

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CA(IB) No. 528/KB/2019
CP(IB) No. 990/KB/2018

Coram: Shri Jinan K.R., Hon'ble Member (J).

Name of the Company	Section
Ankit Kumar – vs – Advance Powerinfra Tech Limited	33(1)(a)

ORDER

This Tribunal delivered its judgment in the above-captioned case vide Order dated 06.05.2019. On 18th June, 2019, the Ld. Counsel for the petitioner mentioned that a typographical error has crept in the above said order which should be corrected as follows:-

1. At page No. 1 M/s. Ankit Kumar - Resolution Professional should be corrected as **MR. ANKIT KUMAR – Operational Creditor.**
2. Also at page 1 Counsels present Sri Balaknath Bhattacharyya - For Operational Creditor should be corrected as **SRI BALAKNATH BHATTACHARYYA – Resolution Professional.**

Amended order is to be uploaded forthwith

The above rectification of the order has been made in terms of the power conferred upon the Tribunal under Rule 154 of the NCLT Rules, 2016.


(Jinan K.R.)
Member (J)

Signed on this, the 18th day of June, 2019.

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IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH

KOLKATA

CA (IB) No.528/KB/2019

CP (IB) No.990/KB/2018

In the matter of:

An application under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016;

And

In the matter of:

MR. ANKIT KUMAR

]

Operational Creditor

And

In the matter of:

M/S.ADVANCE POWERINFRA TECH LIMITED, having its registered office at 4, Chandni Chowk Street, Kolkata - 700072

..... Respondent / Corporate Debtor

Order Delivered on: 06th May, 2019

Amended on 18.06.2019

Coram: Shri Jinan K.R. (Member (Judicial))



Counsels present:

SRI BALAKNATH BHATTACHARYYA] Resolution Professional

AMENDED ORDER

Per Jinan K.R., Member (Judicial)

1. This is an application filed by the Resolution Professional u/s 33 (1)(a) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation.
2. It is submitted that despite publication in Newspaper nobody turned up submitting "Expression of Interest" (EOI) so as to participate in the Resolution Process and thereby in the Meeting held on 10th January, 2019 the Committee of Creditors (CoC) recommended for initiating process for liquidation of the Corporate Debtor Company and accordingly he filed this application.
3. One Mr. Ankit Kumar, a Professional filed this application u/s 9 of the Insolvency & Bankruptcy Code, 2016 claiming his professional fee to the tune of Rs. 6,00,000/- (Rupees Six Lacs Only).
4. The Corporate Debtor has entered appearance and admitted the default thereby this application was admitted vide order dated 27th September, 2018 by appointing the Interim Resolution Professional

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Mr. Balaknath Bhattacharyya, whose name has been proposed by the Operational Creditor.

5. Upon appointing the Interim Resolution Professional he issued publication in the Newspaper. However, no details seen furnished in his First Progress Report as well as in the application about the name of the Newspaper in which he issued publication. The photo copies of the Newspaper also does not reveal the name of the News paper. So whether the publications were made in the leading News

paper having wide circulation in the area where the corporate debtor company is situated, no data available in the case record.

6. According to the Ld. Resolution Professional no claimant other than Operational Creditor come forward and other than the Operational Creditor there is no other claimant. According to him since no name has been submitted up to the last date of submission of claim as per Section 15 of the Insolvency & Bankruptcy Code, 2016 he comes to a conclusion that there are no other claimants. Therefore, he constituted CoC consist of the Operational Creditor itself. After constitution of the CoC and after appointing Valuers he conducted a Meeting of the CoC. Expression of Interest has been called for on 14.12.2018. In which Newspaper he has published the EOI also is uncertain from the available records. He only attempted to issue publication once. According to him since no Expression of Interest for submission of Resolution Plan was received up to the last date of

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submission of EOI as per the publication, he called for the meeting of CoC and the meeting was held on 10.01.2019. In the said meeting the CoC has recommended to initiate process for liquidation of the Company and hence he filed this application.

7. Heard the Ld.Resolution Professional. None appeared on the side of the Operational Creditor. Perused the records.
8. Mr. Ankit Kumar/Operational Creditor filed this application u/s 9 for initiating CIRP process as against Advance Power Infra Limited. Vide order dated 27th September, 2018 the application filed by Mr. Ankit Kumar was admitted and the Resolution Professional was appointed as Interim Resolution Professional and his appointment was confirmed and he continued the process as the resolution professional (RP).
9. As per the report filed by the RP and on perusal of the Progress Report it is understood that the Corporate Debtor is indebted to Statutory Authorities like Income Tax, Central Sales Tax, West Bengal VAT, Central Excise etc. to the tune of Rs. 10.56 crores and none of the Statutory Authorities seems to have submitted its claims to the Resolution Professional. According to the RP none other than the operational creditor filed any claim with him. The Report also mentioned about certain preferential transactions disposing the immovable properties as well as the movable property of the Corporate Debtor Company immediately before the date of filing of this application. This application seen filed on 10.07.2018.

Sd/

10. As per the report of Resolution Professional a freehold land of book value of Rs.378,51.482/- and machinery worth Rs. 66,86,878/p as shown in the Balance Sheet of 31.03.2018 was disposed off by the corporate debtor at the book value. No data available in the record as to when exactly the disposal took place. As per the 1st Progress Report dated 20th March, 2019 itself he has taken note of some transactions appears to be preferential by the Corporate Debtor. Though he observed that the transactions reflected in the Balance Sheet requires close scrutiny and follow up what action has been initiated by him is not mentioned in the report. He also has not explained the reason for not taking any action at the time of hearing the application.
11. In the meanwhile 180 days of CIRP period was expired on 25th March, 2019 and this application seen filed on 15th March, 2019 i.e. before the expiry of the CIRP period and this application came up for consideration on 29th March, 2019. As per the Balance Sheet, according to the Resolution Professional the assets seems to have been disposed off by the Corporate Debtor prior to initiation of the CIRP. The applicant/operational creditor being the professional of Corporate Debtor, filed this application knowingly well that there is nothing to be resolved with the Corporate Debtor also cannot be ruled out from the peculiar circumstances brought out in the case in hand.

12. In the above said circumstances an attempt to defraud any creditors of the Corporate Debtor by the applicant joins hand with the applicant is also cannot be ruled out. It is also understood that the corporate debtor disposed of the immovable and movable properties and withdrawn the money available with the Bank prior to the filing of this CP. Whether the Corporate Debtor has undertaken fraudulent trading within the meaning of Section 66 of the Code also seen not explored by the Resolution professional in the case in hand. Though he has observed that there are certain preferential transactions carried on by the Corporate Debtor no application also seems to have filed u/s 44, 45 & 46 of the Code by him.
13. In view of the above said circumstances, and there is no other alternative other than to pass an order of liquidation requiring the Corporate Debtor to be liquidated in the manner as laid down in Section 33, read with Section (1)(a) of the Insolvency and Bankruptcy Code, 2016 this application deserve consideration.
14. An overall evaluation of the work undertaken by the Resolution Professional, and considering the complexity of the liquidation process to be undertaken by a liquidator, it appears to me that it is not fair and just to continue the Liquidation process by the very same RP. Accordingly, one another Liquidator to be chosen from the list published by the IBBI is to be appointed. Therefore, even if the Resolution Professional has given consent, I am of the view that

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the Resolution Professional cannot be asked to continue as the Liquidator. Therefore, **Sri Sanjay Kumar Sarkar, 182 N.S.C. Bose Road, Kolkata – 700040, e-mail: sanjaysarkar.sks@gmail.com, Mobile No. 9331001321** is appointed as the Liquidator subject to submission of his written consent. In view of the above said discussion the application is allowed upon the following among orders:-

AMENDED ORDER

- (i) **Shri Sanjay Kumar Sarkar** is appointed as the Liquidator in **CP (IB) No. 990/KB/2018**
- (ii) Sri Sanjay Kumar Sarkar is directed to issue public announcement in One of the leading English Newspaper as well as in One Vernacular Newspaper having wide circulation where in the registered office of the Corporate Debtor is situated as per Section 33 (1) (b) (ii) of the Code read with Reg. 12 (1) of IBBI (Liquidation Process) Regulations, 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.

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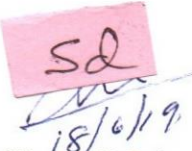
- (v) This order is deemed to be a notice of discharge to the Officers, employees and the workmen of the Corporate Debtor as per Section 33 (7) of I & B Code, 2016.
- (vi) The Liquidator is directed to proceed with the process of Liquidation in a manner laid down in Chapter III of the Insolvency and Bankruptcy Code, 2016.
- (vii) Upon proceeding with the liquidation the Liquidator shall file a preliminary report as per Regulation 5 read with Regulation 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 Regulation 15(1) within 15 days after the end of the quarter in which he is appointed.
- (viii) The fee payable to the Liquidator shall form part of the Liquidation cost as provided under Regulation 4 (1) of the IBBI (Liquidation Process) Regulations, 2016.

15. The CA (IB) No. **CA (IB) No.528/KB/2019** is disposed of accordingly.

16. Copy of this order is to be sent to the Liquidator, Operational Creditor and the Corporate Debtor for information and for taking necessary steps.

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17. Urgent certified copy of this order, if applied for, be supplied to the parties, subject to compliance with of all requisite formalities
18. List it on **24/06/2019** for filing preliminary report .


18/6/19
(Jinan K.R.)
Member(J)

Signed on this, the 18th day of June, 2019.

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