



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

**IA(IBC)(LIQ.)/2(KB)2024
in
CP(IB)/159(KB)2022**

An application Under section 33 of the Insolvency & Bankruptcy Code, 2016

In the matter of:
Sree Polytraders Private Limited

.... Financial Creditor

Versus

Jelenta Polytraders Private Limited.

.... Corporate Debtor

And

In the matter of:
Chandra Kumar Jain

... Applicant/Resolution

Professional

Order pronounced on: 22/07/2024

Coram:

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

Appearances (through hybrid mode):

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|--------------------------|------------------------|
| Mrs.Rashmi Singhee, Adv. |] For the Applicant/RP |
| Ms.Sanjana Shaw, Adv. |] |



ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)(Liq.)/2(KB)2024-** is an application filed under section 33 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) by the Resolution Professional (“**RP**”) of **Jelenta Polytraders Private Limited**, the Corporate Debtor, praying for initiation of liquidation process of the Corporate Debtor. This application is supported by an affidavit duly affirmed by the RP.

The Ld. Counsel appearing for the RP submits that :

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 **Financial Creditor**, vide order dated 04/08/2023 in CP(IB) No.159/KB/2022, had ordered initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against **Jelenta Polytraders Private Limited**, the Corporate Debtor appointing **Mr. Chandra Kumar Jain**, as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry.
4. In terms of Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (“**CIRP Regulations**”) Public Announcements in **Form A** was published on 05/08/2023 in “Business Standard” (English) and “*Ekdin*” (Local/Bengali) inviting claims from the creditors of the Corporate Debtor stipulating last date of submission of claims on 18/08/2023. (**Annexure-B**).
5. As per regulation 7 & 8 of the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations 2016, the claims were



received till 25/09/2023 as per Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016. The claim has been verified and admitted by IRP to the extent as per Regulation 13(1) read with Regulation 14(1) & (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016.

6. The Applicant has appointed the Legal Counsel for availing the legal services to assist in the matter of CIRP i.e., drafting of the Report & Application, filing with NCLT office, appear before NCLT etc. to accomplish has been approved by the CoC member in 2nd CoC meeting held on 29/09/2023.
7. The Applicant has prepared and circulated the EOI in Form G to the member of CoC for their review and fixing the eligibility criteria. That the member of CoC has approved the EOI in form G and Eligibility criteria for sharing with prospective resolution applicant.
8. The Applicant has issued the EOI in Form G for invitation of resolution plan from prospective resolution applicants as per approval in CoC meeting in Business standard and Ekdin (Kolkata, edition) on 2nd October, 2023. The last date of EOI receipt was 18th October, 2023.
9. The Applicant has issued a notice dated 06/11/2023 to convene the 3rd meeting of committee of creditors on 08/11/2023. That the Applicant has received 14 requests from prospective resolution Applicant for sharing of detailed EOI document. However, only 4 Prospective Resolution Applicant submitted the detailed EOI along with documents.
10. The Applicant conducted due diligence of the documents submitted by the prospective resolution applicants. Provisional list of prospective resolution applicant (PRA) was prepared and shared with the member of CoC and PRA by the Applicant.



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11. The Applicant formulated and distributed an Evaluation Matrix along with the request for Resolution Plan (RFRP) to the Committee of Creditors (CoC). The CoC members reviewed and gave their approval during the third CoC meeting. Subsequently, the approved Evaluation Matrix and RFRP were shared with potential resolution applicants.
 12. The Applicant informed the CoC member that he had gone through the documents and information shared by the corporate debtor in view of the avoidance & other transaction u/s 43,45, 47,49 & 63 of IBC 2016 and no such transactions were observed by the applicant. However, the Applicant already sought a quotation from transaction auditor/ forensic auditor and shared their comparative quotation with member of CoC for their opinion for appointment of transaction auditor. The Member of CoC informed that they do not want to appoint the transaction /forensic auditor.
 13. No Resolution Plan was received from the Prospective Resolution Applicant.
 14. The Applicant has issued a notice dated 22/12/2023 to convene the 4th meeting of committee of creditors on 26/12/2023.
 15. That on 26th December, 2023, 4th Meeting of the Committee of Creditors of the Corporate Debtor was conducted. In the said meeting the members of the Committee of Creditors stated that:

*“The Resolution Professional provided an overview of the present status of the Corporate Insolvency Resolution Process (CIRP) to the Committee of Creditors (CoC) member. It was communicated that no resolution plan had been submitted by prospective resolution applicants. **One of the applicants requested an extension of the deadline for plan submission.** After discussions between the RP and CoC members, it was revealed that and informed that they will suggest the name of liquidator and will provide their consent to be appointed as liquidator for liquidation of the corporate debtor. They requested to RP for calling a meeting for approval of liquidation and appointment of the liquidator.*

Following a detailed discussion with CoC member, it was decided that the corporate debtor should be taken into liquidation. The CoC expressed its



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intention to suggest the name of a liquidator and provide their consent for the appointment of the liquidator to oversee the liquidation process. The CoC requested the Resolution Professional to call a meeting for the approval of liquidation and the appointment of the suggested liquidator after they provide the details of the liquidator.”

16. That the Applicant provided an overview of the present status of the Corporate Insolvency Resolution Process (CIRP) to the Committee of Creditors (CoC) member in their meeting held on 26/12/2023. It was communicated that no resolution plan had been submitted by prospective resolution applicants. One of the applicants requested for an extension of the deadline for plan submission. **However, extension was denied by the sole member of CoC citing concerns about the revival of the corporate debtor and the associated costs to continue the CIRP process.**
17. The Applicant has issued a notice dated 12th January, 2024 to convene the 5th meeting of committee of Creditors on 15th January, 2024, subsequent to the receipt of the proposed liquidator's name from the CoC member.
18. It is pertinent to mention that the agenda for initiating the Liquidation Process of the Corporate Debtor was approved by 100% of the Committee of Creditors in the 5th meeting. Copy of minutes of the meeting dated 15th January, 2024 is annexed as **Letter-C** of the IA.
19. The Applicant being not eligible to be appointed as Liquidator vide IBBI notification and accordingly not proposing himself for appointment as liquidator of the corporate debtor. The member of Committee, proposed the name of another Insolvency Professional for appointment as Liquidator subject to approval by the Hon'ble Tribunal.
20. Pursuant to resolution passed in the 5th meeting by the member of Committee of Creditors proposed appointment of **Mr.Surendra Kumar Agarwal**, Insolvency Professional having registration number IBBI/IPA-001/IP-P00825/2017-18/11401 as liquidator of the Corporate Debtor for the purpose of the liquidation.



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21. The Applicant on the basis of the outcome of the meeting of the Committee of Creditors and the authorization provided to the Applicant, the instant application has been initiated under Section 33 of the IBC.
22. It is pertinent to mention here that there is no immovable asset belonging to the Corporate Debtor. Further, as 100% of the Committee of Creditors have voted in favour of initiation of Liquidation Process of the Corporate Debtor, prolonging the CIRP will only increase the CIRP expenses.
23. It is submitted that CoC in the 5th meeting has passed the following resolution by 100% voting share:-
- “RESOLVED THAT as per section 33(2) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016, the COC hereby approve the liquidation as per IBC 2016 and authorizes Resolution Professional to approach the Adjudicating Authority for their necessary direction and order for liquidation of the Corporate Debtor .”*
24. In the above scenario, the applicant has filed the instant application being IA(IBC)(LIQ.)/2(KB)2024 under section 33(1) of the IBC seeking initiation of liquidation process against the Corporate Debtor.
25. 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.
26. A conjoint reading of these two provisions leaves this adjudicating authority with no other option but to order liquidation of the corporate debtor.
27. The CoC has recommended the name of **Mr.Surendra Kumar Agarwal** to be



appointed as liquidator. In this regard, it be mentioned that the replacement of the liquidator is covered under section 34(4) of the Code, which provides as under:-

(4) The Adjudicating Authority shall by order replace the resolution professional, if-

- a. The resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or*
- b. The Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded [in writing ;or]*
- c. The resolution professional fails to submit written consent under sub-section (1).*

28. We also note that the circular ibid has been issued by IBBI under the powers given to the Board under section 34(4)(b), whereby the Board in Para 3 of the said circular recommends that the liquidator be appointed from the penal list of IBBI.

29. This Bench, therefore, hereby orders as follows: -

- a. IA(IBC))(LIQ.)/2(KB)2024 filed by **Chandra Kumar Jain** , RP of Jelenta Polytraders 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;

30. The CoC has recommended the name of an IP for acting as a liquidator, however in view 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 **Mr. Rajesh Keshri** Regn. No. IBBI/IPA-001/IP-P00490/2017-18/10878, having e-mail i.d.keshri.co@gmail.com 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**.

- a. 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.
- b. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., in Business Standard” (English) and “*Ekdin*” (Local/Bengali) stating that the Corporate Debtor is in liquidation.
- c. 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.
- d. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by her in managing the liquidation process of the Corporate Debtor.
- e. 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.
- f. 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



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Debtor continued during the liquidation process by the Liquidator.

g. 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**.

31. The application bearing **IA(IBC)(LIQ.)/2(KB)2024** shall stand disposed of in accordance with the above directions.
32. **CP(IB)/159(KB)2022** is to come up for filing of Periodical Progress Report on **02/09/2024**.
33. 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.
34. 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 22nd day of July, 2024.

PJ