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In the National Company Law Tribunal
Kolkata Bench
Kolkata

CORAM: 1. Shri Madan B. Gosavi, Member (Judicial)
&
2. Shri Virendra Kumar Gupta, Member(Technical)

CP(IB)No.762/KB/2017

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;

-And-

In the Matter of:

1. Noor Alam, son of Late Abdul Rahim, residing at Village-Bnauli, P.O. & P.S.-Chenari, Dist. Rohtas, Bihar-821104.
2. Nikhat Parween, wife of Noor Alam, residing at Village Bnauli, P.O. & Ps-Chenari, Dist. Rohtas, Bihar-821104.
3. Angad Ram, s/o Late Jhillu Ram, residing at Durga Wati, Ward No. 11, Dist. Kaimur, Bihar-821105.
4. Anita Dhanuka, w/o Sanjay Dhanuka, residing at Agust Kunda, Cadaulia, Chitupur, Varanasi, UP-221010.
5. Bibi Nasiban, w/o Kadi Ansari residing at Sawar, Bhabua, Kaimur, Bihar – 82104.

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6. Dharmshila Chaturwedi, w/o Shailesh Kumar Chaturwedi, residing at Khadauli, Dist. – Rohtar, Bihar – 821104.
7. Kamlesh Singh, s/o Shivshankar Singh, residing at Vill. Kukudha, Rampur, Kaimur, Bihar-821101.
8. Kanhaiya Mishra, residing at Vill. Diyari, P.S.-Rampur, Dist. Kaimur, Bihar-821104.
9. Mahatam Singh, s/o Late Chhedi Singh, residing at Sasaram, Dist. Rohtas, Bihar-821115.
10. Mamta Devi, w/o Sudhir Kumar, residing at Barahuli, P.O. Bhabhua Dist- Kaimur, Bihar-821101.
11. Md. Nizamuddin Ansari, s/o Yusuf Ansari, residing at village – Kukari, P.O. Dhapokar, Dist. Kaimur, Bihar-821102.
12. Mohammad Zafir Imam, s/o Mazhar Ali Ansari, residing at Village & P.O. – Chenari, Dist- Rohtas Bihar 821104.
13. Nirmala Devi, w/o Harihar Sah, residing at Vill. Dhavpokhar, Rampur, Kaimur, Bihar-821102.
14. Pradeep Kumar Singh, s/o. Chillara Singh, residing at vill. Belaon, P.O. Kharenda, Dist. Kaimur, Bihar-821102.
15. Priyanka Agarwal, w/o Rajesh Kumar Agarwal, residing at G.T. Road, Kudra, Kaimur, Bihar-821108.
16. Ram Naresh Mishra, s/o Late Ram Nagina Mishra, residing at Vill. Pewandi, Chenari, Dist. Rohtas, Bihar-821104.
17. Rameshwar Nath Shukla, s/o Nathuni Shukla, residing at Bharandua, Chanari, Bihar-821101.
18. Rehana Begum, w/o Maimudin Nasari, residing at 106 Tendua, P.O Rampur, Dist. Kaimur, Bihar-821101.
19. Rupsana Parween, w/o Fahim Beg, residing at 135 Pevandi Chenari, Dist. Rohtas, Bihar-821104.

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20. Sandhya Kumari, w/o Kamlesh Sharma, residing at Ejhara Rohtas, Bihar – 802217.

21. Sarvanath Dubey, s/o Ram Sahay Dube, residing at Village-Majheevan, P.O-Amanv, Dist. Kaimur, Bihar.

22. Shahid Hussain, s/o. Majahar Ali, residing at Vill. & PO- Chenari, Dist. Rohtas, Bihar-821104.

23. Shailesh Kumar Chaturwedi, s/o Saraju Ram residing at Khadauli, P.O. Chenari, Dist. Rohtas, Bihar-821104.

24. Shambhu Prasad, s/o. Gupten Shawar Shah, residing at Vill. Chanari, Rohtas, Bihar.

25. Sharda Devi, w/o. Sudama Shah, residing at Sivapur, Bhabhua, Kaimur, Bihar.

26. Surendra Kumar, s/o Ramalal Shah, residing at Vill. Siswar, Rampur, Kaimur, Bihar -821108.

27. Vijay Kumar Choubey, s/o. Uma Shankar Choubey, residing at Vill. Basuhari, P.O. Khajura, Dist. Kaimur, Bihar-821102.

28. Ram Ekbal Choubey, s/o. Jayaki Chobey, residing at Holding No. 87K, Vill-Baheri, P.O.-Nouhata, Dist. Kaimur, Bihar-852123.

.........Financial Creditors

In the Matter of:

Prism Infracon Limited, a company registered under the Companies Act, 1956, having its registered office at 124, Karaya Road, Kolkata-700017.

.... Corporate Debtor

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Counsels appeared:

For SEBI

1. Mr. S.K. Dutt, Advocate
2. Mr. Syamantak Banerjee, Advocate

For Bengal Shrachi Housing Development Ltd.

1. Ms. Sanchari Chakroborty, Advocate
2. Ms. Siksha Agarwal

For RP

1. Mr. P.K. Sen, Resolution Professional
2. Mr. Rahul Auddy, Advocate
3. Mr. Rishav Banerjee, Advocate

For Suspended Board of Directors

1. Mr. Joy Saha, Sr. Advocate
2. Mr. Sailendra Tiwary, Advocate

For Intervener in CA(IB)No.995/KB/2019

1. Mr. Ankur Singhi, Advocate
2. Riti Basu, Advocate
3. Mr. Prashant Kumar Tripathi, Advocate

For Financial Creditors

1. Mr. Dhiru Sharma, Advocate
2. Ms. Urmila Chakraborty, Advocate

Date of pronouncement of order: 8th November, 2019.

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ORDER

Per Shri M.B. Gosavi, Member (J):

1. One Mr. Noor Alam together with other 27 debenture holders of the Corporate Debtor, namely, **Prism Infracon Limited** filed this application under Section 7 of I & B Code, 2016 to start Corporate Insolvency Resolution Process (in short "CIRP") of the Corporate Debtor on the ground that the Corporate Debtor committed default in paying the amount due against the debenture Certificates on the date of their maturity along with interest accrued thereon. Total debt amount stated to be 49,16,000/- (Rupees Forty-Nine Lakh Sixteen Thousand Only).

2. This Adjudicating Authority vide order 03.07.2018 admitted the Corporate Debtor in CIRP. One Mr. Partha Kamal Sen having registration No. IBBI/IPA-002/IP-N00022/2016-17/10049 was appointed as Interim Resolution Professional.

3. CIRP period of 180 days completed on 29.12.2018. It was extended for 90 days at the request of CoC and the RP. CIRP period of 270 days got over on 29.03.2019.

4. During CIRP, this Authority passed number of interim orders. Almost each action of the RP was being challenged by the Corporate Debtor right from the constitution of the CoC. We were told that there are about 25 debenture holders whose moneys were not paid by the Corporate Debtor upon date of maturity. All they joined as the Financial Creditor in this proceeding. In fact, the Corporate Debtor has appointed intermediator for debenture holders by creating trust, however, appointment of intermediator is cancelled by SEBI. Since it was difficult for the RP to constitute CoC consisting of such huge number of Financial Creditors,

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hence, the RP was directed to constitute CoC invoking provisions of Section 26(6)(a) of the I & B Code, 2016 by appointing representatives of the particular numbers of the Financial Creditors.

5. During CIRP, the RP filed application under Section 19(2) of I & B Code, 2016 for direction to the Corporate Debtor to cooperate the RP in successful completion of the CIRP. It appears from the record that RP came know that the Corporate Debtor was doing chit fund activities and fronzy schemes were floated to collect the amount of public at large. SEBI has taken cognigence of such activities of the Corporate Debtor and initiated enquiry. It is still going on. We are not expressing any opinion about such allegations as it is out of domain of this Authority. The fact remain on record is that the RP did not find much tangible assets. The address noted as the registered address of the Corporate Debtor found to be false. The RP did not find any office or the books of accounts maintained by the Corporate Debtor (reference 4th progress report filed by the RP).

6. The RP also noted that Corporate Debtor owns a restaurant at Bangalore in the name and style as District -6. But in spite of best efforts, he could not take control of the management of that business of the Corporate Debtor (reference 7th progress report filed by the RP). For want of sufficient information about the assets of the Corporate Debtor, the RP could not make Information Memorandum and resultantly could not publish notice to call EOI/resolution plan from the perspective resolution applicants.

7. Pending CIRP an attempt was also made by the Corporate Debtor and some of the Financial Creditors to settle the matter. However, there was

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no consensus to the extent of 90% votes in CoC to settle the matter and to withdraw this application under Section 12 A of I & B Code, 2016. That application was filed by the Suspended Board of Directors of the Corporate Debtor. That application was rejected by this Authority. The appeal was carried on against that order and the appeal was also dismissed by Hon'ble NCLAT.

8. As on today, CIRP period of 330 days already got over in June, 2019. Despite best efforts from the RP and the CoC could not get control of the management of the affairs of the business of the Corporate Debtor (i.e. restaurant in the name and style of District-6 at Bangalore). In fact, this Authority yet to form opinion that whether restaurant is the asset of the Corporate Debtor or not because this fact is disputed by some of the applicants herein. Be that as it may. CIRP period of 330 days has already been expired. CoC and RP did not receive any resolution plan. In such situation, we left with no option but to pass order of liquidation of the Corporate Debtor under Section 33 of the I & B Code, 2016. Hence, we proceed to pass the orderof liquidation of the Corporate Debtor. We also noted that RP is not inclined to continue as the Liquidator. Hence, we replace him with some other Resolution Professional by invoking our jurisdiction under Section 34(4).

ORDER

(i) Corporate Debtor **Prism Infrason Limited** having CIN : U66000WB2009PLC137113, and having its registered office at 124, Karaya Road Kolkata-700017, in the state of West Bengal is admitted in process of liquidation.

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(ii) **Mr. Birendra Kumar Tripathi**, having Registration No. IBBI/IPA-003/IP-N00229/2019-20/12679 and Mobile No. 9433602746 is appointed as the liquidator in CP (IB) No. 762/KB/2017.

(iii) The Liquidator is directed to issue public announcement stating that the Corporate Debtor is in liquidation, in one of the leading English newspaper as well as in one vernacular newspaper having wide circulation where 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.

(iv) 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.

(v) 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.

(vi) 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.

(vii) 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.

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(viii) 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.

(ix) 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.

9. The C.P. (IB) No. 762/KB/2019 is **disposed of** accordingly. Pending application in this CP to be listed on **02.12.2019**.

10. The copy of this order is to be sent to the Liquidator, RP, Financial Creditor and the Corporate Debtor by Speed Post as well as by email for information and for taking necessary steps.

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

Sd 8/11/19

(Virendra Kumar Gupta)
Member(T)

Sd 8/11/2019

(Madan.B. Gosavi)
Member(J)

Signed on this, the 8th day of November, 2019.

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