CPIB_590_BALAJI

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CP (IB) NO. 590/KB/2017

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)
Shri Madan B. Gosavi, Hon'ble Member (Judicial)

IN THE MATTER OF:

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

And

IN THE MATTER OF:

PREMIER ENCLAVE PRIVATE LIMITED, CIN – U70101WB1996PTC081485 a private limited Non-Government Company, limited by shares registered under the provisions of the Companies Act, 1956 and having its registered office at Om Towers, 14th Floor, Suite No.1405, 32, Chowringhee Road, Kolkata 700 071, West Bengal under the aforesaid jurisdiction.

.. Financial Creditor

And

IN THE MATTER OF:

BALAJI POLYSACKS PRIVATE LIMITED, CIN – U51109WB1995PTC075042 a limited Non-Government Company, limited by shares registered under the provisions of the Companies Act, 1956 and having its registered office at 4/1 Middleton Street, P.S. Shakespeare Sarani, Kolkata 700 071, in the state of West Bengal under the aforesaid jurisdiction.

.. Corporate Debtor

Counsels on Record:

Mr. Ranjan Mukherjee, Advocate	} For the Resolution Professional.
Mr. Yogesh Gupta	} Resolution Professional.
Mr. Avik Banerjee, Advocate	]
Mr. Rakesh Sankar, Advocate	] For Corporate Debtor.
Mr. Rajib Mullick, Advocate	]

Date of pronouncement of the order: 12th June 2018.

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ORDER

Per Shri Jinan K.R., Member (J).

1. This is an application filed by the Financial Creditor namely Premier Enclave Private Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short, I&B Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short, the Rules) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Corporate Debtor/ Balaji Polysacks Private Ltd.

2. Vide Order dated 14.12.2017 the application was admitted and one Mr. **Manmohan Jhawar** was appointed as Interim Resolution Professional (IRP). Upon appointment, the Interim Resolution Professional (IRP) initiated CIRP process. However, the CoC in the meeting held on 15.01.2018 did not confirm the appointment of the IRP and proposed Mr. **Yogesh Gupta** as the resolution professional. The period of 180 days of CIRP was expired on 11.06.2018. However, he could not have a resolution due to failure on the side of the corporate debtor and submitted his final report on 07.06.2018 proposing liquidation of the corporate debtor.

3. He submits that due to non-cooperation of the corporate debtor and its directors he was unable to carry out various statutory responsibilities entrusted to him and thereby failed in drawing information memorandum under section 29 of the Code and as a result of which no expression of interest document was prepared.

4. This is a case in which despite the Bench issued direction to the corporate debtor at the request of Ld. RP the corporate debtor did not furnish the relevant records to the RP. Though local district administration

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assistance was provided to the RP he was unable to have proper access to the registered office of the corporate debtor. Being unsuccessful in getting co operation from the corporate debtor he filed his report dated 4th June, 2018 submitting that the Committee of Creditors (CoC) taken a decision to proceed with liquidation process of the Corporate Debtor. The CIRP period of 180 days would expire on 11th June 2018.

5. The Ld. Resolution Professional submits that despite direction of the adjudicating authority to the Corporate Debtor to provide necessary support and cooperation, the Resolution Professional has not been given any support from the Corporate Debtor and despite written communication, the Corporate Debtor did not provide the documents and books of accounts of the corporate debtor and thereby could not discharge his duties and accordingly he proposed before the CoC to decide upon whether an application for extension of time for closure of CIRP to be made under section 12 of the Code. The CoC in its 5th meeting held on 29th May 2018 considered his proposal and decided with 98% vote share to apply for liquidation of the corporate debtor. Being found that the CoC taken a decision that there is no possibility of resolution of the corporate debtor, there is no other alternative other than to proceed with the liquidation process as laid down in Chapter III Part II of the Insolvency and Bankruptcy Code 2016. Therefore, we are inclined to pass an order requiring corporate debtor Balaji Polysacks Private Limited to be liquidated in the manner as laid down in Chapter III Part II of the Insolvency and Bankruptcy Code read with Section 33 (1) of the I&B Code 2016 upon the following directions:

ORDER

(i) Mr. Yogesh Gupta with address 256 Picnic Garden Road, Garden Towers, 8th Floor, Block-A, Kolkata 700 039 (e-mail id: yogeshgupta31@rediffmail.com) with IBBI Registration

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No.IBBI/IPA-001/IP-P00349/2017-18/10650 is appointed as the liquidator in CP (IB) No.590/KB/2017.

(ii) Mr. Yogesh Gupta is directed to issue public announcement that the Corporate Liquidator is a Liquidator in terms of Regulation 12 of Insolvency and Bankruptcy Regulation 2016.

(iii) The Registry is directed to communicate this order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi.

(iv) The Order of Moratorium passed under Section 14 of the I&B Code, 2016 shall cease to have effects and a fresh moratorium under Section 33 (5) shall commence.

(v) This order is deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33 (7) of I&B Code, 2016.

(vi) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of the Insolvency and Bankruptcy Code, 2016.

(vii) Upon proceeding with the liquidation, the Liquidator shall file a ***preliminary report*** as per regulation 5 read with Reg.13 of the IBBI(Liquidation) Regulations,2016 at the registry within 75 days from the liquidation commencement date and continue to file ***progress reports*** as per Reg.15(1) within 15 days after the end of the quarter in which he is appointed.

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(viii) The fee payable to the Liquidator shall form part of the liquidation cost as provided under Reg. 4(1) of the IBBI (Liquidation Process) Regulations,2016.

CP (IB) No.590/KB/2017 is disposed of accordingly.

In view disposal of C.P., CA (IB) No.460/KB/2018 is closed.

Copy of this order is to be sent to the Liquidator, financial creditor and corporate debtor for information and for taking necessary steps.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

Sd/-

(Madan B. Gosavi)
Member (J)

Sd/-

(Jinan K.R.)
Member (J)

Signed this day of 12th June, 2018.

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