

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**Coram : Shri Madan B. Gosavi,  
Hon'ble Member (J)  
&  
Shri Virendra Kumar Gupta  
Hon'ble Member (T)**

**CP (IB) No.06/KB/2018**

**In the matter of:**

**An application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;**

-And-

**In the matter of:**

**Agarwal Alloys, a proprietorship firm having its registered office at 10/30, Guha Road, Ghusuri, Howrah- 711 107;**

**...Applicant/Operational Creditor**

-Versus-

**In the matter of:**

**Yash Smelter Private Limited having its registered office at 13, Ramdhan Ghosh Lane, Belurmath, Howrah- 711 202;**

**....Corporate Debtor**

**Counsel appeared:**

1. Mr. A. K. Upadhyay, Advocate	] For Operational Creditor
2. Mr. D. Saha, Advocate	]

Mr. Shashi Agarwal, Pr. CA	] Resolution Professional
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**Date of Pronouncement of Order: 27.01.2020**

**ORDER**

**Per Shri Madan B. Gosavi, Member (J):**

**M/s. Yash Smelter Private Limited-** Corporate Debtor is admitted in Corporate Insolvency Resolution Process (for short, CIRP) at the instance of one of its operational creditor, M/s. Agarwal Alloys- proprietorship firm because corporate debtor committed default in paying the operational debt of Rs.14,61,523/-.

2. On 25.07.2019, order to initiate CIRP of the corporate debtor was passed by this Adjudicating Authority. Mr. Shashi Agarwal, having registration no. IBBI/IPA-001/IP-P00470/2017-2018/10813 was appointed as the IRP.
3. On 28.07.2019, IRP made public announcement of the CIRP of the corporate debtor by publishing notice in daily newspaper 'Financial Express' (English) and 'Aajkal' (Bengali). He thereby called upon the creditors of the corporate debtor to submit claims with the proof. In pursuant thereto, he received claims from one operational creditor, i.e. the applicant and one from Directorate of Commercial Taxes, West Bengal (statutory authority and also the operational creditor).
4. IRP constituted the CoC consisting of above two operational creditors. IRP visited the registered office of the corporate debtor at 13, Ramdhan Ghosh Lane, Belurmah, Howrah- 711 202, West Bengal but he did not find the office location. He did not get any record therefrom. He came to know that the corporate debtor has shifted the registered office to 50B, Muktaram Babu Street, Kolkata.

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5. Upon his visit there also, he did not get any record or list of assets of the corporate debtor. He contacted one of the directors of the corporate debtor over telephone. IRP requested him to hand over financial papers, list of assets of the corporate debtor but that Director did not cooperate him. Meantime, in the first meeting dated 23.08.2017, IRP's appointment as the RP was confirmed by the CoC.

6. RP found that the corporate debtor was carrying only trading activities. Corporate Debtor did not have much tangible assets. However, CoC directed him to publish notice calling EoI/Resolution Plan from the prospective resolution applicants. Hence, on 27.10.2019, he published notice in 'Financial Express' and 'Aajkal' calling upon the prospective resolution applicants to submit Expression of Interest/ Resolution Plan but he did not receive any plan. CIRP period of 180 days completed on 20.01.2020. During CIRP period, the RP held 05 CoC meetings. In the last CoC meeting held on 18.01.2020, only one CoC member, i.e. M/s. Agarwal Alloys having 59.83% voting shares attended the meeting. Other CoC member, i.e., Directorate of Commercial Taxes, West Bengal remained absent. However, CoC member having 59.83% votes, i.e. M/s. Agarwal Alloys passed resolution recommending this authority to pass order of liquidation of the corporate debtor.

7. We heard the Ld. RP in person. We perused the materials on record. RP and the CoC did not receive resolution plan for the corporate debtor. Hence, we are left with no option but to pass order of liquidation of the corporate debtor.

8. In this case, one of the members of CoC having 59.83% of the votes passed resolution to pass order of liquidation of the corporate debtor. It is less than 66.33%, as required in case of approval of resolution plan. However, sub-

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section (8) of section 21 of IBC states that, "**Save as otherwise provided in this Code, all decisions of the CoC shall be taken by vote not less than 51% voting share of the financial creditor; provided that where corporate debtor does not have any financial creditor, the CoC shall be constituted and shall comprise of such persons to exercise function in such manner as may be specified**".

9. We find no provision in IB Code specifying the percentage of the votes by which CoC can recommend liquidation of the corporate debtor after CIRP period of 180 days. Hence, we approve the resolution passed by the CoC recommending liquidation of the corporate debtor after CIRP period of 180 days by 59.83% votes. Moreover, stark fact on record is that CoC and RP did not receive resolution plan for the corporate debtor. After considering the materials on record, we accept their request to pass order of liquidation of the corporate debtor under section 33(1) of I&B Code. Hence, we proceed to pass order requiring the Corporate Debtor to be liquidated in the manner as laid down in the Chapter III of Part II of I&B Code. We also pass an order under section 33 of the I&B Code, 2016 to start process of liquidation of the Corporate Debtor as by the following order:

#### ORDER

1. By this order, Corporate Debtor- **Yash Smelter Pvt. Ltd.** is liquidated.
2. Mr. Shashi Agarwal, having registration no. IBBI/IPA-001/IP-P00470/2017-2018/10813 is appointed as the Liquidator.
3. Mr. Shashi Agarwal is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016.

Sd  
[Signature]

Sd  
[Signature]

4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. Registry is hereby directed to communicate the order to the RP, Operational Creditor, Corporate Debtor and the Liquidator by Speed Post and also by email for information and for taking necessary steps.
11. CP(IB) No.06/KB/2018 stands disposed off.

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Let the certified copy of the order be issued upon compliance with requisite formalities.

*Sd*  
*27/1/2020*  
(Virendra Kumar Gupta)  
Member(T)

*Sd*  
*27/1/2020*  
(Madan B. Gosavi)  
Member (J)

*Signed on this, the 27<sup>th</sup> day of January, 2020.*