

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CP (IB) No.109/KB/2019

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process 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;

In the Matter of:

United Bank of India, having its Head Office at 11, Hemanta Basu Sarani and having its Stressed Asset Management Branch 4, N.C. Dutta Sarani, 2nd Floor, Kolkata- 700001, West Bengal.

... Applicant/Financial Creditor

And

In the Matter of:

Adyama Rice Mill Private Limited, having its registered office at 29, Kalna Road (Badamtola), Post Office and District- Burdwan, West Bengal.

... Respondent/Corporate Debtor

Order Delivered on: 3rd February, 2020

Coram:

Jinan K.R., Hon'ble Member (Judicial)

Harish Chander Suri, Hon'ble Member (Technical)

For the RP : 1. Mr. Vikash Singh, Advocate
2. Mr. Balaknath Bhattacharyya, Advocate,
3. Mr. S.Dutta, Advocate

For Anup Josh : 1. Mr. Kuldip Mallik, Advocate,
2. Mr.Ajit Kesri, Advocate

ORDER

Jinan K.R., Hon'ble Member (Judicial)

1. United Bank of India - Financial Creditor filed this application under Sec.7 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code) read with Rule 4 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority)

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Rules, 2016 for initiation of corporate insolvency resolution process as against the Corporate Debtor/ Adyama Rice Mill Private Limited. Vide order dated 06.08.2019 the application was admitted by appointing Mr. Balaknath Bhattacharyya as the interim resolution professional (IRP) and his appointment was approved by the CoC convened on 28.08.2019 as the resolution professional (RP). He continued the process in accordance with the provisions of the Code and Regulations and submitted the final progress report on 28.01.2020 praying for passing an order for liquidation.

2. Upon accepting the appointment, the Interim Resolution Professional continued the process, issued publication in two Newspapers on 08/08/2019. The first Committee of Creditors meeting has been convened on 28.08.2019 and all together convened four meetings of the Committee of Creditors and in the 4th Meeting, the Committee of Creditors unanimously decided not to request further extension of the CIRP process for want of receiving EOI from any of the interested resolution applicant, and thereby recommended for passing an order for liquidation.

3. The Resolution Professional has submits that despite his earnest efforts in meeting, the Directors of the suspended Board of Corporate Debtor as well as by sending several email requesting them to handover the book of accounts and the balance sheets and relevant documents so as to enable the Resolution Professional to complete the CIRP as per the timeline and to appoint valuer for the valuation of the assets of the corporate debtor, the directors not co-operated till the date of filing the final progress report. According to him, despite the demand, the Directors of the Corporate Debtor only handed over financial statements for the three years from 2010 to 2013 and for the financial years 2017-18 and 2018-19 and all the records despite demand not handed over to him by

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the Directors of the Corporate Debtor. So also, the directions issued by the Adjudicating Authority to the Directors of the Corporate Debtor, also not obeyed by the directors. Submitted by the Ld.RP. Being CIRP period was expired on 1st Februry,2020 and no resolution plan is forthcoming from any of the interested parties we do not find any justifiable reasons not to pass an order for liquidation as prayed for by the RP.

4. Heard the learned Liquidator as well as learned counsel appearing for the suspended Board of Directors. The learned counsel appearing for the suspended Board of Directors objected the prayer for passing an order of liquidation without filing an interim application and serving a copy of such application to them. We are unable to agree with the submission on the side of the directors of the suspended board of the corporate debtor. Their objection is unsustainable as per section 33 (1) (a) of the Code. It is significant to note that due to the deliberate non-cooperation on the side of the Corporate Debtor, the Resolution Professional was not successful in getting any EOI from any one interested parties. The operation of the Adyama Rice Mill Private Limited of the Corporate Debtor seems to how stopped functioning from the year 2014 onwards.

5. In view of the above said position of law, we have no other alternative than to pass an order of liquidation under Section 33(1) (i) requiring the Corporate Debtor to be liquidated in the manner as laid down in chapter 3 of the IB Code. Accordingly, an order requiring the corporate debtor to be liquidated is passed upon the following directions:-

ORDERS

- i. In view of the facts that the Corporate Debtor has been ordered to be liquidated. Mr. Balaknath Bhattacharyya an Insolvency Professional who is holding IBBI registration No. IBBI/IPA-003/IP-N00096/2017-



18/10971 is appointed as the Liquidator and act in accordance with Rule 12 of Liquidation Process Regulation, 2016 and submit the preliminary Report as per Regulation 13 of the said Code. A written consent is to be submitted by him within 3 days of the receipt of this order.

- ii. The Registry is directed to communicate this order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India.
- iii. The order of Moratorium passed under section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- iv. This order shall be deemed to be a notice of discharge of the Officers, employees and the workmen of the Corporate Debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016.
- v. A copy of this order be sent to the Financial Creditor, Corporate Debtor and the Liquidator for taking necessary steps.
- vi. CP (IB) No.109/KB/2019 is disposed of as above.



Harish Chander Suri
Hon'ble Member (T)



(Jinan K.R.)
Hon'ble Member (J)

Signed on 3rd February, 2020

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IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CA(IB) No. 1330/KB/2019
CP (IB) No.109/KB/2019

In the matter of:

An application under section 19 of the Insolvency and Bankruptcy Code, 2016.

And

In the Matter of:

United Bank of India, having its Head Office at 11, Hemanta Basu Sarani and having its Stressed Asset Management Branch 4, N.C. Dutta Sarani, 2nd Floor, Kolkata- 700001, West Bengal.

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And

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Jinan K.R., Hon'ble Member (Judicial)
Harish Chander Suri, Hon'ble Member (Technical)

For the RP : 1. Mr. Vikash Singh, Advocate
2. Mr. Balaknath Bhattacharya, Advocate,
3. Mr. S.Dutta, Advocate
For Anup Josh : 1. Mr. Kuldip Mallik, Advocate,
2. Mr.Ajit Kesri, Advocate

ORDER

Jinan K.R., Hon'ble Member (Judicial)

1. This is an application filed under section 19 of the Insolvency and Bankruptcy Code, 2016 by the Resolution Professional, who was appointed in

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this case alleging that Directors of the suspended Board of Corporate Debtor were not cooperating with him, despite his personal request as well as by way of sending repeatedly emails. Upon filing this application, the Directors of the suspended Board of Corporate Debtor were directed to extend all assistance and cooperation to the IRP and to the RP as may be required by him in managing the affairs of the corporate debtor so as to have an uninterrupted corporate insolvency resolution process.

2. Despite directions, the Directors have not extended their assistance as required by the IRP and the RP. Books of accounts of the corporate debtor have also not been submitted so far to the RP. Upon repeated demands, what has been given is the copy of the financial statements for the period 2010-11, 2011-12 and 2012-13. Upon receipt of notice in this Interim application what the Directors have attempted to do till the date of final hearing of this application is to challenge the order of admission and the constitution of CoC by RP.

3. According to the Ld. counsel for the directors, the claim of the applicant United Bank of India / Financial Creditor is barred by Limitation and therefore admission of its claim and constitution of CoC with the applicant Bank is illegal and therefore the CIRP is to be stopped and this application is to be dismissed. He also submits that the directors have not received the mail allegedly sent by the RP to them. Whenever this case was taken up for hearing, the very attempt on the side of the directors was to reiterate the objections against the admission of the CP and the constitution of the CoC, and has never shown any readiness to co-operate with the RP by supplying the material/information as requested by the RP. Along with the reply, the directors produced the balance sheet prepared during the pendency of the CIRP by the Auditor of the Corporate Debtor for the financial years ending on 31st March, 2018 and 31st March, 2019. No explanation

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has also been offered for the late production of the same. In the meanwhile, 180 days of CIRP have expired on 1st February, 2020. For want of EOI and resolution plan from any of the interested parties to take over the assets of the Corporate Debtor the RP was compelled to submit his final progress report requesting this Adjudicating Authority to pass an order of liquidation. It is further submitted that COC has taken a decision not to ask for extension of CIRP period and has decided to liquidate the assets of the Corporate Debtor.

4. Even, at the juncture of consideration of the final progress report filed by the RP, there was strong objection on the side of the directors of the suspended board of Corporate Debtor, reiterating that the constitution of Committee of Creditors is illegal and on the date of filing the report, 180 days have not expired and therefore without filing an application no order of liquidation could be passed. It is significant to note here that as per the financial statement prepared for the year ending on 31st March, 2019, the Corporate Debtor has shown the long term borrowing availed from United Bank of India, the applicant herein, and the outstanding amount as per the financial statement is Rs.8,92,64,187/-. Having admitted the liability even after the admission of the CP, the objection by the erstwhile directors of the CD regarding the admission of the CP and constitution of the CoC is found devoid of any merit. Moreover, filing of an appeal challenging the order of admission has not so far been brought to our notice. The contentions raised on the side of the directors are frivolous and their attempt is to abuse the process of the law. Deliberate disobedience of the directions issued to the directors stands proved in the case in hand. This kind of attitude on the side of the Directors of the suspended Board of Corporate Debtor cannot be encouraged. Since CIRP period has already expired, no purpose would be served by continuing this IA. We are disposing of this application directing the directors Mr. Anup Jash

and Subodh Kumar Samant to pay cost of Rs.50.000/- each within one month of the date of this order. Awarding cost is just and proper in the peculiar circumstances in the case in hand.

5. In the result the C.A.(IB)No. 1330/2019 is disposed of directing the Directors Mr. Anup Jash and Subodh Kumar Samant to deposit Rs.50,000/- each in the ESCROW Account of NCLT Kolkata Bench maintained in SBI within one month from the date of receipt of the order. This amount when deposited can be utilized for the liquidation cost.
6. Free Copy of the order is to be sent to the Resolution Professional as well as the Directors of the suspended Board of Corporate Debtor.
7. The Company Petition being CA (IB) No.1330/KB/2019 is disposed of accordingly.
8. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.



(Harish Chander Suri)
Hon'ble Member (T)



(Jinan K.R.)
Hon'ble Member (J)

Signed on 3rd February, 2020

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