

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court - I)
KOLKATA**

IA (IB) No. 1549/KB/2023

in

CP (IB) No. 223/KB/2021

An application under section 33 of Insolvency & Bankruptcy Code, 2016

In the matter of

State Bank of India

... Financial Creditor

Versus

SAV Wires Private Limited

... Corporate Debtor

-And-

In the matter of

CA Santanu Brahma

Resolution Professional of SAV Wires Private Limited

... Applicant

Order pronounced on : 30.01.2024

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (through video conferencing):

For the Applicant:

Mr. Shaunak Mitra, Adv.

: For RP

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ORDER

Per: Balraj Joshi, Member (Technical)

1. This court was convened via video conferencing.
2. This is an application filed by the Resolution Professional with the approval of the Committee of Creditors ('CoC') seeking liquidation of the Corporate Debtor, viz., SAV Wires Private Limited [CIN: U27100WB2011PTC166784], on the ground that the CoC has decided to liquidate the Corporate Debtor by 100 % votes. The applicant has sought for the following reliefs:

(a) An Order for Liquidation of the Corporate Debtor M/s SAV Wires Pvt Ltd be passed by this Hon'ble Tribunal in terms of the IBC;

(b) That this Hon'ble Tribunal may be pleased to appoint a Liquidator of the Corporate Debtor in terms of the Insolvency and Bankruptcy Code, 2016;

(c) Pass such other or further Order/ Orders) as may be deemed fit and proper in the facts and circumstances of the instant case.

3. This IA is supported by an affidavit sworn by RP at page 24 of the Petition.
4. This Adjudicating Authority *vide* its order dated 16th December 2022 on a Petition filed by State Bank of India ('financial creditor') under section 7 of the Insolvency and Bankruptcy Code, 2016 ('the Code') directed initiation of the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and later appointed **Mr. Santanu Brahma** (the applicant) as the Interim Resolution Professional ('IRP') on its order dated 7th February 2023 as per the request of the Financial

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Creditor. The applicant was later appointed as the Resolution Professional ('RP').

5. The applicant submits that in terms of section 15 of the Code, public announcement was made on 17th February 2023, in ***Business Standard*** (English) and ***Aajkal*** (Bengali) newspapers having wide circulation where the Registered Office of the Corporate Debtor whereas in ***The Pioneer*** (English) and ***Pioneer*** (in local language, Hindi) in Chattisgarh where there is business operation of Corporate Debtor, thereby inviting claims from creditors of the Corporate Debtor. The public announcement was uploaded on the website of IBBI.
6. In terms of Regulation 6(2)(c) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the last date for submission of proof of claim was 01.03.2023 and the last date to constitute the CoC was 10th March 2023.
7. On 04.03.2023, the CoC of SAV Wires Pt Ltd appointed the Applicant as Resolution Professional, and they approved excluding 61 days from CIRP due to delayed IRP appointment.
8. The Applicant filed IA No 522 of 2023, seeking a 61-day exclusion from 16.12.2022 to 15.02.2023. The Hon'ble Tribunal reserved the matter on 16.05.2023, pronouncing the order on 16.08.2023. The RP took over CD's factory premises in Bhillai, Chhattisgarh, on 14.03.2023, engaging security guards.
9. The Applicant convened the 2nd, 3rd, 4th, and 5th CoC meetings on 03.05.2023, 22.05.2023, 14.06.2023, and 21.08.2023, respectively.
10. In the 2nd CoC meeting on 03.05.2023, the RP informed the Committee about newspaper publication for Invitation for EoI in Form G. A resolution on the eligibility criteria for Resolution Applicant was also

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passed. Newspaper invitations for EoI in Form G were published on 03.05.2023 in Business Standard, 'Aajkaal,' 'Central Chronicle,' and 'Navbharat.'

11. In the 3rd CoC meeting on 22.05.2023, a decision was made for a second newspaper publication of Form G, as no one expressed interest after the first publication. Marketing consultants were to be engaged, and the decision was communicated in newspapers.
12. The second Form G publication and the engagement of marketing consultants were made on 25.05.2023 in the mentioned newspapers. The Form G publication was reported to IBBI on 26.05.2023.
13. In the 4th CoC meeting on 14.06.2023, the Committee voted 100% in favor of extending the CIRP period by 90 days, resolving to file an application before the Hon'ble National Company Law Tribunal.
14. Post the second Form G publication, M/s. Shanti G Dispat and Power Pvt. Ltd. was identified as a prospective resolution applicant (PRA). The "Provisional List of Prospective Resolution Applicant" was circulated on 14.06.2023, and the "Final List" on 19.06.2023.
15. On 15.06.2023, the Information Memorandum, RFRP, and Evaluation Matrix were provided to the PRA within the scheduled date.
16. The PRA, M/s. Shanti G.D. Ispat and Power Pvt. Ltd., expressed their intention to visit the CD's premises on 14.07.2023, which was permitted by the RP. On 18.07.2023, the PRA requested an extension for the Resolution Plan submission deadline (20.07.2023). With 100% approval from SBI, the sole CoC member, the RP informed the PRA of the extension until 19.08.2023.

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17. Pursuant to the 4th CoC meeting resolution, on 19.07.2023, the Applicant filed I.A No. 1307 of 2023, seeking a 90-day extension for the Corporate Insolvency Resolution Process. The application is pending adjudication, and the Applicant seeks permission to refer to it during the hearing.
18. On the revised last date for submitting the resolution plan (19.08.2023), the PRA expressed unwillingness to participate via email on 17.08.2023. As no plan was received by the deadline, the RP and CoC, in the 5th CoC meeting on 21.08.2023, resolved with 100% voting to liquidate M/s. Sav Wires Pvt. Ltd. under Section 33 of IBC, 2016.
19. RP has not received any concrete Resolution Plan and as there is no prospects of receiving any further consideration taking into fact the CIRP period.
20. Hence, the RP has filed the instant application under section 33(2) of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor on expiry of the CIRP period.
21. The applicant /Resolution Professional, **Mr. Santanu Brahma** [Reg. No. IBBI/IPA-001/IP-P01482/2018-19/12251], has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator, in terms of section 34(1) of the Code and has a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member.
22. We have considered the submission made by the learned Counsel on behalf of the applicant /RP and perused the record.
23. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the corporate insolvency resolution

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process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six percent of voting share to liquidate the corporate debtor

24. This Bench, therefore, hereby orders as follows: -

a. IA(IBC)/788(KB)2023 filed by Mr. Santanu Brahma , SAV Wires, the Corporate Debtor, is allowed. Consequently, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with subsection (1) thereof;

b. Though the RP has given his consent to act as the Liquidator of the Corporate Debtor but in view of the IBBI Circular no. Liq-12011/214/2023-IBBI/840 dated 18/07/2023 for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the Code, we hereby appoint **Mr. Subodh Kumar Agrawal, Regn. No: IBBI/IPA-001/IPP00087/2017-18/10183** of the Insolvency and Bankruptcy Board of India, Panel for Jan 1,2024 to June 30, 2023 - Kolkata Bench having **email: subodhka@gmail.com** as Liquidator in terms of section 34(1) of the Code. His/Her appointment shall be subject to his/her possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he/she is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. The Liquidator is directed to submit his/her consent to act as Liquidator within **10 days** of receipt of this order. The erstwhile RP shall handover all papers and documents in his possession concerning the Corporate Debtor to the Liquidator appointed in this matter within **10 days**.

c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

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- d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, stating that the Corporate Debtor is in liquidation.
- e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him/her in managing the liquidation process of the Corporate Debtor.
- g. On initiation of the liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.
- h. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
- i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal.
25. The application bearing **IA (IB) No. 1549/KB/2023** shall stand disposed of in accordance with the above directions.

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26. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
27. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
28. List the main **CP (IB) No. 223/KB/2021** for reporting progress on **19.02.2024**
29. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their LD. Counsel for information and for taking necessary steps.
30. Certified Copy of this order may be issues, if applied for, upon compliance of all requisite formalities.

[Balraj Joshi]
Member [Technical]

[Rohit Kapoor]
Member [Judicial]

Signed on this, the 30th day of January, 2024

A.J.S [LRA]