

301

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

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

**C.P. (IB) No. 1342/KB/2018**

**In the matter of:**

An Application for initiation of corporate insolvency resolution process by an operational creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with applicable provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016.

**And**

**In the matter of:**

**Jai Balaji Industries Limited**, a company having its registered office at 5, Bentinck Street, Kolkata-700001.

**-Applicant/Operational Creditor**

**Versus**

**SPS Steel Ltd.**, having its registered office at Elegant Towers, 224A, A.J.C Bose Road, Kolkata-700017, in the state of West Bengal under the aforesaid jurisdiction.

**-Respondent/Corporate Debtor**

## Counsels on Record:

### For the Resolution Professional

1. Mr. Nitesh More, Resolution Professional
2. Mr. Rahul Parasrampurua, Pr. CS

### For Respondent Nos. 2, 3 and 4

1. Ms. Shivangi Thard, Advocate

### For Respondent No. 5

1. Mr. Vikas Tewary, Advocate

Date of pronouncement of Order: 6<sup>th</sup> January, 2020.

## **ORDER**

Per Shri Madan B. Gosavi, Member(J)

1. This is an application filed by the Operational Creditor/**Jai Balaji Industries Limited** for the initiation of Corporate Insolvency Resolution Process (in short "CIRP") against the Corporate Debtor/**SPS Steel Limited** under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short "I & B" Code, 2016). Vide order dated 29.03.2019, this Adjudicating Authority admitted the Corporate Debtor in CIRP on the ground that the Corporate Debtor committed default in paying operational debt of Rs. 6,79,26,818/- (Rupees Six Crore Seventy-Nine Lakh Twenty-Six Thousand Eight Hundred and Eighteen Only) and appointed Mr. Nitesh Kumar More having registration no.

IBBI/IPA-001/IP-P01087/2017-18/11785 as Interim Resolution Professional (in short "IRP").

2. On 30.03.2019, the IRP made public announcement of CIRP of the Corporate Debtor and called upon the creditors of the Corporate Debtor to submit claims with proof. It is seen from the record that IRP received total eight (8) claims, seven from Operational Creditors and one from a financial creditor. He constituted Committee of Creditors (in short "CoC") consisting of financial creditor by name Rare Assets Reconstruction Limited. The appointment of IRP was confirmed by the CoC as RP in its first meeting dated 29.04.2019.
3. It appears from record that during CIRP, the RP did not get required cooperation from the directors of the corporate debtor. He did not get full details of the assets of the Corporate Debtor. Despite that, the RP prepared Information Memorandum on the basis of whatever information he received. He called upon prospective investors to submit resolution plans. It is seen from the record that he received EOI from one Rare Assets Reconstruction Limited. However, the said Rare Assets Reconstruction Limited did not submit any resolution plan.
4. The CIRP period of 270 days completed on 23.12.2019. It is seen from the record and proceeding that during CIRP, RP and CoC did not receive resolution plan. The RP in its last progress report noted that, "CoC consist of only one member, having registered office at Ahmedabad." He contacted and consulted Managing Director of the financial creditor i.e. member of CoC in order to hold CoC meeting. The CoC members

did not show any interest to hold such meeting in order to pass formal resolution of the liquidation of the Corporate Debtor.

5. It appears to us that CoC lost interest in CIRP. CIRP period is already over. Section 33(1)(a) of IBC, 2016 requires this Adjudicating Authority to pass order of liquidation of the Corporate Debtor if no resolution plan is received during CIRP or resolution plan is rejected by the CoC. In this case, no resolution plan is received. In fact, it was expected from the CoC to pass formal resolution requesting this Authority to pass order of liquidation of the Corporate Debtor. The CoC failed to observe its statutory duty. However, we being the Adjudicating Authority cannot keep such matter pending as per convenience/inconvenience of the CoC. Since, no resolution plan for the Corporate Debtor is received, we pass order of liquidation of the Corporate Debtor with upon the following directions:-

### **ORDER**

(i) Corporate Debtor M/s **SPS Steel Limited** having CIN: U27109WB2003PLC096537, and having its registered office at Elegant Towers, 224A, A.J.C. Bose Road, Kolkata-700017, in the state of West Bengal is ordered to be liquidated.

(ii) Mr. Nitesh Kumar More having registration no. IBBI/IPA-001/IP-P01087/2017-18/11785 is appointed as the liquidator.

  
4 | Page



(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) Since the CD company is a going concern, the liquidator is at the liberty to sell the CD company as a going concern as per the provisions of the Code and regulation.

(viii) 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.

(ix) 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.


(x) 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.

(xi) The free copy of this order is to be sent to the RP/Liquidator, Operational Creditor and the Corporate Debtor by Speed Post as well as by email for information and for taking necessary steps.

(xii) CP(IB)No.1342/KB/2018 is **disposed of** as order of liquidation is passed.

(xiii) CA(IB)No.1200/KB/2019 is filed by the RP under Section 43 and 66 of I & B Code, 2016 to be placed for further consideration on **11.02.2020**.

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

  
(Virendra Kumar Gupta)  
Member( T )

  
(Madan B. Gosavi )  
Member( J )

Signed on this, the 06<sup>th</sup> January, 2020.

Deeksha(steno)