

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

IA (IB) No. 1574/KB/2023
in
CP (IB) No. 257/KB/2022

An application under section 33(2) of the Insolvency and Bankruptcy Code, 2016

In the matter of

India Resurgence ARC Private Limited

... *Financial Creditor*

Versus

Kundan Suppliers Private Limited

... *Corporate Debtor*

-And-

In the matter of

Mr. Ajay Kumar Agrawal, Resolution Professional of Kundan Suppliers Private Limited

... *Applicant*

Order pronounced on : 02.05.2024

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (through video conferencing):

Ms. Shreya Choudhary, Adv.

Mr. Ajay Kr. Agrawal, RP in person

] For RP

Mr. D. N. Sharma, Adv.

] For applicant in IA/1493/2023

Ms. Urmila Chakraborty, Adv.

Ms. Meenakshi Manot, Adv.

Mr. Abhishek Jain, Adv.

] For R1 & R2 in IA/415/2023 &

For R1 & R2 in IA/1030/2023

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

IA (IB) No. 1574/KB/2023
in
CP (IB) No. 257/KB/2022

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.
2. This application has been filed under section 33(2) of the Insolvency and Bankruptcy Code, 2016 (in short "IBC") by the Resolution Professional ("RP") of Kundan Suppliers Private Limited, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit duly affirmed by the RP.
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 Shubh Mohini Enterprise Private Limited, the Financial Creditor, vide order dated 11/01/2023 in CP(IB)/257(KB)2022, had ordered initiation of CIRP against Kundan Suppliers Private Limited, the Corporate Debtor appointing Mr. Ajay Kumar Agrawal an Insolvency Professional as the Interim Resolution Professional ("IRP").
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 14/01/2023 in "*Financial Express*" Kolkata Edition (English) and "*Duranta Barta*" (Bengali) inviting claims from the creditors. Committee of Creditors ("CoC") was duly formed with the one Financial Creditor i.e. India Resurgence ARC Limited.
5. At the 1st meeting of the CoC held on 13/02/2023, the CoC had unanimously approved appointment of IRP as Resolution Professional ("RP"). An application being IA(IBC)/447(KB)2023 was filed for reporting the decision of the CoC for continuation of IRP as RP and the same was taken on record vide order dated 22/03/2023. Minutes of the 1st CoC meeting forms **Annexure D**.
6. Despite several requests, the suspended members of the Board of Directors of the Corporate Debtor did not handover books of account and related records to the Resolution Professional. Therefore, an application being IA(IBC)/415(KB)2023 was

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

IA (IB) No. 1574/KB/2023
in
CP (IB) No. 257/KB/2022

filed u/s. 19(2) and 19(3) of the IBC on 17/02/2023 and the same is pending adjudication before this Adjudicating Authority.

7. The only asset owned by the Corporate Debtor is a Semi Commercial Unit situated at Mouza- Prastha, J.L.No.29, Police Station- Domjur, District- Howrah 711405 consisting of Unit 2C, 2D and 2E. RP has appointed a Surveyor to ascertain an exact unit owned by the Corporate Debtor at the aforesaid premises. Accordingly, the Surveyor has submitted his report dated 16/04/2023 to the RP.
8. The CoC at its 2nd meeting held on 14/03/2023 in its commercial wisdom has decided to initiate liquidation process against the Corporate Debtor since there were no other asset other than the commercial unit mentioned in para 7 above. Minutes of the 2nd CoC meeting forms **Annexure F**. Accordingly, an application being IA(IBC)627(KB)2023 was filed and the said application was disposed of vide order dated 25/04/2023 remitting back to the CoC to consider afresh, keeping in view the objective of IBC, 2016.
9. In compliance of the said order dated 25/04/2023, Form G was published on 05/05/2023 in "*Financial Express*" (English) and "*Duranta Barta*" (Bengali) inviting Expression of Interest ("EoI") from prospective resolution applicants ("PRA") in terms of regulation 36A(1) of the CIRP Regulations stipulating last date of submission as 20/05/2023. Though inquiries were received from four PRAs but none has submitted any EoI. In view of four enquiries received by the RP, the CoC in its 5th meeting held on 13/06/2023 has resolved to re-publish Form G once again. Minutes of the 5th CoC meeting forms Annexure I. Accordingly, Form G was again published on 15/06/2023 in "*Financial Express*" (English) and "*Duranta Barta*" (Bengali) inviting EoI from PRAs for 2nd time stipulating last date of submission of EoI as 30/06/2023. In response, one EoI was received from one Nakshatra Corporate Advisors Limited, who has submitted EMD of Rs.5 Lakhs. After due deliberation on the eligibility aspect u/s. 29A of the IBC, provisional list and final list was published.

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

IA (IB) No. 1574/KB/2023
in
CP (IB) No. 257/KB/2022

- 10.** Vide order dated 11/07/2023 in IA(IBC)/1153(KB)2023, this Adjudicating Authority had granted extension of 90 days of the CIRP period, thereby the CIRP period has ended on 08/10/2023.
- 11.** However, the only PRA has sent an e-mail's dated 01/08/2023 to the RP requesting refund of EMD of Rs.5 Lakhs without submission of any resolution plan. Accordingly, the CoC at its 7th meeting held on 23/08/2023 has passed following resolution unanimously recommending initiation of liquidation process against the Corporate Debtor due to non-receipt of any resolution plan:

"RESOLVED THAT the Committee of Creditors hereby approves for initiation of liquidation process of Kundan Suppliers Private Limited ("Corporate Debtor) in accordance with Section 33(1) of Insolvency and Bankruptcy Code, 2016, in view of non-receipt of resolution plan by prospective resolution applicant."

Copy of minutes of the 7th CoC meeting forms **Annexure N and the voting results are placed at page no. 124 which shows that the resolution has been passed by a Voting percentage of 100%.**

- 12.** The applicant has given his written consent to act as Liquidator of the Corporate Debtor subject to the confirmation by this Adjudicating Authority.
- 13.** It is to be noted here that the 270 days CIRP period has ended on 08/10/2023 and no further enlargement of time was requested by the CoC, who have approved the Liquidation of the Corporate Debtor.
- 14.** 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.

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

IA (IB) No. 1574/KB/2023
in
CP (IB) No. 257/KB/2022

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

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

- (a) IA (IB) No. 1574/KB/2023 filed by Mr. Ajay Kumar Agrawal, RP of **Kundan Suppliers 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 subsection (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 **Mr. Pankaj Kumar Kedia**. **Regn no. : IBBI/IPA-001/IP-P01037/2017-2018/11710** appearing at S.no. 23 of the Insolvency and Bankruptcy Board of India, Panel for Jan 1,2024 to June 30, 2024 for West Bengal having **email: pkkedia2@rediffmail.com** as Liquidator in terms of section 34(1) of the Code.
- (c) His appointment shall be subject to his/her possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he/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 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**.
- (d) 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.

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

IA (IB) No. 1574/KB/2023
in
CP (IB) No. 257/KB/2022

- (e) Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, stating that the Corporate Debtor is in liquidation.
 - (f) 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.
 - (g) The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him/her in managing the liquidation process of the Corporate Debtor.
 - (h) 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.
 - (i) 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.
 - (j) 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.
- 17.** The application bearing **IA (IB) No. 1574/KB/2023** shall stand disposed of in accordance with the above directions.
- 18.** 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.

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

IA (IB) No. 1574/KB/2023
in
CP (IB) No. 257/KB/2022

19. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
20. List the main **CP (IB) No. 257/KB/2022** for reporting progress on **13.07.2024**.
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 issues, if applied for, upon compliance of all requisite formalities.

**[Balraj Joshi]
Member [Technical]**

**[Rohit Kapoor]
Member [Judicial]**

Signed on this, the 2nd day of May, 2024

A.J.S [LRA]