National Company Law Tribunal **ITEM NO : 115**

Allahabad Bench

CA No. 243/2018,
CA No. 265/2018, CA No. 281/2018 in
C P No.(IB)124/ ALD/2018

ATTENDENCE - CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.02.2019

NAME OF THE COMPANY: The Jammu and Kashmir Bank Ltd Vs. Kushal International Ltd.

SECTION OF I & B CODE: 7 &33 (1)(a), 60(5) IBC

Sl. NO.	Name	Designation	Representation	Signature
1.	Bablu Jain	PCS	RP	[signature]
2.				

CA NO. 243/2018, CA NO. 265/2018, CA NO. 281/2018 IN CP NO. (IB) 124/ALD/2018

Common order passed in CA 265/18, 243/18 and CA 281/18 (vide separate common order).

CA 265/18 is allowed passing order for liquidation of the Corporate Debtor (Kushal International Ltd) under Section 33 (2) of the I & B Code, 2016.

Liquidator after appointment shall issue public announcement stating that Corporate Debtor is in liquidation.

Registry is also directed to send copy of the order to the ROC where Corporate Debtor is registered.

This authority of the considered view that in the interest of smooth functioning of the liquidation process it is necessary to replace the RP by another Insolvency Professional to act as Liquidator.

CA 243/18 is dismissed.

CA 281/18 is dismissed in view of the liquidation order passed.

List the CA 265/18 for hearing on appointment of Liquidator on 11th March, 2019.

Dated: 28.02.2019

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SAROJ RAJWARE,
MEMBER (T)

Sd

BIKKI RAVEENDRA BABU
MEMBER (J)

Typed by:
Vidit Kumar Pandey

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

CA NO.265/2018
IN
Company Petition No.(IB)124/ALD/2018
(Under Section 33(1)(a) read with section 33(2) of Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

MR. PANKAJ KHETAN (RP)

...............APPLICANT

VERSUS

KUSHAL INTERNATIONAL LIMITED

.... RESPONDENT

AND

CA NO.243/2018
IN
Company Petition No.(IB)124/ALD/2018
(Under Section 60(5) and Section 75 of Insolvency and Bankruptcy Code, 2016, read with rule 11 of the NCLT Rules, 2016)

IN THE MATTER OF:

KUSHAL INTERNATIONAL LIMITED
THROUGH EX. DIRECTOR

.... APPLICANT/ CORPORATE DEBTOR

VERSUS

MR. PANKAJ KHETAN (RP)

.... RESPONDENT

AND

CA NO.281/2018
IN
Company Petition No.(IB)124/ALD/2018
(Under Section 60(5) of Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

KUSHAL INTERNATIONAL LIMITED
THROUGH EX. DIRECTOR

.... APPLICANT/ CORPORATE DEBTOR

VERSUS

MR. PANKAJ KHETAN (RP)

.... RESPONDENT

Sd/- Sd/-

ORDER DELIVERED ON 28.02.2019

CORAM : Mr. Bikki Raveendra Babu, Hon'ble Member (Judicial)
: Ms. Saroj Rajware, Hon'ble Member (Technical)

For the Resolution Professional :
Sh. Ashish Srivastava, Adv. along with
Ms. Babita Jain, PCS.

For the Kushal International Ltd. :
Sh. Mohit Chaudhary, Adv. along with
Ms. Garima Sharma, Adv.

PER SE : Mr. Bikki Raveendra Babu, Hon'ble Member (Judicial)

ORDER

1. The application (CA No.265/2018) is filed by the Resolution Professional (RP) U/s 33(1)(a) read with section 33(2) of the Insolvency & Bankruptcy Code, 2016 seeking order for liquidation of the Kushal International Ltd. (hereinafter referred to as the Corporate Debtor).

2. The application (CA No.243/2018) is filed by the Kushal International Ltd. (Corporate Debtor) seeking stay of Corporate Insolvency Resolution Process (CIRP) proceedings under Rule 11 of the NCLT Rules, 2016 and for a direction to the parties to reconcile and settle accounts and to order enquiry into the loan transaction between Corporate Debtor and Financial Creditor and declare the said transaction to be an extortionate credit transaction in terms of Section 50 read with section 51 of the I & B Code, 2016 and for initiation of proceedings against the Financial Creditor under Section 75 of the I & B Code, 2016 for furnishing false information and/ or omission of material facts.

3. The application (CA No.281/2018) is filed by Kushal International Ltd. (Corporate Debtor) seeking removal of RP and for appointment of a new RP to conduct the CIRP proceedings properly.

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4. Jammu & Kashmir Bank Ltd. as Financial Creditor triggered CIRP in respect of KIL U/s 7 of the I & B Code. This Adjudicating Authority by its order dated 08.05.2018 commenced the CIRP in respect of KIL by appointing IRP. The following are the sequence of events that took place during CIRP period :-

DATE	PARTICULARS
08.05.2018	**Date of Order. Appointment as Interim Resolution Professional by NCLT in C.P. No.(IB)124/ALD/2018**
09.05.2018	Sent the Intimation Letter regarding initiation of CIRP of Corporate Debtor to RoC, Kanpur, Suspended Director, Statutory Auditor of CD and J& K Bank (Financial Creditor)
10.05.2018	Public Announcement in Form A in Amar Ujala (Hindi) and The Statesman (English) having circulation in Meerut and Saharanpur Area. The last date fixed for receiving claims is **21.05.2018**
12.05.2018	IRP with his team visited the Food Park and Cold Storage unit of Corporate Debtor and took the possession and deployed his 4 security persons The possession was duly photographed and video graphed.
14.05.2018	visited the Registered Office of the Company and found that at the address no such office exist. Address provided was the house of the Mr. Karanveer Singh, Director of CD
17.05.2018	Received Balance Sheet as at 31.03.2015, 31.03.2016 and 31.03.2017 from Mr. Ashish Parashar on email
18.05.2018	Received Claims from J&K Bank in form C along with complete Annexure.
19.05.2018	1. Received Details from Mr. Parashar i.e. Bank Accounts Details of CD having account in PNB Beharigarh Branch, State Bank of Patiala. 2. Verified the claim as received from J&K Bank.
21.05.2018	Sent intimation Letter to PNB, Behari Garh Branch and State Bank of Patiala regarding the initiation of CIRP.
22.05.2018	Since only one claim has been received formed a committee of Creditors comprising only one FC.
24.05.2018	Sent intimation Letter to Income Tax Department and Bank of Baroda, Chhutmalpur, Saharanpur Branch regarding Initiation of CIRP.
25.05.2018	**The Progress Report from 08.05.2018 to 22.05.2018 is filed and taken on record by the NCLT and next date fixed by the tribunal is 13.06.2018.**
26.05.2018	Wrote a mail to Mr. Vikas Sharma, Mr. Ashish Parashar and Devendra Garg, requested them to provide following documents: a) Audited Balance Sheet as on 31.03.2018 along with the books of accounts for the last 3 Financial Years; b) Statement of Affairs of the Company as on 08.05.2018; c) Bank Statement of the CD of all bank accounts as mentioned in the balance sheet as at 31.03.2017; d) Details of Assets of the CD as mentioned in the balance sheet as at

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	31.03.2017; e) Details of Lands along with Khasra No. and demarcation map of the concerned Patwari. f) Details of employees as on date because at the time of visit of Registered office of the Company on 14.05.2018, there was no office running in that premises; g) Details and nature of Transactions made by the CD as per the balance sheet as at 31.03.2017, the investments in equity shares of M/s Barnawa Agro Industries Ltd has been shown in the tune of Rs. 1,87,19,480/- and Long Term Loan & Advances of Rs. 48,32,857/- has also been shown; h) All the statutory registers maintained by the CD as per the provisions of CA, 2013 including Minute Book as on the date of Initiation of CIRP i.e. 08.05.2018; i) List of Cases under litigation which were filed by the CD or filed against the CD; and j) Status of Car and Truck as they are showing in the balance Sheet as at 31.03.2017 and CD is required to handover the possession of said vehicles to IRP. We requested the CD to provide aforementioned Information/ documents within next 3 days i.e. by 29.05.2018.
29.05.2018	Issued Notice for First Meeting of CoC to be held on 05.06.2018 at 04.00 P.M. at J&K Bank Limited, Zonal Office, Delhi (North), Plot No. 132-134, Sector-44, Gurgaon-122001, Haryana.
05.06.2018	Convene First Meeting of Committee of Creditors (COC) as per Agenda items mentioned in the Notice of COC
07.06.2018	Prepared and circulated the minutes of First COC to all the members present and attended the meeting and no objection has been raised by the members of COC on the minutes till date.
09.06.2018	Wrote a mail to Mr. Karan Vir Singh (Suspended Director of the Corporate Debtor) requesting him to provide the necessary documents in order to continue with the CIRP Process but till date no document has been provided by him.
11.06.2018	Wrote a mail to Manager of Bank of Baroda, Chhutmalpur Branch, requesting them to provide us the statement of Accounts of the Corporate Debtor from 01.04.2015.
12.06.2018	1. Filed Proceedings of 1st COC with NCLT. 2. Filed application u/s 19(2) and 19(3) IBC, 2016 for issuance of necessary Directions to the Personnel of the Respondent to comply with the instructions of the Applicant.
13.06.2018	**Matter was taken and next date fixed for hearing is 04th July, 2018.**
18.06.2018	Issued Notice of Second Meeting of COC to be held on 05.06.2018 at 04.00 P.M. at J&K Bank Limited, Zonal Office, Delhi (North), Plot No. 132-134, Sector-44, Gurgaon-122001, Haryana to Financial Creditor, Suspended Directors, and Special Invitee: *CA Devendra Garg, Statutory Auditor and Mr. Ashish Parashar, Manager of Corporate Debtor*
19.06.2018	Received bank statement from Bank of Baroda, Chhutmalpur Branch, Dehradun.
25.06.2018	Second meeting of COC was adjourn due to the lack of the quorum and the adjourned meeting was rescheduled to be held on next day i.e. Tuesday at the same place and same time.

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25.06.2018 - 26.06.2018	1. Received E-mail from Mr. Ashish Prashar, stating that he (Mr. Prashar) is neither the part of Committee of Creditors nor the director of the Corporate Debtor. 2. Sent reply to Mr. Ashish Prashar that Resolution Professional has given the notice of the second meeting of COC to Mr. Prashar as Special Invitee because he is the manager of the company holding all data of Corporate Debtor and balance sheet of the Corporate Debtor for the FY 2016-17 was sent by him. 3. Received Email from Mr. Ashish Prashar stating that he is not working as manager of the Corporate Debtor and not holding any data of the Company but he clearly mentioned in the mail that he is working as Financial Advisor of the Company. Mr. Parashar further stated in his mail that he is not bind to assist the Resolution Professional and for assistance Resolution Professional is required to pay his fee. 4. In pursuant to the Email received from Mr. Ashish Prashar, Resolution Professional has sent the Reply stating that on one hand Mr. Ashish Prashar is saying that he is not the employee of the Company but on the other hand he has filed an application with this Hon'ble Tribunal under Rule 49(2) of NCLT Rules, for quashing the order passed by this Hon'ble Tribunal on 08.05.2018 in the capacity of the Manager. Resolution Professional further stated that in the Board Resolution dated 16.03.2018 attached with the Application Which the Jammu and Kashmir Bank (Financial Creditor) received on 07.06.2018, Members of the Board has authorized **Mr. Ashish Prashar, Manager of the Company** to file the application with this Hon'ble Tribunal under Rule 49(2) of NCLT Rules and with that application Mr. Parashar also filed an affidavit on Oath representing himself as Manager. 5. Received a mail from Mr. Ashish Parashar, stating that he is neither the employee of the company nor he holds any data of the company but he has **ONLY** filed the application with the NCLT, Allahabad Bench under Rule 49(2) of NCLT Rules in the capacity of the Manager and further he has no responsibility as employee towards the Company.
26.06.2018	Convene and hold Second Meeting of the Committee of Creditors as per Agenda item mentioned in the Notice.
28.06.2018	1. Prepared and circulated the minutes of Second Meeting COC to all the members present and attended the meeting and no objection has been raised by the members of COC on the minutes till date. 2. Supplementary affidavit filed with NCLT
30.06.2018	Complaint filed against CA Devendra Garg, Statutory Auditor and PCS Anju Bansal for wrong certification of Form AOC-4 for the F.Y. 2015-16
03.07.2018	1. Filed Progress Report from 05.06.2018 till 29.06.2018 with NCLT 2. Filed an application with NCLT u/s 19 (2) & (3) of the Code, 2016 for issuance of necessary directions to the personnel of the Respondent to comply with the instructions of the Applicant and/ or to provide the requisite information to the applicant in discharging his duties as a Resolution Professional under the code, along with the Affidavit in support thereof.
04.07.2018	**1. NCLT passed an order directing the suspended Directors and Statutory Auditor to fully co-operate with the RP and also taken on Record Second Progress Report upto 29.06.2018. Also the appointment as Resolution Professional approved by NCLT.** **2.** sent a mail informing IBBI and ICSI: **a)** An Application is filed with the NCLT U/s 19(2) & (3). **b)** Minutes of Second Meeting of Committee of Creditors and Progress Report till 29.06.2018 filed with NCLT
09.07.2018	Sent mail to suspended Directors of the Corporate Debtor, CA Devendra Garg (Statutory Director) and Mr. Ashish Parasher (Manager) of the Corporate

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	Debtor informing them about the order dated 04.07.2018 passed by NCLT
10.07.2018	1. Filed an application with NCLT for necessary amendment in order passed on 04.07. 2018 for including the name of Mr. Ashish Parashar, Manager and CA Devender Garg, Statutory Auditor of the Corporate Debtor. 2. Letters are sent to the Sub-Divisional Magistrate, Tehsil Sadar, Behat Nakur, Rampur Maniharan, Deoband of district Saharanpur requesting them to provide us with the details of land owned in the name of Corporate Debtor M/s Kushal International Limited.
16.07.2018	**NCLT amending its previous order passed on 04.07.2018 issued directions to Sh. Ashish Parasher, Manager and CA Devendra Garg (Statutory Auditor) of the Corporate Debtor.**
18.07.2018	1. Sent mail to suspended Directors of the Corporate Debtor, CA Devendra Garg (Statutory Auditor), Mr. Ashish Parasher (Manager) informing them about the amended order of NCLT. 2. Sent a WhatsApp to Mr. Ashish Parasher informing him about the order passed by the Hon'ble Tribunal and requesting him to provide all information and data of the Corporate Debtor within next 7 days.
23.07.2018	1. Received a mail from Mr. Ashish Parashar informing that he do not wish to contest the directions issued by the Hon'ble Tribunal but is ready to co-operate with the Resolution Professional by providing the following documents related to the Corporate Debtor: a) Balance Sheet 2016 & 2017. b) ITR & Computation 2016 & 2017. c) List of Shareholder of the Corporate Debtor. d) Valuation Report of the Corporate Debtor by valuer approved by J&K Bank. e) Permission of Commissioner for purchase of land. f) Order of Commissioner dated 11-08-2018 g) Bank Statement of Bank of Baroda and Punjab National Bank. h) List of Trade Payables (2017) i) Donation Deed executed in favour of UPSEB adjoining the site He also informed us that he has discontinued rendering his service to the Directors of the Corporate Debtor w.e.f. 15.06.2018. 2. Received a mail from Mr. Karan Vir Singh assuring for full co-operation to the Resolution Professional to settle dues of the Financial Creditor and resume the business & operations of the Corporate Debtor. He further wrote that he attached the following documents: a. Balance Sheet, Statement of Affairs & ITR of the Corporate Debtor (2016 & 2017). b. Bank Statements of Bank of Baroda and PNB. c. Details of Assets. d. Map and Khasra No. of the landed Property (Patwari certificate is taking some time as the land is very huge) e. Details of Employees. f. Details of liabilities. g. List of cases under Litigation. Also that the Balance Sheet of 2018 is pending with the Statutory Auditor for signature. But the attachments were not attached fully.
24.07.2018	Filed Progress Report with NCLT from 30.06.2018 to 23.07.2018

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26.07.2018	1. Mr. Karan Vir Singh in his reply only provided us with: a) Layout along with the Khasra no. of Shivalik Food Park b) Details of long term loans and Advances c) Depreciation chart of 2017 And he asked for 2 more weeks to provide the rest of the information He further said that the List of employees will be sent shortly. On the point related to the investment made in Barnawa Agro Industry Ltd he said, that the investment was made in the year 2006 and is in the form of shares, this cannot be returned on urgent basis. 2. Mr. Pankaj Khetan in his reply to the mail sent by CA Devendra Garg, Statutory auditor of the Corporate Debtor said that information provided by him is the same. He further requested him to provide the Book
27.07.2018	**NCLT passed an order directing the Resolution Professional to take necessary actions if the desired and the required information has not been provided by the Management of the Corporate Debtor within next 7 days.**
31.07.2018	Mr. Pankaj Khetan in its reply sent to Mr. Karan Vir Singh warned him along with Mr. Ashish Parasher (Manager) and CA Devendra Garg (Statutory Auditor) regarding the initiation of the Contempt of Court proceedings if required information is not provided within 7 days. As whatever information provided is of very little help. He further asserted to provide the following information:
02.08.2018	1. Issued Notice along with Agenda of 3rd Meeting of Committee of Creditors. 2. Received reply from SDM Sadar, Saharanpur, Uttar Pradesh explaining the reason being non- availability of Khasra no. for not providing any information.
03.08.2018	1. Received an email from Mr. Karan Vir Singh requesting for rescheduling of the 3rd Meeting of COC as due to "Kawar Mela" he will be unable to attend the Meeting. Also that List of Employee and worker is attached. He also explained about the Trade payables shown in the Balance sheet 2. In the reply Mr. Pankaj Khetan explained as to why the rest of the information provided by him is of no use including the valuation Report. 3. On the request made by the Mr. Karan Vir Singh, Third Meeting of Committee of Creditors to be now held on 13.08.2018 at same time and place.
06.08.2018	Received a mail from Mr. Karan Vir Singh providing the list of employees & workers and giving clarification on various points including the loans and advances, trade payables Further Mr. Karan Vir Singh has requested for Four weeks time in order to provide all information as desired by the RP. He stated that Statutory Records including Minutes Book, Books of Accounts etc. are with him but he needs time to complete them and also for the RoC filling for the FY 2016-17 He also informed that he has filed an Application with the Hon'ble NCLT, Allahabad to grant some time.
09.08.2018	In reply to the mail received Mr. Pankaj Khetan strictly refused to grant any extra time as proceeding under IBC, 2016 is time bound and already 92 days has passed.

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	He further asked clarification on the amount of Trade Payables shown in Balance Sheet as at 31.03.2017. Also that the documents pertaining to the transfer of car in the name of Mr. Karan Vir Singh in May 2017 in lieu of the loan given to the Company of Rs.47,03,422/- to be showed to him as it will come u/s 43 as Preferential Transactions. He further asserted to file application for non- compliance of the order of the Hon'ble NCLT.
11.08.2018	Received a reply from Mr. Karan Vir Singh stating that the company has filed an application with NCLT for providing sometime to arrange remaining documents. Also that the Company is in final stage of arranging funds to be paid to the only Financial Creditor (J&K Bank).
13.08.2018	Convene Third Meeting of Committee of Creditors (CoC) as per Agenda items mentioned in the Notice of COC.
14.08.2018	Prepared and Circulated the minutes of Third Meeting of Committee of Creditors to the members present.
16.08.2018	Received tally data for the FY 2017-18 from CA Devendra Garg Also in his e-mail has accepted his negligence in the preparation of Consolidated Balance Sheet of Kushal International Ltd.
20.08.2018	Received reply from ICAI and ICSI in context of the complaint initiated against CA Devendra Garg and PCS Anju Bansal respectively demanding Rs. 2950/- and Rs2500/- respectively in order to initiate the procedure.
23.08.2018	Filed 4 Applications with NCLT: 1. Application u/s 60 (5) (b) & (c), IBC for attaching the property of m/s. Barnawa agro industries ltd. which is the subsidiary of the corporate debtor, m/s. Kushal international limited. 2. Application u/s 60 (5) &70 (1) (a), (b) and (c) IBC, for granting punishment to the officers of corporate debtor for not disclosing to the resolution professional all the details of property of the corporate debtor/ or does not deliver all or part of the property of the corporate debtor in his control or custody and which he is required to deliver /or does not deliver all books and papers in his control or custody belonging to the corporate debtor and which he is required to deliver. 3. Application u/s 19(2) and 19(3) read with section 25 (1) & (2) (a) of IBC, 2016 and regulation 30 of IBBI (CIRP) Regulations, 2016 for issuance of necessary directions to the SDM of tehsil Sadar, Behat, Nakur, Rampur Maniharan and Deoband of district Saharanpur to comply with the instructions of the applicant and/or to provide the requisite information to the applicant in discharging his duties as a resolution professional under the code. 4. Contempt petition u/s 12(5) of the contempt of court act 1971, r/w section 425 of the companies act, 2013 for initiating contempt proceedings against the officers of CD for non compliance of the order dated 04.07.2018 & 16.07.2018 passed by the NCLT. **Matter was taken up and NDOH: 18.09.2018** Also filed Progress Report with NCLT from 23.07.2018 to 20.08.2018.
24.08.2018	Sent a mail to J&K Bank informing them about the order passed by NCLT dated 23.08.2018

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30.08.2018	Had a telephonic conversation with Mr. Karanvir Singh regarding the documents and filing of Form DIR-3KYC as the last date of filing of the said forms was 31.08.2018.
03.09.2018	Had a telephonic conversation with the Mr. Karanvir Singh and reminded him that the last date of filing of Form DIR-3 KYC has been extended by the Ministry of Corporate Affairs by 15.09.2018 and after 15.09.2018 if Director has failed to file the said form then his DIN shall be deactivated by the MCA and for renewal of deactivated DIN director needs to file Form DIR-3KYC with late fee of Rs. 5,000/-.
09.09.2018	Received a reply of the applications, from Mr. Karanvir Singh, already filed on 22.08.2018.
14.09.2018	In compliance with the Directions as issued by Hon'ble NCLT, filed a fresh Application u/s 19(2) & 19(3) read with Section 25 (1) (2) (a) of the IBC-2016 for issuance of necessary directions to the District Magistrate (Saharanpur), SDM of Sadar, Behat, Nakur, Rampur Maniharan and Deobad districts of Saharanpur to comply with the instructions of the Applicant in discharging his duties as Resolution Professional vide diary no. **655.**
15.09.2018	Wrote a mail to Mr. Karanvir Singh, Mr. Ashish Prashar & CA Devendra Garg regarding the filing of Form DIR- 3KYC and reminding them that 15.09.2018 is the last date of filing of Form DIR-3 KYC and till date Financials of the Company has not been finalized and due to that we are unable to call the Annual General Meeting.
17.09.2018	1) Informed Mr. Karanvir Singh regarding non-filing of Form DIR-3KYC and informed him that Digital Signature is Expired. 2) Got a mail from J&K Bank, Branch Meerut that insurance of Corporate Debtor was due for renewal. 3) Received a reply from CA Devendra Garg stating that he doesn't have the DSC of the Corporate Debtor.
18.09.2018	Counsel on behalf of Corporate Debtor assures Hon'ble NCLT, Allahabad Bench stated that the Consolidated Balance Sheet for the F.Y 2015-16, 2016-17 will be provided by 30.09.2018 along with the details of the Immovable Assets of the Corporate Debtor. Interim Application to CA 199/2018 to seek directions against the DM, Saharanpur along with the SDM of Tehsil Nakur, Sadar, Deoband, Rampur Maniharan and Behat of Saharanpur is taken on record. **Next Date of hearing is 08.10.2018.**
24.09.2018	Wrote a mail to Mr. Karanvir Singh, Mr. Ashish Parashar and CA Devendra Garg and informed them that the MCA has extended the last date of Filing of Form DIR- 3KYC with a fee of Rs. 500/- till 05.10.2018 and from 06.10.2018 onwards, a late fee of Rs.5,000 will be charged.
25.09.2018	1. Approve the J&K Bank to pay the insurance premium from the Account of Corporate Debtor. 2. Sent a mail to Mr. Karanvir Singh, Mr. Ashish Parashar and CA Devendra Garg asking them to confirm whether the Digital Signature of all the Suspended Directors are updated and registered with MCA as all the directors are required to file Form DIR-3KYC ASAP otherwise respective DIN will be deactivated by the MCA and Rs. 5,000/- will be charged as Penalty. 3. Received a reply from CA Devendra Garg in regard with the mail sent

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	informing us that he is the Statutory Auditor of the Corporate Debtor and it is not his issue.
27.09.2018	Had a telephonic conversation with Mr. Karanvir Singh reminding him the last date to provide all the necessary documents is 30th September in order to comply with the order dated 18.09.2018.
28.09.2018	Received a mail from Mr. Karan Vir Singh informing us that DIR 3 KYC has been successfully done of all the Directors.
01.10.2018	Sent a mail to Mr. Karan Vir Singh (Suspended Director), Mr. Ashish Parashar (Manager) and CA Devendra Garg (Statutory Auditor) informing them that due to their non- cooperation in providing the requisite information we are unable to: 1. appoint two Registered Valuers under regulation 27 of IBBI (CIRP) Regulations, 2016; 2. prepare and submit Information Memorandum before CoC under Regulation 36(1) of IBBI (CIRP) Regulations, 2016; and 3. Invite EoI under Regulation 36A & 36B of IBBI (CIRP) Regulations, 2016 Also that only 19 days has left for submission of CoC Approved Resolution Plan with the Hon'ble Tribunal because as per Section 30(6) read with Regulation 39(4) of IBBI (CIRP) Regulations, 2016, the Resolution Professional is required to submit the Resolution plan approved by the Committee to the National Company Law Tribunal at least 15 days (T+165) before the expiry of the 180 days and in our matter already 146 days has been passed.
05.10.2018	Sent a mail to the Bank informing them that since the last day of CIRP is 04.11.2018, a COC meeting has to be conducted in the coming week (11th or 12th) to pass the resolution either for seeking extension of time or else opt for liquidation as due to non-cooperation by the Personnel of Corporate Debtor we are unable to appoint Valuers, call EOI, finalized Information Memorandum, filling of ITR and ROC returns.
08.10.2018	1. Council on the behalf of the Suspended Director of Corporate Debtor presented some Application to the Hon'ble NCLT, Allahabad Bench, of which no advance copy was provided to us. Further, time is granted to file a reply of on the maintainability of Application filed by Counsel for CD and the Progress Report being filed by the Resolution Professional for a period from 21.08.2018 to 01.10.2018 is taken on record. **The matter is listed for hearing on 01.11.2018.** 2. Issued Notice for the 4th Meeting of CoC.
12.10.2018	Convene Fourth Meeting of (CoC)
13.10.2018	Prepared and Circulated the minutes of Fourth Meeting of CoC to the members present and who attended the meeting and till date no objection has been raised.
26.10.2018	Sent a mail to IBBI, ICSI of the minutes of 4th meeting of COC.
31.10.2018	1. Filed a Reply of application filed by the CD u/s 60(5) and 75 of IBC, 2016 read with rule 11 of NCLT rules, 2016. 2. Filed Progress Report from 2.10.2018 to 24.10.2018 along with minutes of 4th COC. 3. Filed an app for liquidation u/s 33(1)(a) read with section 33(2) of IBC, 2016.

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5. The CoC in its fourth meeting held on 12.10.2018 resolved to initiate liquidation process in respect of Corporate Debtor. The COC also approved the appointment of RP to act as Liquidator of the Corporate Debtor. The minutes of the fourth CoC meeting held on 12.10.2018 has been circulated amongst all members present and who attended the meeting vide email dated 13.10.2018. Basing on the resolution of the CoC in its fourth meeting held on 12.10.2018, RP filed this application seeking liquidation of the Corporate Debtor and for appointment of RP as Liquidator of Corporate Debtor.

6. The Suspended Director of the Corporate Debtor filed reply in CA No.265 of 2018. The Suspended Director of the Corporate Debtor also filed CA No.243 of 2018 seeking stay of the CIRP and CA No.281 of 2018 seeking removal of RP and appointment of a new RP to conduct the CIRP proceedings properly. The averments made in the reply in CA No.265/2018 and the averments made in CA No.243/2018 & CA No.281/2018 are almost the same. Therefore, the case of the promoters of the Corporate Debtor is as follows.

7. The Financial Creditor instead of providing complete finance as promised, created a situation of financial distress impacting the Food Park Project of the Corporate Debtor and thereby causing losses of subsidies amongst other business losses to the Corporate Debtor.

8. It is alleged by the Suspended Director of the Corporate Debtor that since inception Mr. Pankaj Khetan (initially appointed as IRP now RP) is biased and is acting contrary to the interest of the company. It is alleged that IRP fixed his remuneration as Rs.3.5 Lakh on monthly basis alongwith exorbitant remuneration. It is also stated that IRP failed to understand the loan amount

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and has wrongfully taken the amount quoted by the Bank as gospel truth without verifying the claim of the Financial Creditor.

9. IRP filed an application against M/s Barnawa Agro Industries Ltd. without any reason. IRP filed various applications making allegation against the Directors of the Corporate Debtor. IRP repeatedly sought information, which is already available with the Bank records and which has already been provided by the Directors. It is stated that the documents required by the IRP have been sent vide e-mail dated 23.07.2018. It is further stated that the IRP is not competent to carry on present resolution process as the sole purpose appears to be personal gain and not to go ahead with the resolution process. It is further stated that the claim made by the Financial Creditor in terms of substantially unfair loan transaction and in the nature of an extortionate credit transaction.

10. It is stated by the Suspended Directors of KIL that the Bank has taken an erroneous stand in the present case, which could be clear from the following facts as narrated in CA No.281/2018 :-

I. Delay in Loan Disbursal by bank causing changed costs, market conditions and circumstances for corporate debtor but failure to proportionally revise terms of contract based on the same.

II. Erroneously making available less funds for Flour Mill project, an act opposed to the doctrine of legitimate expectations causing loss to the corporate debtor.

III. Failure to provide working capital for Cold Storage.

IV. Declaring Account NPA with respect to Term Loan of 1.85 crores for Cold Storage prior to date of first instalment wherein sanction was in Feb, 2014 and disbursal on 30.03.2014 and first instalment was due on 30.03.2015.

V. Collateral with J&K bank far in excess of prudential banking norms. Collateral disbursal ratio is 9:1 as against 1.5:1 under any prudential banking norms.

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11. It is stated that the non-appearance of Directors in two CoC meetings is no ground to liquidate the company.

12. It is stated by the Suspended Directors, that non-cooperation from the Directors is a false and misleading statement. It is stated that IRP without performing his functions, filed an application for liquidation under Section 33. It is also stated that RP visited the office of the company and took custody of the original documents, computers, files, folders and the entire stationary, but the RP did not prepare any inventory inspite of several requests by the Suspended Directors. IRP instead of doing his job, demanded documents, which are already taken by him. IRP also choose to make complaint against an Independent Practicing Chartered Accountant to ICAI.

13. It is alleged in the reply in CA No.265 of 2018 as follows, "*Upon being contacted Mr. Pankaj Khaitan again took a stand that entire matter can get resolved if he is allowed to come for a sum of Rs.10 crore out of which Rs.8 crore before to bank and he would get Rs.2 crores to facilitate the entire being. The abovementioned acts of RP discouraged the Directors to remain in touch with him so as to give options and bring before him the entire factual matrix. RP has even threatened the Ex-Director if such demands are not made; he would file various applications before the Tribunal so as to seek prayers which may not arises in factual situation. Such an act of corruption is not at all appreciated by Ex-Director and/or the Auditor and therefore, he is misusing his position.*"

14. It is stated that RP has taken almost all the documents on the following occasions :-

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i. At the time the RP visited the Food Park to seal the Cold Store, Co-down and the Office Block.

ii. At the three meetings when the RP visited the office of the Corporate Debtor at Meerut.

iii. At the meeting in Jangpura (office of the RP).

15. It is stated that the CoC must keep the basic object of the Code, that is to explore resolution, but not liquidation. It is stated that the scheme of the Code is to vest the powers of management of a company to a professional agency to continue the business of the corporate body as a going concern until a resolution plan is drawn up, but IRP/RP instead of discharging his duties U/s 18(1)(a) & (b) and Section 25(2)(h) of the Code and Section 29 & 30 of the Code, made a way for the liquidation. It is stated that it is a settled principle of law, that the stage of inviting the resolution plan cannot be jumped and U/s 25(2)(h) of the Code, RP is under obligation to undertake the action *interalia* of inviting prospective lenders, investors and any other persons to put forward resolution plans. It is also stated that the RP has to file the certificate to the effect that all steps for CIRP leading to the approval of CoC for liquidation has been taken.

16. Heard the arguments of learned counsel appearing for the RP and learned counsel appearing for the Suspended Directors of the Corporate Debtor.

17. A perusal of the averments in all these three applications and the replies and as well as the progress reports filed by the RP clearly disclose that RP taken steps to get information from the Suspended Directors of the Corporate Debtor. In fact RP filed application seeking directions against the Chartered Accountant (CA) Devendra Garg (Statutory Auditor), Mr. Ashish Parasher (Manager) and

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Suspended Director Mr. Karan Vir Singh, Mr. Kusal Pal, Mr. Shashi Sirohi and Mr. Surendar Nagpal of the Corporate Debtor to extend assistance and cooperation to the RP in managing the affairs of the Corporate Debtor and discharging the responsibilities as RP. On the said application, this Authority by its order dated 04.07.2018 directed the Suspended Directors of the Corporate Debtor and CA (Statutory Auditor) of the Corporate Debtor to fully cooperate with the RP. RP in his progress report dated 24.07.2018 stated that the Suspended Directors of the Corporate Director have handed over some of the documents and they did not hand over some of the documents. Thereafter, RP filed CA No.200/2018 U/s 60(5)(b)(c) of the I & B Code for attachment of the assets of M/s Barnawa Agro Industries Limited, the subsidiary company of the Corporate Debtor. RP also filed CA No.198/2018 U/s 60(5) read with section 70(1)(a), (b) & (c) of the I & B Code, 2016 seeking direction regarding the punishment to the officers of the Corporate Debtor for not disclosing to the RP all the details of property of the Corporate Debtor and for not delivering the possession of the property of the Corporate Debtor. RP also filed CA No.199/2018 seeking certain directions against the SDM without giving full details.

18. This Authority by its order dated 18.09.2018 directed the Corporate Debtor to provide details of the immovable assets of the Corporate Debtor company to the RP by 30.09.2018. Thereafter, RP represented that the Corporate Debtor did not comply with the order dated 18.09.2018.

19. A perusal of the progress report filed by the RP no doubt shows that there is no preparation of information memorandum, there is no invitation for expression of interest. It is also a fact that there are no resolution plans, there is no

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expression of interest given by any of the prospective Resolution Applicant and in fact there is no Resolution Applicant that filed the resolution plan. The controversy is, whether the RP had not taken up all the steps that are required to be taken in the CIRP, is on account of his lapses or on account of non-cooperation of the Suspended Directors of the Corporate Debtor. According to the RP, it was on account of the non-cooperation of the Suspended Directors of the Corporate Debtor. According to the Suspended Directors of the Corporate Debtor it was because of the attitude and inaction of the IRP/RP in following various steps in the resolution process that ultimately led the CoC that consist of only one Financial Creditor to take a decision for liquidation. On examination of the entire material placed on record, it appears that the RP decided to proceed against the assets of the M/s Barnawa Agro Industries Ltd. the subsidiary of the company (KIL) by filing CA No.200 of 2018. It appears if the said issue made the Directors of the Corporate Debtor not to cooperate with the KIL to the extent they are required to cooperate. The material on the record also goes to show that there is no proper cooperation from the Suspended Directors of the Corporate Debtor. In fact applications have also been filed to punish the Suspended Directors of the Corporate Debtor for not following the directions given by this Authority to cooperate with the RP in the CIRP process.

20. Several allegations were made by the Suspended Directors of the Corporate Debtor against the RP, but no material has been placed on record to substantiate such allegations. However, it is for the IBBI to consider the allegations, if any, against the RP. This Authority has to see, whether RP has conducted the CIRP in the manner laid down by the IBC or not.

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21. In considering an application seeking liquidation order U/s 33 of the IBC, this Adjudicating Authority has to see, whether any resolution plan has been received before the expiry of Insolvency Resolution Process period or the maximum period permitted for completion of CIRP U/s 12 of the IBC.

22. In this case 180 days is going to expire by 03.11.2018, but the COC in its fourth meeting held on 12.10.2018 resolved to liquidate the company by 100% voting share, that means by the date of fourth meeting 157 days is only over. In the fourth meeting of CoC it was considered and resolved that due to non-providing of financial data and other information by the Corporate Debtor, RP failed to appoint valuers, unable to finalize information memorandum and to call for expression of interest. The CoC was of the view that none of the Suspended Directors has attended the last two meetings of the COC and violated the directions issued by this Authority and therefore it is better to liquidate the company rather than making application for extension of the CIRP period. It is the said resolution passed in the CoC, that made the RP to file this application for liquidation. The wisdom of the CoC in passing a resolution for liquidation cannot be interfered by this Authority. Moreso, when the CoC took such a decision because of the non-cooperation of the Suspended Directors of the Corporate Debtor in providing the financial information related to the Corporate Debtor. The very fact that the Suspended Directors are asking stay of the CIRP period on 08.10.2018 that is nearly five months after the resolution process commenced goes to show that they are not at all interested in the resolution process. If really the Suspended Directors of the Corporate Debtor were aggrieved against the IRP/RP and they are of the view that effective steps are not being taken by the IRP/RP they ought to have

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moved this Authority during initial days of the CIRP period. After the IRP/RP filed application seeking direction to the Suspended Directors to cooperate and after the IRP/RP filed application seeking attachment of the assets of the subsidiary of the Corporate Debtor, the Suspended Directors came forward with an application to stay the CIRP. Section 33(2) enables the RP to seek liquidation of the Corporate Debtor in case the CoC by not less than 66% voting share resolved to liquidate the Corporate Debtor before confirmation of resolution plan and during CIRP.

23. In the case on hand, there is no resolution plan at all. In fact there is no expression of interest also. The CoC by 100% voting share resolved to go for liquidation. Basing upon that resolution, RP filed this application U/s 33(2) of the Code. Section 33(2) of the Code enjoins on the Adjudicating Authority to pass a liquidation order, if the CoC passed the resolution approving for liquidation by a 66% voting share, on the application of the RP. Here the sole Financial Creditors that constitute CoC by 100% voting share resolved to go for liquidation. Therefore, this Authority has no right to interfere with the wisdom of the CoC in going for liquidation, moreso, on the ground that RP has not followed the various steps in the CIRP. It appears that RP is unable to follow the various steps in CIRP period due to non-cooperation of the promoters of the Corporate Debtor. There are no grounds to invoke Section 75 of I & B Code against Financial Creditor. This Authority has no jurisdiction to enquire into the loan transaction between Financial Creditor and Corporate Debtor moreso after admission order is passed.

24. Therefore, in view of the above discussion, this Authority is of the considered view, that there is no need to stay the CIRP process and it is a case where a

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liquidation order has to be passed in respect of the Corporate Debtor. Applicant in CA No.243/2018 is not entitled for any relief. In view of the liquidation order passed in CA No.265/2018, no need to consider the request of applicant in CA No.281/2018 to replace RP to conduct CIRP.

25. Coming to the application filed by the Suspended Directors for removal of the RP. Since this Authority decided to pass an order for liquidation of the Corporate Debtor, the question is whether the same RP can be appointed as Liquidator or not.

26. Section 34(4) enables the Adjudicating Authority to replace the RP under three contingencies.

> ***(a)*** *The resolution plan submitted by the resolution professional under Section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or*
>
> ***(b)*** *The Board recommends the replacement of a resolution professional to the Adjudicating Authority; or*
>
> **(c)** *The resolution professional fails to submit written consent under sub-section (1) of section 34.*

27. In the case on hand, RP submitted the written consent. The Board also did not recommend for the replacement of the RP. However, there are some serious allegations against the RP. It is the plea of Suspended Directors of the Corporate Debtor that due to inaction and inability of the RP, he could not follow the various steps in CIRP. The fact remain that no resolution plan has come forward in this case. Without going into the truth or otherwise of the allegations made against the RP, this Authority is of the considered view that in the interest of the smooth functioning of the liquidation process, it is necessary to replace the RP by another Insolvency Professional to act as

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Liquidator. In that view of the matter, list CA No.265 of 2018 for hearing on the appointment of another Insolvency Professional as Liquidator.

28. CA No.265 of 2018 is allowed passing order for liquidation of the Corporate Debtor (KIL) U/s 33(2) of the I & B Code. Liquidator, after his appointment shall issue public announcement stating that the Corporate Debtor is in Liquidation. Registry is also directed to send a copy of the order to the ROC, with which the Corporate Debtor is registered.

29. CA No.243/2018 is dismissed.

30. CA No.281/2018 is dismissed in view of the liquidation order passed.

31. List CA No.265/2018 for hearing on appointment of Liquidator on 11.03.2019.

Dated: 28.02.2019

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(SAROJ RAJWARE)
MEMBER (TECHNICAL)

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(BIKKI RAVEENDRA BABU)
MEMBER (JUDICIAL)

Typed by:
Kavya Prakash Srivastava
(Stenographer)