [CIN: U45400WB2011PTC156973]** of 78 Bosepukur Purbapara Road, Lokenath Apartment, 2<sup>nd</sup> floor, Kolkata 700107, 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., in “*Morning India*” (English) and “*Duranta Barta*” (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**, 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**.
13. The Application bearing **IA(IBC)/442(KB)2022** shall stand disposed of in accordance with the above directions.
14. **CP(IB)/1614(KB)2019** is to come up for filing of Periodical Progress Report on **09/08/2023**.
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 may be issued, if applied for, upon compliance of all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

Signed on this, the 22<sup>nd</sup> day of June, 2023.

hb.