
(2023) 02 NCLT CK 0045

In the National Company Law Tribunal

Case No : IA(IBC)/1421(KB)2022 in CP(IB)/324(KB)2019

Chandak Commercial Private Limited Vs BKS Leather Exports Private Limited ?

Date of Decision : 21-02-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 15, 33(1)(a), 33(2), 34(1)

Citation : (2023) 02 NCLT CK 0045

Hon'ble Judges : Bidisha Banerjee, Member (J); Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Vedika Sureka, Pratap Mukherjee, Bikash Kumar Sarkar

Final Decision : Disposed Of

Judgement

Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.
2. IA(IBC)/1421(KB)2022 is an application filed under section 33(1)(a) by the Resolution Professional ("RP") of BKS Leather Exports Private Limited, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit Vedika Sureka, Pratap Mukherjee, Bikash Kumar Sarkar duly affirmed by Mr. Pratap Mukherjee, the RP.
3. This Adjudicating authority, on a petition filed u/s. 9 of the Insolvency and Bankruptcy Code, 2016 (in short "IBC") by Chandak Commercial Private Limited, vide order Annexure "A" at pages 29 to 38 of the application dated 29/06/2022 in CP(IB)/324(KB)2019, had ordered initiation of CIRP against BKS Leather Exports Private Limited, the Corporate Debtor. Mr. Pratap Mukherjee 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, a Public Announcement Annexure "B" at pages 39 to 40 of the application in Form A was published on 01/07/2022 in "Financial Express" (English) and "Ekdin" (Bengali) inviting claims from the creditors, stipulating last date of submission of claims on 13/07/2022.

5. A Committee of Creditors (in short, "CoC") was duly constituted comprising of One Secured Financial Creditor, one Unsecured Financial Creditor and two Operational Creditors and the 1st meeting of the CoC was duly held on 26/07/2022. The CoC at its 1st meeting appointed the IRP as Resolution Professional. Copy of the minutes of the 1st meeting Annexure "C" at pages 41 to 48 of the application of the CoC dated 26/07/2022 form Annexure C.

6. At the 2nd CoC meeting Annexure "D" at pages 49 to 53 of the application held on 08/08/2022 wherein it was resolved to appoint registered valuers one in the category of Plant & Machinery and other in the category of Securities and Financial Assets as per regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, to determine the fair value and liquidation value of the Corporate Debtor. The Resolution Professional had appointed M/s. P.S. Roy & Associates for determining transactions u/s. 43, 45, 50 and 66 of the IBC.

7. At the 3rd CoC Meeting Annexure "E" at pages 54 to 64 of the application held on 29/09/2022, the RP apprised the CoC that he had received fresh claims from four Operational Creditors out of which he had admitted claims of three Operational Creditors up to 27/09/2022 in terms of regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, comprising of one Secured Financial Creditor, one Unsecured Financial Creditor, two Operational Creditors (Government Department) and three Operational Creditors (Other than Government Department)

8. At the said 3rd CoC meeting held on 29/09/2022, the members of the CoC upon due deliberation has passed the following resolution to liquidate the Corporate Debtor with more than 94% voting share, which is reproduced hereinbelow:

"RESOLVED THAT BKS Leather Exports Private Limited be recommended for liquidation under sub-section (2) of section 33 of the Insolvency and Bankruptcy Code, 2016 since the Committee of Creditors do not find any prospect of receiving resolution plans as the CD is a closed concern without any tangible asset (except two cars not in good condition), long outstanding book debts and non-existence of factory, no employee/worker in the payroll, while exercising their commercial wisdom."

9. It is pertinent to mention here that the 180 days CIRP period had expired on 25/12/2022 and there was no extension of the CIRP period. The Resolution Professional under regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has duly filed Compliance Certificate Annexure "H" at pages 136 to 139 of the application

10. in Form H.

11. The Resolution Professional in compliance of sub-section (1) of section 34 of the Insolvency and Bankruptcy Code, 2016 has duly submitted his Written

Consent Annexure "I" at pages 140 to 142 of the application along with Authorisation for Assignment to Act as Liquidator of the Corporate Debtor.

12. 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.

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

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

a. IA(IBC)/1421(KB)2022 filed by Mr. Pratap Mukherjee, RP of BKS Leather Exports 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. Pratap Mukherjee, RP [Reg. No. IBBI/IPA-001/IP-P02515/2021-2022/13851] of 27A, Bhattacharjee Para Road, Paschim Barisha, Kolkata 700063, having e-mail i.d. pratapmukherjee62@gmail.com, telephone nos. 9433169214 and 9674795648 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 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.

15. The application bearing IA(IBC)/1421(KB)2022 shall stand disposed of in accordance with the above directions.

16. CP(IB)/324(KB)2019 is to come up for filing of periodical progress report on 21/04/2023.

17. 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.

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