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IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-502

TP (Co. Act.)-55(PB)/2022 Old CP No.-989/2015

IN THE MATTER OF:

Japna Estates Pvt. Ltd.

....Applicant

Vs.

Shubhkamna Buildwell and Estates Pvt. Ltd.

.....Respondent

SECTION

U/s 433(e)(f) CA 1956

Order delivered on 25.04.2023

CORAM:

**SHRI P.S.N PRASAD,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant : Mr. Nagesh, Sr. Adv. with Ms. Tripti Kapoor,
Mr. Akshay Sharma, Adv.

For the Respondent :

For the OL : Ms. Hemlata Rawat, Adv.

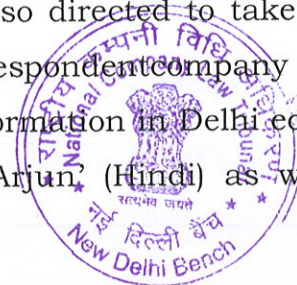
ORDER

TP (Co. Act.)-55(PB)/2022 Old CP No.-989/2015:-

IA/128/2023 & IA/129/2023:-

On 06.08.2018, the Hon'ble Delhi High Court has passed an order denoting that the winding up petition under Section 439 read with Section 433 (e) and 434 of the Companies Act, 1956 seeking winding up of the respondent company was considered and the Hon'ble Single Judge of the Hon'ble Delhi High Court has admitted the petition and appointed the Official Liquidator attached to the Hon'ble Delhi High Court as the Provisional Liquidator and the Provisional Liquidator is also directed to take over all the assets, books of accounts and records of the respondent company forthwith. It was also ordered for publication of the said information in Delhi editions of the newspapers 'Statesman' (English) and 'Veer Arjun' (Hindi) as well as Delhi

Amit Tiwari
25.04.2023



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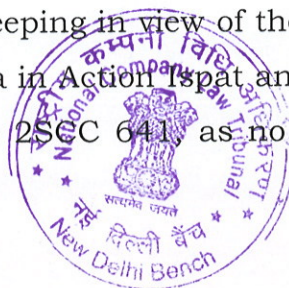
Gazette, at least 14 days prior to the next date of hearing. It transpires that the said order has been complied with. The Hon'ble Delhi High Court in its order further stated that the Official Liquidator shall also endeavour to prepare a complete inventory of all assets of the respondent company when the same are taken over. It transpires from the submissions made by Ld. Counsel for the Official Liquidator, the said order has been complied with and the Official Liquidator has prepared the inventory of all the assets of the respondent company.

Further, the Hon'ble Delhi High Court vide its order dated 09.11.2022 has considered the applications filed by 122 Applicants who claim themselves to be the homebuyers in a residential project of the respondent company and have prayed for transfer of the said winding up proceedings/petition to the National Company Law Tribunal and stay the liquidation proceedings against the respondent company.

The Paragraph No. 3 of the above referred order also denotes that the Official Liquidator's attempt to dispose of the properties of the respondent company did not bear any fruit. Therefore, no irretrievable steps have been taken by the Official Liquidator in respect of the assets of the respondent company.

The Paragraph No. 10 of the above referred order makes it clear that Section 53 of IBC, 2016 provides that the proceeds from the sale of the liquidation assets shall be distributed with priority accorded to the Insolvency Resolution Process cost and liquidation cost being paid in full. The claim of the Official Liquidator therefore can be safeguarded by directing that expenses incurred by Official Liquidator shall be considered as CIRP cost and shall be dealt with in accordance with the Section 53 of the IBC, 2016.

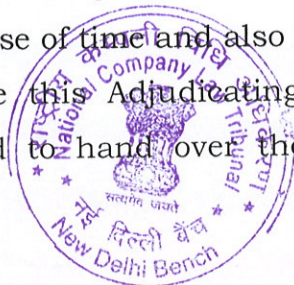
In the order, it is further observed that keeping in view of the ratio of the judgment of the Hon'ble Supreme Court of India in *Action Ispat and Power Pvt. Ltd. v. Shyam Metalic and Energy Ltd.*, (2021) 2SCC 641 as no irretrievable



steps had been taken in furtherance of order of the Hon'ble High Court admitting the present petition, it is a fit case for transferring the petition to Ld. NCLT, to be taken up by the Ld. NCLT from the stage it is at before the Hon'ble High Court. Therefore, the Applicant was directed to file Form 1 and Form 2 and those forms have been taken on record on 10.04.2023.

In the above referred order, the Hon'ble High Court has directed the Official Liquidator to safeguard the interest of the properties. Therefore, this Tribunal directs the Official Liquidator to file a short affidavit denoting the inventory of the properties and also list of the properties which is subject matter of safeguarding by the Official Liquidator within next week days.

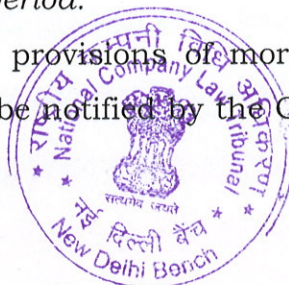
Keeping the directions contained in the Hon'ble High Court's order in view, and the fact that the Applicant has filed applications in Form 1 and has also filed Form 2 in which the Petitioner has identified an Insolvency Professional to Act as IRP, this Adjudicating Authority admits the TP (Co. Act)-55(PB)/2022 Old CP No.-989/2015 and initiates CIRP proceedings in the case of M/s. Shubhkamna Buildwell & Estates Private Limited. The Adjudicating Authority also confirms the appointment of Mr. Shailendra Singh, the Insolvency Professional bearing Registration No. IBBI/IPA-002/IP-N00471/2017-2018/11372 to act as IRP in respect of the Corporate Debtor. The form placed before us and the annexures thereto denote that the Insolvency Professional has given written consent to act as IRP in the matter and he is possessing a valid authorization for assignment. The IRP is directed to take charge from the Provisional Liquidator appointed by the Hon'ble High Court in the matter and as per the provisions of IBC, the CIRP process has to be completed within the time prescribed under law. It is clarified here that the IRP is entitled to fee and expenses as per the fee and expenses determined by the IBBI schedule of rates. Upon taking of the charge, the IRP is directed to take steps without any further lapse of time and also file a special report within 15 days of taking charge before this Adjudicating Authority. Further, the Provisional Liquidator is directed to hand over the charge to IRP and the



Provisional Liquidator will be discharged from the duties and responsibilities to act as Provisional Liquidator the moment his charge is handed over to IRP.

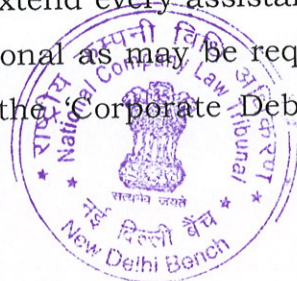
We further direct as follows:-

1. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
 - a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.
 - e) The IB Code 2016 also prohibits *Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*
2. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the



supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

3. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
4. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Shailendra Singh to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
5. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
6. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the Corporate Debtor'. In case there is any



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violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.

7. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
8. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

IRP may take steps to inform all concerned about his appointment and also about the initiations of CIRP process. List the matter on **15.05.2023**.

The IA/128/2023 as well as IA/129/2023 **stands disposed of** in all respects. TP (Co. Act)-55(PB)/2022 Old CP No.-989/2015 stands **admitted**.

Registry may treat this as a proceeding under IB Code, 2016 and take necessary steps for allotting a CP(IB) No., if deemed necessary.

S/d-
(DR. BINOD KUMAR SINHA)
MEMBER (T)



S/d-
(P.S.N PRASAD)
MEMBER (J)

Amit Tiwari
25.04.2023

Paul
03/05/2023
सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
C.G.O. COMPLEX, NEW DELHI-110003

3/5/23