



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

IA/I.B.C.)/(Liq.)/16(KB)2024

C.P. (IB)/270(KB)2021

***An application under Section 33(2) of the Insolvency and
Bankruptcy Code, 2016 and under Section 60(5) of the
Code for initiation of liquidation of the CD.***

-And-

In the matter of:

(1) SHRIRAM CITY UNION FINANCE LIMITED;

... Financial Creditor

-Versus-

(2) MOUNTAIN EDGE TOURS AND HOLIDAYS PRIVATE LIMITED;

... Corporate Debtor

-And-

(3) Mr. Kanchan Dutta, the Resolution Professional of Mountain Edge Tours and Holidays Private Limited, having his Office at Chatterjee International Centre, 17th Floor, Flat No. 13A, 33A, J. L. Nehru Road, Kolkata – 700 071, West Bengal.

... Applicant

Date of pronouncing of the order: 25/06/2024

Coram:

SMT. BIDISHA BANERJEE HONOURABLE MEMBER (JUDICIAL)

SHRI D. ARVIND HONOURABLE MEMBER (TECHNICAL)



Appearances (via video conferencing/physically):

Mr. Rahul Auddy, Adv. : For the Resolution Professional
Mr. Aditya Goptu, Adv. :

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 Resolution Professional was heard in extenso.
3. This application **IA(I.B.C)(Liq.)/16(KB)2024** has been preferred to seek the following reliefs, inter alia: -

(a) This Hon'ble Tribunal be pleased to pass necessary Orders of Liquidation of the CD under Section 33 of the Code;

(b) Appointment of Mr. Kanchan Dutta as the Liquidator of the Corporate Debtor or alternatively, any other person this Hon'ble Bench deems fit and proper;

(c) Such further and/or other Order or Orders be passed, as this Learned Tribunal may deem fit and proper in the instant case;

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

(a) The Shriram City Union Finance Limited herein the Financial Creditor filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against the Corporate Debtor,



namely, **Mountain Edge Tours And Holidays Private Limited**. The petition, i.e., **C.P. (IB)/270(KB)2021** was admitted on 10th November, 2024 and in the said Order of admission, the applicant was appointed as Interim Resolution Professional (in short “IRP”).

- (b) In terms of Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”), Public Announcement was made by the IRP in two newspapers in “*Echo of India and Info India*” (Port Blair) and “*Financial Express and Pratahkaal*” (Mumbai) on 14th November, 2023 and the last date for submission of claim as per the Public Announcement was on 24th November, 2023.
- (c) The IRP intimated the Directors of the CD about the commencement of CIRP of the CD *vide* letter/email dated 11th November, 2023. Thereafter, IRP sent another emails/letters dated 14th November, 2023 and 16th November, 2023 to the Directors of the Corporate Debtor intimating them to provide documents and financial information when they will be visiting the registered office of the Corporate Debtor on 20th November, 2023. The office at the registered office of the Corporate Debtor could not be found and the other office was found to be closed and no representative of the Corporate Debtor was found at the premises of the Corporate Debtor. It was found that the Directors had stopped business from Port Blair after the COVID – 19 lockdowns. The applicant herein states that all the letters sent to the Directors/Corporate Debtor at the registered address of the Corporate Debtor as stated above were returned undelivered to the office of the IRP.



- (d) The IRP was appointed as the RP of the Corporate Debtor by the CoC in their first meeting, the e-voting of which concluded on 22.12.2023.
- (e) Since there was no cooperation or no assistance from the directors of the CD, the Applicant started researching the records of MCA to know the details of the CD. From the charge registrar of the CD as maintained with the CD, it appears that the CD has 6 offices. Four (4) of such office spaces are mortgaged to Shriram City Union Finance Limited and two of which are mortgaged to Dewan Housing Finance Corporation Limited (presently know as Piramal Capital and Housing Finance Limited).
- (f) The RP team and the Registered Valuers appointed visited the aforesaid premises on 5th February, 2024 and it transpired that the 6 office spaces were not owned by the CD but it was owned from the very inception by other entities/individuals without any connection with the CD. After the aforesaid visit to Mumbai and the clarifications provided by the secretary of the society, it appears that credit facilities were taken by the CD and its directors upon total false and fraudulent representations and by providing false securities. It seems that the documents which were presented to the banks are all false and forged.
- (g) In the meantime, the 2nd CoC meeting was held on 4th January, 2024. The 3rd CoC meeting was held on 2nd February, 2024. Since there were lots of issues pertaining to identification of assets at that point of time, Shriram Finance having 79.22% voting right in the 3rd CoC meeting requested the RP to postpone the publication of **Form G**



and observed there is no point in wasting money in the CIRP of the CD.

- (h) After the visit to Mumbai by the RP and his team, the clarifications received from the secretary of the Mumbai complex, the 4th CoC meeting was held on 14th March, 2024. The issue of publication of **Form G** was once again discussed in the said meeting. The RP informed the CoC that in case EOIs were received pursuant to the Form G, then an extension of the CIRP period would be required for the period of 180 days and was expired on 08th May, 2024. The CoC decided to put the resolution for extension of the CIRP period by 90 days under Section 12 of the Code in the said meeting. The e-voting ended on 23rd March, 2024 and the resolution for extension of the CIRP period was dissented by the CoC. On 23rd March, 2024, an email was received by the RP from Shriram Finance Limited (having voting rights 79.22%) proposing liquidation of the CD instead of publishing the Form G for inviting expression of interest.
- (i) The 5th meeting of the CoC meeting was held on 8th April, 2024 wherein the issue of liquidation of the CD was discussed. In the said meeting, the CoC members proposed the liquidation of the CD without going for publication of Form G. The aforesaid resolution was put up for voting and the e-voting concluded on 3rd May, 2024 wherein the resolutions for liquidation of the CD were passed with 94.85% majority.
- (j) The till the two progress reports have been filed by the applicant till period of 15th March, 2024. 3rd Progress Report for the period of 16th March, 2024 to 8th May, 2024.



(k) In the aforesaid facts and circumstances, the applicant is filing this instant application praying for necessary Order of liquidation of the CD and further prayers of appointment of the Applicant as the Liquidator herein or in the alternative any other IP as this Hon'ble Tribunal deems fit and proper.

5. Hence, the rival contentions were noted.

6. **Analysis and Findings: -**

(a) We have considered the submissions made by the Ld. Counsel(s) and perused the records.

(b) Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor when the CoC with 66% approves the Liquidation of Corporate Debtor.

(c) Hence, we do find merit in the prayers made in **IA(I.B.C)(Liq.)/16(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(I.B.C)(Liq.)/16(KB)2024** filed by RP, is allowed and **Mountain Edge Tours And Holidays Private Limited**, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code;

b. **Ms. Brinda Bidasaria** having registration no. **IBBI/IPA-001/IP-P-02818/2023-2024/14329**, **email: cabrindadalmia@gmail.com**, 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. We find that Corporate Debtor has not cooperated with the Resolution Professional during CIRP as well as liquidation proceedings in spite of directions. They had outstanding loan amount to be paid to the tune of Rs. 11,95,49,139/- at the time of commencement of CIRP. It has been learnt by the liquidator that the Corporate Debtor has taken loan from the Financial Creditor by pledging properties that belongs neither to the Corporate Debtor nor to the Suspended Board. The properties belong to the un-connected third parties. In view of the above, we direct the Stakeholders Consultation Committee (in short “SCC”) to consider filing avoidance application concerning the “PUFE” transaction application under IBC. For the purpose of obtaining information & the presence of the Directors of the Corporate Debtor, the liquidator may seek the assistance of the local Police Authority.
9. The application bearing **IA(I.B.C)(Liq.)/16(KB)2024** shall stand **disposed of** in accordance with the above directions.
10. List the main **C.P. (IB)/270(KB)2021** for reporting progress on **02.09.2024**.
11. 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.



12. Certified copy of this Order may be issued, if applied for, upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on: 25th of June, 2024.

Ar. [steno]