

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

**IA(IBC)/1064(KB)2023
in
CP(IB)/208(KB)2021**

Under section 33(2) of the Insolvency & Bankruptcy Code, 2016

In the matter of:
State Bank of India

.... Financial Creditor

Versus

SAV Steels Private Limited .

.... Corporate Debtor

And

In the matter of:
Mr.Sanjai Kumar Gupta,
Resolution Professional of SAV Steels Private Limited

... Applicant

Order reserved on: 23/06/2023

Order pronounced on: 20/12/2023

Coram:

Smt. Bidisha Banerjee	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (through hybrid mode):

For RP	:	Mr. Rahul Auddy, Adv. Mr.Aditya Gooptu,Adv. Mr.Sanjai Kr.Gupta,RP in person
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ORDER

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.

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2. **IA(IBC)/1064(KB)2023-** is an application filed under section 33 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) by the Resolution Professional (“**RP**”) of SAV Steels Private Limited, the Corporate Debtor, praying for initiation of liquidation process of the Corporate Debtor. This application is supported by an affidavit duly affirmed by the RP.

The Ld. Counsel appearing for the RP submits that :

3. This Adjudicating authority, on a petition filed u/s. 7 of the IBC read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Financial Creditor**, *vide* order dated 28th October 2022 in CP(IB)/208(KB)2021, had ordered initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against **SAV Steels Private Limited**, the Corporate Debtor appointing Mr. Mr.Uday Narayan Mitra, as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry.
4. In terms of regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (“**CIRP Regulations**”) Public Announcements in **Form A** was published on 31/10/2022 in “*Financial Express*” (English) and “*Ekdin*” (Bengali) inviting claims from the creditors of the Corporate Debtor stipulating last date of submission of claims on 11/11/2022.
5. In compliance of provisions of the Code and Regulations, the IRP had intimated the initiation of CIRP to various authorities such as ROC, RD, to all banks.
6. In response to public announcement, one claim was received from State Bank of India with the IRP and since the SBI was the sole financial creditor and hence the CoC was constituted with SBI as its sole member. The IRP has received claims from ESI and directorate of Commercial Tax (in capacity as operational creditor).
7. The IRP held 6 CoC meetings on various dates. 1st CoC meeting 25/11/2022, 2nd CoC Meeting on 06/12/2022, 3rd CoC meeting on 11/01/2023, 4th CoC meeting on 04/02/2023, 5th CoC meeting on 28/03/2023, 6th CoC meeting on 17/04/2023.

8. Thereafter, vide order dated 2nd May 2023 of this Adjudicating Authority, the IRP was replaced and the Applicant herein was appointed as the RP. The Applicant took charge of the CIRP of the CD from a very belated stage, of nearly 5.5 months after the expiry of the CIRP. The IRP till date had filed one progress report.
9. The IRP had published the Form G twice to invite expression of interest on 14th January, 2023 and again on 23rd February 2023 however there was no response to the same. The Form G on both the occasions were published in **Financial Express** in English and **EK Din** in Bengal. Copies of the Form G is annexed as letter “B”.
10. Thereafter, the 6th CoC meeting was held on 17th April 2023. In the said meeting, the CoC deliberated that since there was no business of the Corporate Debtor and no assets, there was no response to the Form G published and there was no scope of any resolution plan, the CoC advised the IRP to apply before NCLT for Liquidation of the CD in view of no realisable asset of the CD.
11. The application for liquidation was filed by the IRP sometime on or around 21st April 2023 and the same has been numbered as IA No. 860/2023.
12. Thereafter, vide order dated 2nd May 2023 passed by this Adjudicating Authority, the IRP was replaced and the applicant herein was appointed as the RP.
13. The RP after taking charge of the affairs of the CD and after taking handover of the documents from the IRP was of the view that certain mandatory requirements in the application under section 33 were amiss. The name of the liquidator was not proposed, the fees of the liquidator was not fixed, the estimated costs was not approved by the CoC. Since the same are mandatory requirement as per the Code, the Applicant sent a notice on 16/05/2023 for convening the 7th CoC Meeting on 17th May 2023.

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14. The 7th CoC Meeting was held on 17th May 2023 wherein the agendas for naming the liquidator, Liquidator fees and estimated Liquidation Cost, consent of the CoC for this applicant to be appointed as the Liquidator and approval of CoC directing Applicant to file Rejoinder/Application for Liquidation of the Applicant were approved by the CoC by 100% Voting. Copy of minutes of 7th CoC meeting along with Voting results annexed as Letter D.
 15. The Applicant has agreed to continue as the Liquidator of the CD, and as such the Consent of the Applicant and the AFA are annexed as Letter-E.
 16. A unique situation arose which led to a fresh filing of this liquidation application even though an application with similar prayers have been filed being IA No. 860/2023. The previous application was filed by the IRP, Uday Narayan Mitra. After the filing of the application, on and from 2nd May 2023, the Applicant is the RP and the IRP has no role after being substituted. Now since it was necessary to bring on record the additional information such as name of liquidator, his consent, his AFA, the fees of liquidator, the estimated liquidation cost, the RP cannot file a supplementary affidavit in an application filed by another IRP. Thus, to avoid the complexities, the RP is filing a fresh application under section 33 and shall withdraw the previous section 33 application numbered as IA NO. 860/2023.
 17. In the above scenario, the applicant has filed the instant application being IA(IBC)/1064(KB)2023 under section 33(2)(a)(i) of the IBC seeking initiation of liquidation process against the Corporate Debtor.
 18. It is to be noted here that the CIRP period had already ended on 01/01/2023 and no extension has been sought by the RP.
 19. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass an order of liquidation where no resolution plan is received before the expiry of the CIRP. Sub-section (2) thereof requires the Adjudicating Authority to pass the liquidation order where the Resolution Professional intimates to the Adjudicating

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Authority the decision of the Committee of Creditors approved by not less than 66% of the voting share to liquidate the Corporate Debtor.

20. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
21. This Bench, therefore, hereby orders as follows: -
- a. IA(IBC)/1064(KB)2023 filed by Mr. Sanjai Kumar Gupta, RP of SAV Steels Private Limited, 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 sub-section (1) thereof;
22. Though the RP has given his consent to act as the Liquidator of the Corporate Debtor but in view of the IBBI Circular dated 18/07/2023 vide no. Liq-12011/214/2023-IBBI/840 for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the Code, we are appointing **Mr. Sunil Choraria**, Regn. No. **IBBI/IPA-002/IP-N01209/2022-2023/14078** having e-mail i.d. chorariamba@rediffmail.com, mobile no. 9831278326 as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he 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 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**.
- a. 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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- b. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., in “*Financial Express*” (English) and “*EKdin*” (Bengali) stating that the Corporate Debtor is in liquidation.
- c. 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.
- d. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by her in managing the liquidation process of the Corporate Debtor.
- e. 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.
- f. 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.
- g. 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**.
23. The application bearing **IA(IBC)/1064(KB)2023** shall stand disposed of in accordance with the above directions.
24. **CP(IB)/208(KB)2021** is to come up for filing of Periodical Progress Report on

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16th January 2024.

25. 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.
26. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 20th day of December, 2023.

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