

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

**IA(IBC)(LIQ.)/12(KB)2024
in
CP(IB)/299(KB)2022**

Under section 33(1) of the Insolvency & Bankruptcy Code, 2016

In the matter of:

Rahul Carbon Commercials Private Limited
(CIN: U51102JH2012PTC000177)

.... Financial Creditor

Versus

New Hind Silk House Private Limited.
(CIN:U51909WB2009PTC134564).

.... Corporate Debtor

And

In the matter of:

Mr.Bimal Kanti Choudhury,

... Applicant/Resolution Professional

Order pronounced on: 13/06/2024

Coram:

Smt. Bidisha Banerjee

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (through hybrid mode):

For RP

**: Mr. Rishav Banerjee, Adv.
Ms. Prerna Shaha, Adv.**

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)(LIQ.)/12(KB)2024-** is an application filed under section 33 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) by the Resolution Professional (“**RP**”) of New Hind Silk House 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 26/04/2023 in CP (IB)/299(KB)2022, had ordered initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against New Hind Silk House Private Limited, the Corporate Debtor appointing Mr. Bimal Kanti Choudhury, 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 29/04/2023 in “Business Standard” (English) and “*Aajkal*” (Local/Bengali) inviting claims from the creditors of the Corporate Debtor stipulating last date of submission of claims on 10/05/2023. (**Annexure-B**).
5. It is submitted that on 02/05/2023, the applicant submitted Form CIRP-1 to the Insolvency and Bankruptcy Board of India. (**Annexure-C**)
6. In compliance of provisions of the Code and Regulations, the IRP had

intimated the initiation of CIRP to various authorities such as ROC, RD, to all banks.

7. In response to public announcement, the Applicant received claims from various Financial Creditors and Operational Creditors. The claims were verified on 18/05/2023.
8. It is stated that the Report dated 18.05.2023 of the Applicant / Resolution Professional certifying constitution of the Committee of Creditors of the Corporate Debtor in the instant company proceedings in terms of Circular dated July 25, 2022 bearing File No. 25/02/2022-NCLT of the National Company Law Tribunal.
9. The IRP held 12 CoC meetings on various dates i.e. 1st CoC meeting 25/05/2023, 2nd CoC Meeting on 04/07/2023, 3rd CoC meeting on 14/09/2023, 4th CoC meeting on 08/09/2023, 5th CoC meeting on 04/10/2023, 6th CoC meeting on 01/11/2023, 7th CoC meeting on 24/11/2023, 8th CoC meeting on 09/01/2024, 9th CoC meeting on 16/01/2024, 10th CoC meeting on 24/01/2024, 11th CoC meeting on 07/02/2024 & 12th CoC meeting on 04/04/2024.
10. Prior to the CoC meeting, the Applicant who was the Interim Resolution Professional submitted Form AA under Regulation 3(1A) giving his written consent to act as Resolution Professional, if appointed.
11. It is submitted that on 06/07/2023, Form-G was published for the first time in **Business Standard** (English Newspaper) and **Aajkal** (Local Bengali), wherein it was mentioned that the last date for the receipt of Expression of Interest is 21/07/2023.
12. It is stated that on 25/07/2023, the applicant /Resolution Professional herein issued a provisional list of eligible prospective resolution applicants.
13. The Applicant/Resolution Professional issued the information memorandum,

evaluation matrix and request for resolution plans on 30/07/2023.

14. It is stated that on 31/07/2023, the Applicant /Resolution Professional issued the final list of prospective resolution applicants.
15. It is submitted that a Resolution Plan was submitted by one Manoj Kumar Singh on 30/08/2023.
16. It is stated that in the fourth CoC meeting held on 08/09/2023, the CoC rejected the only Resolution Plan . It was also decided by the CoC that Form-G will be issued for the second time.
17. It is submitted that on 09/09/2023, Form-G has been published for the second time in **Business Standard** (English Newspaper) and **Aajkal** (Local Newspaper), wherein it was mentioned that the last date for the receipt of EOI is 24/09/2023.
18. It is submitted that post commencement of the CIRP of the Corporate Debtor only one resolution plan was received by the Applicant/ Resolution Professional herein. In order to ensure maximization of the value of the Corporate Debtor, it is imperative that more resolution plans for the Corporate Debtor is received by the Applicant/Resolution professional.
19. It is stated that 180 days of the Corporate Insolvency Resolution Process of the Corporate Debtor was about to expire on 23.10.2023.
20. It is stated that in the fifth COC meeting held on 4/10/2023, the Applicant/ Resolution Professional sought approval from the members of the COC for extension of 90 days over and above the period of 180 days and the same was approved by the CoC with 83.90% votes in favour of the same.
21. It is stated that vide order dated 19/10/2023, this Tribunal granted extension of 90 days over and above the period of 180 days for completion of CIRP of the

Corporate Debtor in terms of Section 12(2) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 40(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) Regulations, 2016.

22. It is submitted that the last date of submission of resolution plan was 4/11/2023.
23. It is stated that the 6th CoC meeting was held on 01/11/2023 wherein the last date to submit resolution plan was extended to 14/11/2023.
24. It is stated that two resolution applicants submitted their resolution plans namely Mr. Jitendra Singh and Minar Builders Private Limited.
25. It is stated that in the 7th CoC meeting held on 24/11/2023, the CoC rejected both the resolution plans due to inadequacy of the financial packages offered for the payment of claims to various stakeholders.
26. It is stated that in the 8th CoC meeting held on 9/01/2024, Applicant /Resolution Professional requested the CoC members to deliberate and decide on the liquidation of the Corporate Debtor, keeping in mind the impending CIRP expiration date, i.e., 21/01/2024.
27. It is stated that in the 9th CoC meeting held on 16/01/2024, representative of PNB, one of the Financial Creditors stated that Minar Builders Private Limited, an existing Resolution Applicant, whose application was previously rejected by CoC, expressed a willingness to increase their financial package by Rs. 5 Lakhs.
28. It is also stated that Representative of Rahul Carbon Commercial's Private Limited, Financial Creditor herein informed the CoC about another Company interested in submitting a better resolution proposal. The Resolution Professional/ Applicant herein stated that to consider any such proposal, he

will have to again invite Expression of Interest and therefore issue Fresh Form G which is only possible if this Hon'ble Tribunal grants extension of 60 days over and above the period of 270 days for completion of the Corporate Insolvency Resolution Process of the Corporate Debtor.

29. It is stated that 10th CoC meeting was held on 24/01/2024 in which CoC decided to go ahead with filing an Application before this Tribunal seeking extension of 60 days over and above the period of 270 days for completion of Corporate Insolvency Resolution Process. This Resolution was passed with 83.90% votes in its favour.
30. It is stated that vide order dated 05/02/2024, this Tribunal granted enlargement of 60 days with effect from 05/02/2024 over and above 270 days for the completion of CIRP.
31. It is submitted that the 11th CoC meeting was held on 07/02/2024. It was resolved in the 11th CoC that a fresh Form-G will be published on 08/02/2024.
32. It is stated on 08/02/2024, Form-G was published for the third time in Business Standard (English) and **Aajkal**(Local Bengali), wherein it was mentioned that the last date for the receipt of Expression of Interest is 23/02/2024.
33. It is submitted that the 12th CoC meeting which was held on 04/04/2024 wherein the Members of the CoC present at the meeting unanimously agreed that all three attempts by the RP to resolve the debt issue of the CD evoked non-acceptable responses from prospective resolution applicants. None of the resolutions proposed were found acceptable by the CoC. Additionally, the CIRP period which was extended by the Hon'ble NCLT twice, once for 90 days and again for 60 days is also going to expire on 5th April, 2024. Given these circumstances, the inevitable consequence is to liquidate the CD.

The Chairman/RP intervened to mention that filing of an application for

avoidable transactions was still pending. The delay in filing the application was due to the late receipt of the Transaction Audit Report, received as late as January 2024, and the unavailability of documents readily to substantiate the allegations. The illegal takeover of the CD's registered office by PNB Housing further complicated matters, leaving the RP in a difficult situation when he was on the brink of completing the collection of evidence from old and disorganized files. The CoC members expressed the view that if deemed necessary, such an application could be filed during the liquidation process as well.

34. It is submitted that CoC in the 12th meeting has passed the following resolution by 86.52% voting share:-

“ Resolved that New Hind Silk House Private Limited (Under CIRP) having CIN: U51909WB2009PTC134564 be liquidated”.

“Resolved further that authority be and is hereby given under Section 33(2) to the Resolution Professional of New Hind Silk House Private Limited (CD) to apply to the Adjudicating Authority of the decision of the Committee of Creditors to liquidate the CD for passing an appropriate order for liquidation.”

35. In the above scenario, the applicant has filed the instant application being IA(IBC)(LIQ)/12(KB)2024 under section 33(1) of the IBC seeking initiation of liquidation process against the Corporate Debtor.
36. 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.

37. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
38. This Bench, therefore, hereby orders as follows: -
- a. IA(IBC)/12(KB)2024 filed by **Mr. Bimal Kanti Choudhury**, RP of New Hind Silk House 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;
39. Though the RP has given his consent to act as the Liquidator of the Corporate Debtor but 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 hereby appoint **Mr. Binay Kumar Singhania** Regn. No. **IBBI/IPA-001/IP-P00041/2017-18/10102** having e-mail i.d. **binay1@yahoo.com** mobile no. **9433068790** appearing at S.No. 15 of the IBBI approved panel for West Bengal, 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 “**Aajkal**” (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 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**.

40. The application bearing **IA(IBC)/12(KB)2024** shall stand disposed of in

accordance with the above directions.

41. **CP(IB)/299(KB)2022** is to come up for filing of Periodical Progress Report on **15th July 2024.**
42. 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.
43. 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 13th day of June, 2024.

PJ