

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 231/KB/2019

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:

D K JAIN PROPERTIES PRIVATE LIMITED, U70101WB2006PTC109626, having its registered office at 9/12, Lal Bazar Street, 3rd Floor, Block-B, Room No. 17, Kolkata 700001, West Bengal.

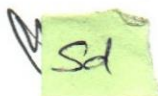
... Financial Creditor

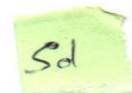
And

IN THE MATTER OF:

M/S. SARSWATI SALES PRIVATE LIMITED, U51909WB2008PTC130190, having its registered office at 6D, Elgin Road, Kolkata 700020.

... Corporate Debtor





**Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &
Shri Harish Chander Suri, Hon'ble Member (Technical)**

Counsel on Record:

1. MR. SHASHI AGARWAL, CA] Resolution Professional

Order pronounced on: 07/11/2019.

ORDER

Per Shri Harish Chander Suri, Hon'ble Member (T):

1. By way of orders passed on 24th June, 2019, this petition was directed to be admitted and Corporate Insolvency Resolution Process initiated against the Corporate Debtor M/s. Sarswati Sales Private Limited. As usual moratorium was ordered and appointment of Mr. Shashi Agarwal was made as Interim Resolution Professional to perform the duties assigned to the IRP/RP under the Code.

2. In his Progress Reports the IRP submitted public announcement in Form 'A' was published in two Newspapers at Kolkata on 27th June, 2019 and 1 (one) claim from Financial Creditor and 1 (One) claim from Operational Creditor was received on 20th July, 2019. The Committee of creditors was formed and information relating to Constitution of committee was filed with this Tribunal consisting of One Financial Creditor in compliance of Section 21 and other applicable provisions of the Code and Regulations 17 and other applicable Regulations of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) Regulations, 2016.





3. It is further submitted in the Progress Reports filed by the Resolution Professional that in spite of the fact that letters had been sent to the Directors of the Corporate Debtor for providing audited Annual Accounts and related financial informations/documents of the Corporate Debtor, Mr. Shambhu Nath Basak, the suspended director of the Corporate Debtor informed vide letter dated 16th July, 2019 that they have shifted the Registered Office of the Corporate Debtor and that the statutory records of the Corporate Debtors were not available, whereas in case of accounts computerized data were available, whereas physical books of accounts were not available and that till date no statutory records have been handed over by the suspended Directors of the Corporate Debtor.

4. It is also submitted that 2 (Two) Registered Valuers were appointed to submit their Valuation Reports. It is submitted that as on the date of CIRP the Corporate Debtor was not carrying on any business activities and, therefore, in the 2nd meeting of Committee of Creditors it was decided to issue Invitation for Expression of Interest in Form 'G' which was published in two Newspapers on 17th September, 2019, from interested and eligible Resolution Applicant to submit their Resolution Plans, but no request for Expression of Interest has been received.

5. It is submitted that no Resolution seems to be possible and the CoC has also consented in its meetings that the liquidation of the Corporate Debtor is the only option.

6. The R.P. has further submitted that there is no cash flow in the Company and circulated before the CoC the estimated Liquidation costs per month and for 6 months which shall be payable on actual basis as below:-

Particulars	PM	For 6 month
Liquidator Fee (including tax)	10,000 + % as per Regulation	60,000 + % as per Regulation
Public Announcement (not regular)	15,000	15,000
Electricity	2,000	12,000
Legal Fees	-	50,000
Employee Salary	6,000	30,000
Audit Fee	-	15,000
Miscellaneous Expenses (Filing Fee etc.)	-	30,000
	33,000	2,12,000

7. It is submitted that the CoC in one of its meetings has approved the name of Mr. Shashi Agarwal, the R.P. to act and perform as the Liquidator of the Company unanimously. The CoC has also approved the Liquidation costs and fee of the Liquidator etc.

8. In view of the averments made in the final progress report filed by the R.P. on 31st October, 2019, we deem it fit and proper in these circumstances, to pass an order of Liquidation of the Corporate Debtor as

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submitted by the Resolution Professional/Liquidator, particularly for the reasons that there is no cash flow in the Company and there is no potential Resolution Applicant to take over or submit its Resolution Plan, and when the CoC has already given its approval for the Corporate Debtor to be liquidated.

9. We, therefore, consider it proper, without any reservations to the contrary, to pass an order of **liquidation** under Section 33(2) of the Code upon the following directions.

ORDERS

- (i) In view of the facts that the Corporate Debtor has been ordered to be liquidated, **Mr. Shashi Agarwal**, an Insolvency Professional who is holding IBBI registration No. **IBBI/IPA-001/IP-P00470/2017-18/10813** 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.
- (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.

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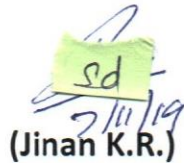
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- (iii) The order of moratorium passed under section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh moratorium u/s 33(5) of the Insolvency and Bankruptcy Code shall commence.
- (iv) This order shall be 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) **C.P. (IB) No. 231/KB/2019 is disposed of** as above.
- (vii) Urgent certified copy of this order, if applied for, be issued to the parties upon compliance of all requisite formalities.



(Harish Chander Suri)

Member (T)



(Jinan K.R.)

Member (J)

Signed on this, the 7th day of November, 2019.

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