
(2025) 01 NCLT CK 0005

National Company Law Tribunal, Division Bench (Court -I) Kolkata

Case No: IA(IBC)(LIQ.)/15 (KB)/2024 & IA(IBC)2111(KB)/2023 in CP(IB)/157(KB)2022

State Bank of India & Ors.

APPELLANT

Vs

Manglam Fiscal Services Pvt. Ltd.

RESPONDENT

Date of Decision: Jan. 16, 2025

Acts Referred:

- Insolvency and Bankruptcy Code 2016 - Section 14, 33, 34, 52, 11, 19

Hon'ble Judges: Sameer Kakar, Member (T); Bidisha Banerjee, Member (J)

Bench: Division Bench

Advocate: Dripto Majumdar, Sumit Biswas, Rajashree Bhowmick, Deepankar Thakur
Chandan Mohata, Avishek Gupta, Arik Banerjee, Sarangam Chakraborty

Final Decision: Allowed

Judgement

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. IA(IBC)(LIQ.)/15(KB)2024- is an application filed under section 33 of the Insolvency and Bankruptcy Code, 2016 (â€œIBCâ€) by the Resolution Professional (â€œRPâ€) of Manglam Fiscal Services 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.

Â Submissions of 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 Financial Creditor, vide order dated 03/10/2023 in CP (IB)/157(KB)2022, had ordered initiation of Corporate Insolvency

Resolution Process (â€œCIRPâ€) against Manglam Fiscal Services Pvt. Ltd., the Corporate Debtor, appointing Mr. Avishek Gupta, as the Interim Resolution Professional (â€œIRPâ€). The board was suspended and moratorium under Section 14 was imposed. The IRP was later confirmed as RP by the CoC.

4. On account of non-compliance of the order dated 03/10/2023 by the Director of the Corporate Debtor, the RP was unable to effectively manage the affairs of the Corporate Debtor. Thus, he filed an application under Section 19(2) of the IBC, 2016 alleging non-cooperation of the Directors of suspended Board being IA No. 2111/2023 in C.P.(IB) No.157/2022. The said matter was reserved for order on 09/01/2025.

5. The Applicant-RP had also filed an Application alleging PUF transactions against the directors of the suspended Board of the CD, being IA (IBC) No. 397/KB/2024. The said matter is pending before this Adjudicating Authority.

6. On 11/01/2024, RP published Form G for inviting â€˜Expressions of Interestâ€™ for submitting Resolution Plan, in two newspapers namely â€˜Business Standardâ€™ (all India) in English, â€˜Sanmargâ€™(Ranchi) in Hindi and â€˜Ekdinâ€™(West Bengal) in Bengali. However, RP received three Expressions of Interest from Kalyan Toll Infrastructure Limited, RKF Fund I, Shubhlaxmi Investment Advisory Private Limited and Sunrise Industries. Copy of Form G, newspaper publication is enclosed as Annexure-A-4.

7. On 30/03/2024, the applicant RP had filed an application being IA(IBC) No. 759/KB/ 2024 before this Adjudicating Authority seeking extension of the CIRP period by further 30 days beyond 180 days which was to end on 31/03/2024 days as per the resolution passed in the 8th CoC meeting held on 28/03/2024. This Adjudicating Authority granted extension of 30 days vide order dated 19th April 2024.

8. Thereafter, on 20/02/2024, the applicant RP issued the â€˜final List of Resolution Applicantsâ€™ in terms of Regulation 36A of the CIRP Regulations, 2016 had also issued the Request for Resolution Plan (RFRP), Evaluation Matrix (EM) and Information Memorandum (IM) in terms of Regulation 36B of CIRP Regulations and Form G.

9. Out of all the EOI participants one M/s Subhlaxmi Investment Advisory Private Limited submitted its resolution plan but without any Earnest money deposit. The CoC members in the 9th CoC members found that the resolution plan provides for a resolution amount way below the liquidation value and the said PRA has not submitted EMD where as it has been seeking extensions for two times in a row. Hence, the CoC found that there was no point in granting any further extensions and rejected the Resolution Plan and decided that the RP should proceed for liquidation of the CD.

10. Since no complete resolution plan was received in the ongoing CIR process, post the 10th CoC meeting held on 06/05/2024, the following resolution was put for e-voting and approved with 93.73% votes passed in favour " Resolved that as per Section 33 (2) of the IBC , 2016, the CoC members hereby decide that Manglam Fiscal Services Private Limited (in CIRP) should move to liquidation and that an application is to be filed before this Adjudicating Authority for liquidation of the corporate debtor. Thus, the CoC members resolved to liquidate the corporate debtor and authorized Resolution Professional to file the instant application. Copy of the minutes of the 9th and 10th CoC meeting along with the e-voting results is annexed as Annexure- A-5.

11. That apropos the above, it was unanimously resolved by the CoC in the 10th CoC meeting by e-voting held from 07/05/2024 to 10/05/2024 to authorize the RP for filing an application for Liquidation under section 33 of the IBC,2016.

12. It is submitted that in the 10th CoC meeting, the CoC proposed the name of Mr. Soumitra Lahiri to be appointed as the Liquidator in the process. The resolution was approved by 93.73% votes in the e-voting process held in the 10th CoC meeting.

13. In view of above, the RP has prayed that the Corporate Debtor may be liquidated in accordance with Section 33(2) of the Insolvency and Bankruptcy Code, 2016 and the rules and Regulations framed thereunder and has filed the instant application being IA(IBC)(LIQ.)/15(KB)2024 under section 33(1) of the IBC seeking initiation of liquidation process against the Corporate Debtor.

14. We have considered the pleadings and perused records.

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 period. 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.

Â 17. In regard to appointing a Liquidator, Section 34(4) of the Code provides as under:-

(4) The Adjudicating Authority shall by order replace the resolution professional, if-

Â 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

Â b. The Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded [in writing

;or]

Â c. The resolution professional fails to submit written consent under sub-section (1)

17. We would also note a Circular No. Liq. 12011/214/2023-IBBI/840 dated 18/07/2023 issued by the 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 should be appointed from the panel list of

IBBI.

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

Â a. IA(IBC)/15(KB)2024 filed by the RP/Applicant of Manglam Fiscal Services 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;

19. In view of the circular cited above, we hereby appoint Mr. Vasudeo Agarwal, Reg. Â No. IBBI/IPA-001/IP-P00186/2017-18/10365 having e-mail

ID vdainfo@gmail.com, 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.

Â 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.

Â b. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., in "Business Standard"

(English) and "Ekdin" in Vernacular Language i.e. Bengali stating that the Corporate Debtor is in liquidation.

Â 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.

Â d. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as would be required by

the Liquidator for effectively managing the liquidation process of the Corporate Debtor.

Â 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 with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read

with its proviso.

Â 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.

Â 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.

Â 20. The application bearing IA(IBC)(LIQ.)/15 (KB)2024 shall stand disposed of in accordance with the above directions.

Â 21. CP(IB)/157(KB)2022 is to come up for filing of Periodical Progress Report on Â 03/03/2025.

22. IA(IBC)2111/(KB)/2023- This application has been filed by the RP under Section 19(2) of the Insolvency and Bankruptcy Code, 2016 read with

Rule 11 of the National Company Law Tribunal Rules, 2016, for the following reliefs:-

a. Respondent be directed to forthwith provide all the requisite documents/information and books of accounts with financial statement as

required by the applicant for proceeding with the CIRP of the Corporate Debtor.

Â 23. The Liquidator so appointed may file an application seeking appropriate relief under section 19(2) of the Code, if required.

Â 24. In view of the liberty granted, I.A.No. (IBC)2111/(KB)/2023 filed by the erstwhile RP has been disposed of.

Â 25. The Registry is directed to send e-mail copies of the order forthwith to all the parties, including the liquidator appointed as above, and their Ld.

Counsel for information and for taking necessary steps.

Â 26. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

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