

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

IA(IBC)(LIQ.)/1479(KB)2023  
in  
CP(IB)/131(KB)2022

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

*In the matter of:*

M/s Aryan Mining & Trading Corpn Pvt.Ltd.

...Financial Creditor

*Versus*

Progressive Meters Pvt. Ltd.

...Corporate Debtor

*And*

*In the matter of:*

Mr.Anup Kumar Singh

... Applicant/Resolution Professional

Order pronounced on: 12/07/2024

*Coram:*

Smt. Bidisha Banerjee

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

*Appearances (through hybrid mode):*

Mr. Rachit Lakhmani, Adv.

] For the RP

Mr. Avishek Das,Adv.

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**ORDER**

*Per: Balraj Joshi, Member (Technical )*

1. This Adjudicating Authority convened through hybrid mode.

**IA(IBC)(LIQ.)/1479(KB)2023**  
**in**  
**CP(IB)/131(KB)2022**

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2. IA(IBC)/1479(KB)2023- is an application filed under section 33 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) by the Resolution Professional (“RP”) of Progressive Meters Pvt. Ltd., 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 28/10/2022 in CP (IB)/131(KB)2022, had ordered initiation of Corporate Insolvency Resolution Process (“CIRP”) against Progressive Meters Pvt. Ltd., the Corporate Debtor appointing Mr. Anup Kumar Singh, 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 01/11/2022 in “Financial Express” (English) and “*Duranta Barta* ” in Vernacular Language i.e. Bengali inviting claims from the creditors of the Corporate Debtor stipulating last date of submission of claims on 25.01.2023 (Annexure-B).
5. The applicant in compliance with Regulation 17 of the Insolvency and Bankruptcy Board of India ( Insolvency Resolution Process for Corporate Persons) Regulations, 2016 filed a report certifying constitution of the Committee of Creditors before this Adjudicating Authority *vide* email dated 20/11/2022. The said report was also uploaded at the NCLT e-filing portal once the same was added at the e-filing portal on 07/12/2022.
6. On 26/11/2022, the Applicant convened the First Meeting of Committee of Creditors wherein the undersigned was appointed as the Resolution Professional.

7. In compliance with Section 22(3) (a) of the Insolvency and Bankruptcy Code, 2016, the filed the Intimation Report on 29/12/2022 for continuation of Interim Resolution Professional as the Resolution Professional with the NCLT, Kolkata Bench.
8. The Applicant in the Second meeting of Committee of Creditors held on 26/12/2022, proposed for approval and ratification of the cost incurred for the purpose of the inclusion of the said expenses in Insolvency Resolution Process Cost, ratify the fees of Registered Valuers, ratify the appointment of Transaction Auditor and the professional Fees for inclusion in Insolvency Resolution Process Cost, approval of Draft Expression of Interest for submission of Resolution Plan., approve the expenses for creation of virtual data room. All the said resolutions were approved by the members of the Committee of Creditors.
9. The Applicant as approved in Second Meeting of Committee of Creditors, published Form G for Invitation of Expression of Interest on 27/12/2022 in the Newspapers namely Financial Express (English Language) in Kolkata Edition, Duranta Barta (Bengali Language) in Kolkata Edition, Financial Express (English Language) Delhi Edition and Indian Express (English Language) in Jaipur edition, inviting prospective bidders for submission of Expression of Interest for the Corporate Debtor wherein the last date of submission of EoI was 10/01/2023. Copies of the said publication of Form G is annexed as Annexure E.
10. The Applicant as approved in the Second Meeting of Committee of Creditors appointed M/s V. Singhi & Associates, Chartered Accountants in compliance with Section 25(2) (d) of the Insolvency and Bankruptcy Code, 2016 to conduct Due Diligence/Transaction Audit of the Corporate Debtor on 06/12/2022.
11. In terms of Regulation 35 of the CIRP Regulations, the applicant appointed Two Registered Valuers namely, M/s Adroit Appraisers & Research Private Limited and M/s Fintech Valuation Advisory Private Limited for each class of assets on 06/12/2022 to determine the Fair Value and Liquidation Value of the Corporate

Debtor.

12. That due to non-receipt of any Expression of Interest from the Prospective Resolution Applicant till the last date for the submission of EOI, the Resolution Applicant on concurrence of the sole member of the Committee of Creditor published Notice for extension of the last date for the submission of Expression of Interest on 10/01/2023 thereby extending the last date till 25/01/2023.
13. It is submitted that Form G (Version-2,3&4 ) was published on various dates i.e. on 26/01/2023, 10.02.2023 and 17.02.2023 in Financial Express (English Language), Duranta Barta (Bengali Language) in Kolkata edition, Financial Express (English Language) in Delhi edition and in Indian Express (English Language) at Jaipur edition, thereby extending the last date to submit the Expression of Interest from the Prospective Resolution Applicants pursuant to the concurrence of the Committee of Creditors.
14. That in order to have a wider participation, the last date of receipt of Expression of Interest was further extended by the publication of Form G (Version -5) dated 19-03-2023, in the newspapers namely Financial Express in English Language, Duranta Barta (Vernacular Language “Bengali”) in Kolkata Edition, Financial Express (English Language) at Delhi edition and in Indian Express (English Language) at Jaipur edition. The last date for the receipt of the expression of Interest by the prospective resolution applicant was extended till 7/04/2003.
15. In compliance with Regulation 36A(10) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, the applicant issued a Provisional List of Prospective Resolution Applicants vide email dated 17.04.2023 to all the members of the committee and to all the prospective resolution applicants who submitted their Expression of Interest.
16. That on 02/05/2023, pursuant to Regulation 36A(12) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)

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Regulations, 2016, the Applicant issued the Final List of Prospective Resolutions Applicants to the committee.

17. It is submitted that as approved by the CoC member in the Third meeting of Committee of Creditors filed an application for extension of CIRP period by further 90 days over and over the period of 180 days for completion of Corporate Insolvency Resolution Process of the Corporate Insolvency Resolution Process 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 and Resolution Process for Corporate Persons) Regulations, 2016 on 09/04/2023. The matter was considered and approved vide Order of this Tribunal dated 26/04/2023 and CIRP Period of Corporate Debtor was extended from 27/04/2023 till 25/07/2023. (Annexure-J).
18. That the Applicant vide e-mail dated 26/05/2023 sent the reminder to all the Prospective Resolution Applicants regarding the last date for submission of Resolution Plan within 09/06/2023.
19. That till the last date for the submission of Resolution Plan, the applicant did not receive any Resolution Plan from any of the Prospective Resolution Applicants within the stipulated timeline. Further two of the Resolution Applicants also sent the mail for the refund of the Process Participation Deposit expressing their reluctance to submit the Resolution Plan for the Corporate Debtor.
20. That in the fifth meeting of the Committee of Creditors held on 14/06/2023, the committee member discussed the pros and cons and decided that since none of the Resolution Applicants raised any query for extension of the timeline for submission of Resolution Plan. In addition to this the applicants also sent the mail for the refund of Process Participation Deposit, hence it was considered that all the applicants preferred to withdraw to participate in the resolution process of the Corporate Debtor. In addition to this, the provisional financial statement of the Corporate Debtor also did not depict any of the tangible assets in their books

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of accounts as on Insolvency Commencement date. Further, since the extended period of the CIRP was also expiring, hence the committee member resolved to initiate liquidation proceedings in respect of the Corporate Debtor. The consent letter for the appointment of the undersigned as the Liquidator was placed at the meeting for the perusal of the member of the Committee of Creditor. The committee approved the same. (Annexure-K)

21. The Members of the Committee of Creditors deliberated on the manner on which the Liquidation Process be carried out and after much deliberation, it was decided that since the Corporate Debtor had not fixed asset as reflected in the provisional Financial Statement of the Corporate Debtor. Therefore, the Corporate Debtor may be sold as a Going Concern in terms of Clause (e) of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
22. The Applicant convened the Sixth Meeting of Committee of Creditors on 24/07/2023 wherein the Valuation Report prepared by two registered valuers were shared before the Committee of Creditors on receipt of the Confidential undertaking to maintain confidentiality of Fair Value and the Liquidation Value of the Corporate Debtor and shall not use these to cause an undue gain or undue loss to ourselves and any other person. The Fair Value and Liquidation Value of the assets of the Corporate Debtor, specially, securities & Financial Assets were arrived at Rs. 8377/- by both the valuers. Further, on perusal of the Valuation Reports and considering that the Corporate Debtor had no fixed assets, the professional fees of the Liquidator was fixed at Rs. 3 lakhs plus GST and out pocket expenses. The minutes of the Sixth Meeting of Committee of Creditors is attached as Annexure-L.
23. The applicant states that on account of the delay in the receipt of the Valuation Reports by the applicant, the applicant conducted the sixth CoC meeting on 24/07/2023 and circulated the minutes on 25/07/2023.

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24. The applicant had conducted the fifth meeting of Committee of Creditors wherein Committee member approved the Liquidation of the Corporate Debtor in terms of the provisions of Section 33(1) (a) of the I & B Code.(Page Nos. 109-130) .Aryan Mining & Trading Corporation Pvt.Ltd. is the sole member of CoC which is mentioned at page 112 of the petition.
25. It is submitted that CoC in the 5<sup>th</sup> meeting has passed the following resolution by 100% voting share:-
- “To consider and if thought fit, to pass with or without modification the following Resolution:*
- RESOLVED THAT pursuant to Section 33(1) of the Insolvency and Bankruptcy Code, 2016 (Including all the amendments and modifications for the time being in force)approval of the committee of Creditors be and is hereby accorded for the approval of Liquidation of the Corporate Debtor M/s Progressive Meters Private Limited as envisaged under the insolvency and Bankruptcy Code, 2016. .”*
26. The Committee approved the resolution for the appointment of applicant as the Liquidator of the Corporate Debtor with 100% votes in favour of the motion in the fifth meeting of Committee of Creditors in terms of section 34(1) of the I & B Code, 2016.
27. In the above scenario, the applicant has filed the instant application being IA(IBC)/1479(KB)2023 under section 33(1) of the IBC seeking initiation of liquidation process against the Corporate Debtor.
28. 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

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66% of the voting share to liquidate the Corporate Debtor.

29. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.

30. The CoC has recommended the name of Mr.Kamal Prakash Singh 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)*

31. 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.

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

a. **IA(IBC)/1479(KB)2023** filed by Mr.Anup Kumar Singh, RP/Applicant of Progressive Meters Pvt. Ltd., 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;

33. In view of the above, we hereby appoint **Mr. Rakesh Kumar Agarwal, Regn. No. IBBI /IPA-001/IP-P00443/2017-18/10786** having e-mail ID



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rakesh202@hotmail.com, whose name appears at S.No. 1 of the IBBI Panel for Kolkata region, 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 Financial Express” (English) and “*Duranta Barta* ” in Vernacular Language i.e. Bengali and in “Indian Express” in English Language at (Jaipur Edition) 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

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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.

34. The application bearing IA(IBC)/1479(KB)2023 shall stand disposed of in accordance with the above directions.
35. CP(IB)/131(KB)2022 is to come up for filing of Periodical Progress Report on **10-09-2024**.
36. 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.
37. 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 12<sup>th</sup> day of July, 2024.

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