

DIVISION BENCH
COURT - II

Mentioning
NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P. (IB)/582(KB)2020
IA(I.B.C)/234(KB)2023

CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SHRI D. ARVIND

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 06, FEBRUARY, 2024, 10:30 A.M

IN THE MATTER OF	SANDEEP BAID, SOLE PROP. OF HITECH MINERALS AND CHEMICALS VS NEXUS HEALTH AND BEAUTY CARE PVT. LTD
UNDER SECTION	IBC UNDER SEC 9

Appearance (via video conferencing/physically)

Mr. Udit Agarwal, Adv.] For the RP

Order

1. Upon mentioning order dated 07.12.2023, Ld. Counsel for the RP states that this Tribunal had appointed Mrs. Renu Agarwal as Liquidator but due to medical issues, in the meantime, she does not continue as Liquidator in this matter.
2. In view of such, we hereby appoint Mr. Manmohan Jhawar, having IBBI Regn. No. IBBI/KPA-001/IP-900334/2017-18/10604, E-mail ID: manmohanjhawar@yahoo.com and Mob. No. 9331015694 as Liquidator from the date of this order. The outgoing Liquidator, Mrs. Renu Agarwal is hereby discharged from his duties. The outgoing Liquidator, Mrs. Renu Agarwal is also directed to handover all the documents related to this matter to Mr. Jhawar for smooth functioning of his duties.
3. Registry is directed to send a copy of this order to both the Liquidator for their compliance.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

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

**IA(IBC)/234(KB)2023
in
CP(IB)/582(KB)2020**

Under section 33(2) of the Insolvency & Bankruptcy Code, 2016

In the matter of:

Sandeep Baid, Sole Proprietor of Hi-Tech Minerals & Chemicals

.... **Operational Creditor**

Versus

Nexus Health and Beauty Care Private Limited
(U24246WB2005PTC101755)

.... **Corporate Debtor**

And

In the matter of:

Mr. Pankaj Lunawat,

Resolution Professional of Nexus Health and Beauty Care Private Limited

... **Applicant**

Order reserved on: 16/10/2023

Order pronounced on: 07/12/2023

Coram:

Smt. Bidisha Banerjee

: Member (Judicial)

Shri Arvind Devanathan

: Member (Technical)

Appearances (through hybrid mode):

For RP

: Mr. Udit Agarwal, Adv.

For Secured Creditor SBI

: Mr. Ramesh Chandra Prusti, Adv.

Ms. Mahuya Ghosh, Adv.

Ms. Alisha Kar, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.

2. **IA(IBC)/234(KB)2023** is an application filed under section 33 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) by the Resolution Professional (“**RP**”) of **Nexus Health and Beauty Care Private Limited**, the Corporate Debtor, praying for initiation of liquidation process of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by the RP.
3. This Adjudicating authority, on a petition filed u/s. 9 of the IBC read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Sandeep Baid, sole proprietor of Hi-Tech Minerals and Chemicals**, the Operational Creditor, *vide* order² dated 06/07/2022 in CP(IB)/582(KB)2020, had ordered initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against **Nexus Health and Beauty Care Private Limited**, the Corporate Debtor appointing Mr. Pankaj Lunawat as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry.
4. In terms of regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (“**CIRP Regulations**”) Public Announcements³ in **Form A** was published on 11/07/2022 in “*Financial Express*” (English) and “*Aajkal*” (Bengali) inviting claims from the creditors of the Corporate Debtor stipulating last date of submission of claims on 20/07/2022.
5. In compliance of provisions of the Code and Regulations, the IRP had sent e-mails/letters to the following authorities informing initiation of CIRP against Corporate Debtor:

Date	To whom sent	Documents	Annexure No. & at page
11/07/2022	IBBI	Public Announcement	“3” at page 41
12/07/2022	IIPI & ICAI	Commencement of CIRP	“4” at page 42
13/07/2022	RoC	Commencement of CIRP	“5” at page 43
15/07/2022	SBI, SME, Parwanoo	Commencement of CIRP	“6” at page 44
25/07/2022	ITO	Commencement of CIRP	“7” at page 45

¹ At pages 21 to 23 of the application

² Annexure 1 at pages 26 to 38 of the application

³ Annexure 2 at pages 39 to 40 of the application

6. In response to public announcement, one claim was received from State Bank of India, SME Parwanoo (06403), Himachal Pradesh on 20/07/2022 which was rejected due to certain deficiencies and the same was duly communicated to the SBI, Parwanoo vide e-mail⁴ dated 23/07/2022. State Bank of India SME Parwanoo has again submitted its claim on 10/08/2022 but the same was also rejected due to certain deficiencies and the same was also communicated to the SBI, Parwanoo vide e-mail⁵ dated 16/08/2022. However, State Bank of India, Parwanoo again filed its claim on 12/09/2022 and this time the claim of the State Bank of India, Parwanoo, HP was admitted for an amount of Rs.147,62,352/- and accordingly Committee of Creditors (“CoC”) was constituted with sole member, State Bank of India, in accordance with section 21(1) of the IBC. Report⁶ on constitution of CoC was duly communicated to this Adjudicating Authority on 13/09/2022. List of Stakeholders as on 12/09/2022 was filed with the IBBI as well as this Adjudicating Authority on 12/09/2022 and 14/09/2022 respectively. Copy of acknowledgement dated 13/09/2022 received from IBBI forms **Annexure 10**⁷. Copy of List of Stakeholders along with its e-filing acknowledgement dated 14/09/2022 forms **Annexure 11**⁸.
7. 1st meeting of the CoC was held on 20/09/2022 wherein the sole member of CoC has refused to approve the appointment of IRP as RP and did not file any application for replacement of IRP. Minutes of the 1st meeting of the CoC forms **Annexure 12**⁹.
8. The applicant had further received a claim of Rs.5,14,46,951/- from the Assistant Commissioner, CGST Division, Baddi, an Operational Creditor on 27/09/2022 and the same was admitted on 29/09/2022. The modified List of Creditors as on 29/09/2022 was filed with the IBBI and confirmation dated 03/10/2022 received

⁴ At page 47 of the application

⁵ Annexure 8 at page 49 of the application

⁶ Annexure 9 at pages 50 to 53 of the application

⁷ At page 54 of the application

⁸ At pages 55 to 58 of the application

⁹ At pages 59 to 68 of the application

from IBBI forms **Annexure 13**¹⁰. Copy of modified List of Stakeholders as on 29/09/2022 was filed with this Adjudicating Authority, which forms **Annexure 14**¹¹.

9. At the 2nd CoC meeting held on 21/10/2022, invitation of Expression of Interest (“**EoI**”) in **Form G**¹² was orally approved by the CoC and the same was published on 22/10/2022 in “*Financial Express*” (English) and “*Aajkal*” (Bengali) in terms of regulation 36A(1) of the CIRP Regulations inviting EoI from prospective resolution applicants (“**PRA**”) stipulating last date of submission of EoI on 06/11/2022. In response, no EoI was received from any PRA.
10. At the 3rd CoC meeting held on 16/11/2022, the applicant recommended for early liquidation of the Corporate Debtor as no EoI was received as well as there were no assets except a cash of Rs.2,157/-. However, the CoC has adjourned the voting on same. A copy of the minutes of the meeting of the 3rd CoC meeting forms **Annexure 16**¹³. The CoC at its 5th meeting held on 21/12/2022 had confirmed and approved by 100% voting share the appointment of IRP as Resolution Professional (“**RP**”) and his remuneration ((Agenda Item no.3). However, voting on **Agenda Item No.4** for approval of liquidation of the Corporate Debtor was withheld A copy of the minutes of the 5th CoC meeting forms **Annexure 17**¹⁴
11. The applicant had given his consent¹⁵ dated 21/12/2022 to act as the Liquidator of the Corporate Debtor.
12. In the above scenario, the applicant had filed the instant application being IA(IBC)/234(KB)2023 under section 33(1)(a)(i) of the IBC seeking initiation of liquidation process against the Corporate Debtor. This IA came up for hearing on 30/01/2023, when it was observed that the decisions of the CoC in terms of

¹⁰ At page 69 of the application

¹¹ At pages 70 to 74 of the application

¹² Annexure 15 at pages 75 and 76 of the application

¹³ At pages 77 to 81 of the application

¹⁴ At pages 82 to 89 of the application

¹⁵ At page 90 of the application

Agenda Item No.4 of the 5th CoC meeting held on 21/12/2022 was not placed before this Adjudicating Authority. Accordingly, the CoC was directed to give its decision on this Agenda Item No.4 fixing the next date of hearing on 14/03/2023. When the matter came up for hearing on 14/03/2023, no one appeared on behalf of SBI, SME, Parwanoo, HP. Therefore, direction was given to issue notice to Mr. Sanjay Kumar, who had attended the said 5th CoC meeting on behalf of SBI, SME Parwanoo, HP, for appearance on the next date of hearing fixed on 24/04/2023.

13. However, on 24/04/2023 no one appeared for the SBI, SME Parwanoo. By way of an affidavit duly affirmed by the RP, the RP had placed on record the Minutes of the 6th CoC meeting held on 02/02/2023, wherein the CoC has not approved the liquidation of the Corporate Debtor. Accordingly, notice was issued to Mr. Sanjay Kumar, SBI, Parwanoo, Dist, Solan, HP for appearance before this Adjudicating Authority personally on the next date of hearing, i.e., on 16/06/2023. Accordingly, Mr. Sanjay Kumar, Chief Manager, Parwanoo appeared personally before this Adjudicating Authority on 16/06/2023, who was directed to file a Supplementary Affidavit bringing on record the facts about the rejection of the liquidation of the Corporate Debtor with reasons so that appropriate order could be passed. Hence, a Supplementary Affidavit affirmed on 04/09/2023 by one Mr. Neeraj Kumar, Manager (PF No. 5340845), has been filed by the SBI, SME Parwanoo, Dist. Solan, HP **recording that State Bank of India being the only secured creditor has no objection for liquidation of the Corporate Debtor** subject to consideration of this Adjudicating Authority to allow the secured creditor, State Bank of India to recover the outstanding dues of the Corporate Debtor from the sale proceeds of the House Property belonging to Sh. Rajinder Singh Thakur, the suspended Director of the Corporate Debtor, who has allowed the extension of the security of the Housing Loan for repayment of the dues of the Corporate Debtor to protect the interest of the bank¹⁶.
14. It is to be noted here that the CIRP period had already ended on 01/01/2023 and

¹⁶ Para 15 of the said affidavit affirmed on 04/09/2023

no extension has been sought by the RP.

15. 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.
16. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
17. This Bench, therefore, hereby orders as follows: -
 - a. IA(IBC)/234(KB)2023 filed by Mr. Pankaj Lunawat, RP of Nexus Health and Beauty Care 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;
 - b. Though the RP has given his consent to act as the Liquidator of the Corporate Debtor but in view of the IBBI Circular no. Liq-12011/214/2023-IBBI/840 dated 18/07/2023 for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the Code, we hereby appoint Ms. Renu Agarwal (Reg. No. IBBI/IPA-001/IP-P-02294/2020-2021/13479) having e-mail i.d. renuagarwal317@yahoo.com, mobile no. 9051115818 as given at Sl.No.31 of the Insolvency and Bankruptcy Board of India, Panel for July 1, 2023 to December 31, 2023 – Kolkata Bench, as Liquidator in terms of section 34(1) of the Code. Her appointment shall be subject to her possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which she 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 her 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**.

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 “*Financial Express*” (English) and “*Aajkal*” (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 her 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.**

18. The application bearing **IA(IBC)/234(KB)2023** shall stand disposed of in accordance with the above directions.
19. **CP(IB)/582(KB)2020** is to come up for filing of Periodical Progress Report on **10/01/2014.**
20. 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.
21. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Arvind Devanathan
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 7th day of December, 2023.

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