

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

**IA(IBC)/250(KB)2023
in
CP(IB)/222(KB)2021**

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

In the matter of:

Subham Goodwill Private Limited

.... Financial Creditor

Versus

Monet Vyapaar Private Limited
(CIN: U51909WB1994PTC061471)

.... Corporate Debtor

And

In the matter of:

Sudipta Ghosh,
Resolution Professional of Monet Vyapaar Private Limited

... Applicant

Order reserved on: 15/03/2023

Order pronounced on: 17/03/2023

Coram:

Smt. Bidisha Banerjee

: Member (Judicial)

Shri Rahul Bhatnagar

: Member (Technical)

Appearances (through hybrid mode):

For RP

: Ms. Urmila Chakraborty, Adv.
Ms. Pallavi Ray, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/250(KB)2023** is an application filed under section 33(2) by the Resolution Professional (“**RP**”) of **Monet Vyapaar Private Limited**, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by Sudipta Ghosh, the RP.
3. This Adjudicating authority, on a petition filed u/s. 7 of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Subham Goodwill Private Limited, *vide* order² dated 27/04/2022 in CP(IB)/222(KB)2021, had ordered initiation of CIRP against Monet Vyapaar Private Limited, the Corporate Debtor. Mr. Sudipta Ghosh was appointed as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry.
4. In terms of section 15 of the IBC, Public Announcements³ in **Form A** was published in “*Financial Express*” (English) and “*Ekdin*” (Bengali) on 01/05/2022 inviting claims from the creditors, stipulating last date of submission of claims on 11/05/2022.
5. In accordance with section 21 of the IBC 2016 and regulation 17(1) of the IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016, a Committee of Creditors (in short, “**CoC**”) was duly constituted on 13/05/2022 and the 1st meeting of the CoC was duly held on 26/05/2022. The CoC at its 1st

¹ At pages 17 to 19 of the application

² Annexure “A” at pages 20 to 28 of the application

³ Annexure “B” at pages 8 and 9 of the supplementary affidavit affirmed on 06/03/2023

meeting⁴ held on 26/05/2022 appointed the IRP as Resolution Professional.

6. In terms of regulation 36A(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 Form G⁵ was published in “*Financial Express*” (English) and “*Ekdin*” (Bengali) on 11/07/2022, stipulating last date of receipt of Expression of Interest (“EoI”) as 26/07/2022.
7. Since no EoI was received within the stipulated time, the CoC at its 5th Meeting held on 14/08/2022 had resolved to re-issue Form G. Pursuant to the decisions of the CoC, Form G (Re-Issue)⁶ was published in “*Financial Express*” (English) and “*Ekdin*” (Bengali) on 18/08/2022, stipulating last date of receipt of Expression of Interest (“EoI”) as 02/09/2022. In response, one EoI was received from one Prospective Resolution Applicant (“PRA”), Nakshatra Corporate Advisors Limited.
8. At the request of the PRA, CoC at its seventh meeting held on 18/10/2022 had resolved to extend the timeline by 20 days for submission of Resolution Plan and the same was duly intimated to the PRA. However, the said PRA, Nakshatra Corporate Advisors Limited, vide, e-mail dated 03/12/2022 has expressed their inability to submit Resolution Plan with a request to refund the security deposit of Rs.2 Lakhs.
9. At the 8th CoC meeting⁷ held on 18/01/2023, the CoC with 100% voting share has decided for liquidation of the Corporate Debtor under section 33(2) of the Code and passed the following Resolutions: -

“RESOLVED that since no Resolution Plan being received, initiation of Liquidation Process of the Corporate Debtor be and is hereby decided by the Committee of Creditors and necessary application be moved to the Adjudicating Authority”

⁴ Annexure “C” at pages 32 to 41 of the application

⁵ Annexure “B” at pages 10 and 11 of the supplementary affidavit affirmed on 06/03/2023

⁶ Annexure “B” at pages 12 and 13 of the supplementary affidavit affirmed on 06/03/2023

⁷ Annexure “I” at pages 72 to 81 of the application

“RESOLVED further that authorization of Mr. Sudipta Ghosh, Resolution Professional for filing necessary Application before the Adjudicating Authority for initiation of Liquidation Process of the Corporate Debtor be and is hereby approved by the Committee of Creditors.”

10. It is stated in the application that the applicant has duly complied with all the Rules and Regulations framed under the Code from time to time to revive the Corporate Debtor in the best possible manner for the best interest of all the stakeholders of the Corporate Debtor and altogether held Eight CoC meetings on 26/05/2022, 09/06/2022, 07/07/2022, 23/07/2022, 14/08/2022, 15/09/2022, 18/10/2022 and 18/01/2023 respectively.
11. It is also stated in the application that the applicant has duly filed five Progress Reports on 15/06/2022, 11/10/2022, 11/10/2022, 06/12/2022 and 25/01/2023 respectively.
12. It is stated in the application that two registered valuers, Mr. Ankush Garg and Mr. Shyamal Mukherjee were appointed to determine and ascertain the Fair Value and Liquidation Value of Securities and Financial Assets of the Corporate Debtor and they have sent their respective valuation reports⁸ to the applicant.
13. It is also stated that the Transaction Auditor, M/s. Banerjee Abhijit & Associates, Chartered Accounts has completed the Transaction Audit, under the relevant provisions of the Code, for the period of last two years from the date of commencement of CIRP. The said Transaction Auditor has submitted its report dated 18/07/2022, wherein it was recorded that none of the transaction during the relevant period fall within the category of Preferential, Undervalued, Extortionate and Fraudulent transaction.
14. The applicant, Mr. Sudipta Ghosh, having Registration No. IBBI/IPA-001/IP-

⁸ Annexure “F” at pages 46 to 63 of the application

P00484/2017-18/10872 has given his consent⁹ along with Authorisation for Assignment to act as the Liquidator of the Corporate Debtor.

15. This Adjudicating Authority vide order dated 20/10/2022 passed in IA(IBC)/1172(KB) has extended the CIRP period by 90 days beyond the initial 180 days period, thereby the 270 days CIRP period has ended on 21/01/2023.
16. 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.
17. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
18. This Bench, therefore, hereby orders as follows: -
 - a. IA(IBC)/250(KB)2023 filed by **Mr. Sudipta Ghosh, RP of Monet Vyapaar 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. **Mr. Sudipta Ghosh, RP [Reg. No. IBBI/IPA-001/IP-P00484/2017-18/10872] of 8, N. N. Mukherjee 3rd Lane, Uttarpara, Hooghly - 712258, having e-mail i.d. sudipta_ghosh08@yahoo.com , telephone no. 92308 23033 / 7003384289** is hereby appointed 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

⁹ Annexure "J" at pages 82 to 86 of the application

of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.

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 “*Ekdin*” (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 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 Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the **Registrar of Companies, West Bengal.**

19. The application bearing **IA(IBC)/250(KB)2023** shall stand disposed of in accordance with the above directions.
20. **CP(IB)/222(KB)2021** is to come up for filing of Periodical Progress Report on **24/04/2023.**
21. 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.
22. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Rahul Bhatnagar
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 17th day of March, 2023.

hb.