

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 45/KB/2018

IN THE MATTER OF:

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

-And-

IN THE MATTER OF:

INDIAN OVERSEAS BANK, a bank and a body corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having its Central Office at 763, Anna Salai, Chennai 600002 and carrying on business through its different branches including its branch office at and from 2, Wood Street, Police Station Shakespeare Sarani, Kolkata 700016, West Bengal (commonly known as "International Business Branch)".

... Petitioner (Financial Creditor)

-Versus-

IN THE MATTER OF:

M/S. D C INDUSTRIAL PLANT SERVICES PVT. LTD., a Private Limited Company incorporated under the Companies Act, 1956, having its registered office at 6A, South Block, Park Plaza, 71, Park Street, Kolkata 700016, and its

factory at 8/A, Sailesh Nagar, Doltala, Doharia, P.O. Ganganagar, P.S. Barasat,
Kolkata 700132.

... Respondent (Corporate Debtor)

AND

M/S. DC INDUSTRIAL PLANT SERVICES PVT. LTD. INTTUC WORKERS UNION,
registered under the Societies Registration Act having its office at Doharia,
Ganganagar, Kolkata 700132.

Applicant

**Coram: Shri Jinan K.R., Hon'ble Member (Judicial) & Shri Harish Chander
Suri, Hon'ble Member (T)**

Counsel on Record:

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|-------------------------------------|----------------------------|
| 1. Ms. SAVITA AGARWAL |] Resolution Professional |
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| 1. MS. URMILA CHAKRABORTY, Advocate |] |
| 2. MR. AASISH CHOUDHURY, Advocate |] For CoC |
| 3. MS. PUJA TRIPATHI, Advocate |] |
| | |
| 1. MR. AMIT KUMAR NAG, Advocate |] For Resolution Applicant |
| 1. MR K. THAKKAR |] |
| 2. MR. MICKY CHOWDHARY |] Workmen |
| 3. MR. SWARAJIT DEY |] |

Order pronounced on: 19/06/ 2019.

ORDER

Per Shri Harish Chander Suri, Member (Technical)

1. This petition has been filed by Indian Overseas Bank, the Financial Creditor against M/s. D.C. Industrial Plant Services Pvt. Ltd., the Corporate Debtor for initiating Corporate Insolvency Resolution Process against the Corporate Debtor alleging that an amount of Rs. 151,19,77,120.91 (Rupees One Hundred Fifty One Crore Nineteen Lakh Seventy Seven Thousand One Hundred Twenty and Paise Ninety One Only) is outstanding amount payable by the Corporate Debtor to the Financial Creditor which it has failed to repay in spite of demands and has thus committed default, necessitating the filing of this application. This Adjudicating Authority (AA) issued notice of admission on the Corporate Debtor on 11th January, 2018.
2. In the preliminary hearing of the application and after carefully going through the Reply Affidavit in opposition this AA was satisfied that the amount was due and payable and the Financial Creditor was successful in proving this case by production of statement of accounts, and also that the default has occurred on the part of the Corporate Debtor in





making the payment. The application was admitted and moratorium was declared in accordance with Sections 13, 14 & 15 of the Insolvency and Bankruptcy Code. This Tribunal appointed Mrs. Savita Agarwal, Registration No. IBBI/IPA-001/IP-P00101/2017-18/10201 as an Interim Resolution Professional (IRP) to perform her duties as assigned to an IRP in Insolvency and Bankruptcy Code.

3. The appointment of the IRP was confirmed as Resolution Professional (RP) by the Committee of Creditors (CoC). The RP during the course of hearing on 25th January, 2019 prayed for extension of the CIRP period beyond 180 days by 90 days from 25th January, 2019, as per the decision of Committee of Creditors.
4. The Resolution Professional filed status report from time to time, which was brought to the notice of the Tribunal. In the 6th Progress Report filed by the RP, it was informed that the CoC is yet to consider the Resolution Plan in its next meeting and that the time would be expiring on 25th April, 2019. The CA(IB) No. 514/KB/2019 was filed by the RP for exclusion of certain period which allegedly remained un-utilised during the period of CIRP. She had asked for exclusion of 19 days period taken for consideration of this application and **other 25 days** period that remained un-utilised period by the CoC. The time of 44 days was accordingly ordered to be excluded

vide order dated 15th of May, 2019, with a direction to the RP to expedite the process by taking day today steps and file the final report as early as possible before the expiry date.

5. That the 17th COC meeting was held on 28th May, 2019 to vote on the approval/rejection of the Resolution Plan as already discussed and evaluated by the COC members in the 13th & 14th COC meetings. The matter was put for e-voting. As per the e-voting results, the Resolution Plan was rejected by 100% majority. However, none of the COC members had submitted the reason for the rejection of the Resolution Plan in spite of RP stating the provisions of the related Regulation in the CoC meeting.
6. It is submitted on the side of the Ld. RP that despite her directions to the Committee of Creditors, they have not given reason for non approval of the Resolution Plan, therefore this Adjudicating Authority had to direct the Resolution Professional to get the reason recorded for non approval of the Resolution Plan and communicate the reason for non approval of the Resolution Plan to the Resolution Applicant. In compliance of the directions, the Ld. Resolution Professional has submitted addendum to the Final Progress Report submitted on 4th June, 2019 and submitted the below mentioned reasons for non approval of the Resolution Plan by the Committee of Creditors.

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6.1 INDIAN OVERSEAS BANK & IDBI LIMITED

Huge hair cut, Longer tenure of Payment, Source of Payment, Low upfront payment and Plan offer less than the Liquidation Value.

6.2 BANK OF INDIA

No corporate guarantee by the resolution Applicant, Contingent Liability not cleared, Uncertainty with regard to non compliances and Huge variation in two valuation report.

6.3 CANARA BANK

Huge hair cut, Longer tenure of Payment and Source of Payment.

7. Upon the above said reasons submitted by the respective members of the Committee of Creditors the Committee of Creditors unanimously rejected the Resolution Plan. According to the Ld. Resolution Professional the Resolution Plan is not feasible and viable and therefore in the absence of Resolution Plan an order of Liquidation is to be passed.

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8. At this juncture the Ld. Counsel appearing for the INTTUC Workers Union submits that the Workers Union filed the **CA(IB) No. 662/KB/2019** praying for passing the following directions:-

- a) That the period of 15 days which was consumed extra for inviting revised expression of interest and the period from 15th April, 2019 till the time when the resolution plan is finally considered by the COC may be excluded from the CIRP.
- b) The COC be directed to consider the resolution plan within such time as this Ld. Tribunal may deem fit and proper.
- c) In the event that the resolution plan submitted by the Mecgale is rejected by COC, the Ld. Tribunal may direct the Liquidator to take steps under Section 230 of the Companies Act, 2013 for revival and continuation of the Corporate Debtor by means of compromise or arrangement with creditors or members.
- d) In the event that no scheme can be framed under Section 230 of the Companies Act, 2013 to sell the Corporate Debtor as a going concern.

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e) Such other and further order/orders as this Ld. Tribunal deems fit and proper.

9. It is contended that in case the Adjudicating Authority considers passing order of Liquidation, the possibility of sale of Appellant Company as an ongoing concern is also to be looked into.
10. We have heard the Ld. Resolution Professional, the Ld. Counsel appearing for the Financial Creditors, and for the Workmen. We have also carefully perused the records.
11. The CIRP period originally expired on 25th April, 2019. However, at the request of the Resolution Professional certain unutilized period of 44 days was excluded, and thereby the 270 days period of CIRP has expired on 09.06.2019.
12. **C.A. (IB) No. 662/KB/2019** was filed by the Workmen subsequent to the expiry of CIRP period, praying for exclusion of period of 15 days and for issuing directions to the Liquidator to take steps under Section 230 of the Companies Act, 2013 for revival and if failed in framing a Scheme, direct the Liquidator to sell the Corporate Debtor Company as a going concern. This Company Application having been filed at the fag end of the consideration of Final

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Progress Report filed by the Resolution Professional, and also after 270 days of CIRP having expired, we are unable to consider this application. It requires no consideration at all. The details sought for can be considered by the Liquidator, if any member applies for it.

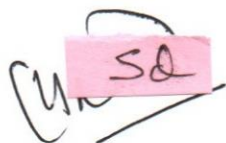
13. The Committee of Creditors being the Competent Authority as regards approval or rejection of the Resolution Plan, considering its feasibility and viability, and the Adjudicating Authority has nothing to do with the decision of the Committee of Creditors in dissenting and rejecting the Resolution Plan by 100% voting share.
14. In view of the aforesaid reason, the Adjudicating Authority has no other alternative than to pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter III read with Section 33(1) of I&B Code 2016.
15. At this juncture, the submissions of the Ld. Counsel for the Workmen that in case of passing an order of Liquidation, the Liquidator may be directed to explore the possibility of framing a Scheme for compromise or arrangement with creditors or members by taking steps u/s 230 of the Companies Act, 2013 cannot be ignored. According to him a Scheme can be framed u/s 230 of the Companies Act, 2013

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to sell the Corporate Debtor as a going concern. In S.C. Sekaran vs. Amit Gupta & Ors (CA(AT) (Insolvency) No. 495 & 496/2018), the Hon'ble Appellate Tribunal issued directions to the liquidator that "before taking steps to sell the assets of the Corporate Debtors, the liquidator will take steps in terms of Section 230 of the Companies Act, 2013".

16. The above said discussions lead us to the only conclusion that, the Liquidator has to explore all the possibilities as to whether the Corporate Debtor can be sold as a going concern, and if possible, sell the Corporate Debtor as a going concern, failing which he shall be at liberty to take steps under Section 230 of the Companies Act, 2013.
17. The CoC in its 17th meeting unanimously decided to propose the name of Mr. Ram Ratan Modi, Insolvency Professional bearing Registration IBBI/IPA-001/IP-P00051/2017-2018/10125 to act as the Liquidator. Accordingly, he is appointed as the Liquidator subject to filing of written consent within One week of the date of this order.
18. In view of the above said discussions we are inclined to pass the following orders:-





ORDER

- i) In the result, the application is allowed by ordering liquidation of the Corporate Debtor, namely M/s. D.C. Industrial Plant Services Private Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016, and the following orders/directions are issued:-
- a) **Sri Ram Ratan Modi** is appointed as Liquidator;
 - b) Sri Ram Ratan Modi is directed to issue Public Announcement stating that the Corporate Debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
 - c) The Registry is directed to communicate this order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India.
 - d) The order of moratorium passed under section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect, and that a fresh moratorium u/s

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33(5) of the Insolvency and Bankruptcy Code shall commence.

- e) This order shall be deemed to be a notice of discharge to the Officers, employees and the workmen of the Corporate Debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016.
- f) The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- g) The Liquidator shall submit a Preliminary Report within Seventy Five days from the date of commencement date to the Adjudicating Authority as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- h) A copy of this order be sent to the Financial Creditor, Corporate Debtor and the Liquidator for taking necessary steps.

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19. **C.A. (IB) No. 622/KB/2019 and C.P. (IB) No. 45/KB/2018 is disposed of as above.**
20. Urgent certified copy of this order, if applied for, be issued to the parties upon compliance of all requisite formalities.



(Harish Chander Suri)
Member (T)



(Jinan K.R.)
Member (J)

Signed on this 19th day of June, 2019.

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