

**In the National Company Law Tribunal  
Kolkata Bench  
Kolkata**

**C.P. (IB) No. 221/KB/2018**

**Coram: Shri Jinan K.R, Hon'ble Member (Judicial)**

**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 :**

**Mr. Rakesh Pandey**, Son of Shri Jagmohan Pandey residing at 90, L.I.C. Gali, Mohsinpur, Mansoorpur, Akbarpur, Ambedkar Nagar, Uttar Pradesh 224122.

**...Applicant/Financial Creditor**

**VERSUS**

**In the matter of :**

**CIRP OF M/S. JHV DISTILLERIES AND SUGAR MILLS LIMITED**, a Limited Non-Government Company, limited by shares registered under the provisions of the Companies Act, 1956 and having its registered office at 156-A, Lenin Sarani, Room No. 212, 11 Floor, Kolkata - 700 013, in the State of West Bengal under the aforesaid jurisdiction.

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.... Respondent/Corporate Debtor

And

**In the matter of :**

MR. SHRAVAN KUMAR VISHNOI, Son of Late Shiv Ratan Vishnoi, aged about 42 years, carrying out profession at BCC Tower, 1008, 10<sup>th</sup> Floor, Arjun Ganj, Lucknow - 226002.

.... Resolution Professional

**In the matter of :**

<b>MR. RAKESH PANDEY</b>	<b>] FINANCIAL CREDITOR</b>
<b>M/S. JHV DISTILLERIES AND SUGAR MILLS LIMITED</b>	<b>] CORPORATE DEBTOR</b>
<b>MR. SHRAVAN KUMAR VISHNOI</b>	<b>] RESOLUTION PROFESSIONAL</b>

**Counsels on Record :**

<b>Mr. Udit Agarwal, Advocate</b>	<b>] For the Financial Creditor</b>
<b>CS Rahul Parasrampur, Pr. CS</b>	<b>] For the Erstwhile IRP ] (Mr. Alope Kumar Kuchhal)</b>
<b>Mr. Pranay Agarwal, Advocate</b>	<b>] For Resolution Professional</b>
<b>Ms. Ankita Baid, Advocate</b>	<b>] For Resolution Professional</b>

**Order pronounced on : 12/02/2019**

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**Per Shri Jinan K.R, Member (Judicial)**

1. The C.P.(IB) No.221 of 2018 has been filed by One Mr. Rakesh Pandey / Financial Creditor under Section 7 (1) of the Insolvency and Bankruptcy Code, 2016 (I & B Code) read with Rule 4 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process as against the Corporate Debtor/M/s. JHV Distilleries & Sugar Mills Limited hereinafter referred to as the Corporate Debtor.
2. The application was admitted vide order dated 08.05.2018 by appointing Mr. Alok Kumar Kuchhal as Interim Resolution Professional. The Interim Resolution Professional was thereafter removed by the Committee of Creditors by appointing one another Resolution Professional viz., Mr. Shravan Kumar Vishnoi. He continued the resolution process. Mr. Shravan Kumar Vishnoi however was unsuccessful in finding out a Resolution Applicant so as to take over stressed assets of the Corporate Debtor and filed the Final Report dated 1st February, 2019.
3. The CIRP period of 270 days expired on 5<sup>th</sup> February, 2019. The Ld. Counsel appearing for the Resolution Professional submits that for want of co-operation from the Directors of the Corporate Debtor and since the assets of the Corporate Debtor was taken away by the District Magistrate of Kushinagar, Uttar Pradesh he was unable to call for Expression of Interest (EOI). He further would submit that he was not authorized to issue publication of EOI and thereby he could not call for EOI and hence is filing the final

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report detailing the progress of the work which had been completed and prays for ordering liquidation.

4. Heard the Resolution Professional and his Counsel. Perused the records.

5. From the report, it is revealed that the Financial Creditors who are the members of the Committee of Creditors as well as the Directors of the Corporate Debtor have not fully co-operated with the Resolution Professional in order to enable him to complete the CIRP by finding out a Resolution Applicant. The circumstances highlighted by the Resolution Professional in his report are the following:-

The Resolution Professional herein was in receipt of the documents handed over to him from the erstwhile Interim Resolution Professional as on 12.10.2018 and at his instance, he called for 3<sup>rd</sup> meeting of the members of the Committee of Creditors on 26.10.2018 and since the period of 180 days was about to expire, he filed an application for extension of the CIRP period and vide order dated 5.11.2018, the CIRP period was extended by 90 days from 3<sup>rd</sup> November 2018 till 5<sup>th</sup> February 2019.

Though the CIRP period was extended, he was unable to trace out the details of the assets of the Corporate Debtor because the documents called for from the Directors of the Corporate Debtor were not handed over to him despite directions issued to the Directors in the Interim Application filed by the Resolution Professional. While so he came to know that the immovable properties of the Corporate Debtor were in the possession of the District Magistrate of Kushinagar, Uttar Pradesh and despite notice

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issued to the District Magistrate, he declined to hand over the assets and further it is learnt that he is proceeding with the assets and conducting auction for disposal of the assets.

6. An Interim Application filed by the Resolution Professional as C.A. (IB) No. 1067 of 2018 in this case, for issuing directions against the District Magistrate, to cause production of the assets and to initiate contempt as against him is pending for consideration. Though a writ petition has been filed before the Hon'ble High Court at Allahabad, no favourable order was obtained by the Resolution Professional so as to take custody of the assets in order to complete the Resolution process and to have had valuation of the property for enabling him to issue publication calling for EOI. It is stated that EOI was not published because it became impossible to value the property of the Corporate Debtor because of the properties being in the custody of the District Magistrate. Since the properties of the Corporate Debtor were not valued, there was no publication of Form 'G' inviting Expression of Interest (EOI). However, the Resolution Professional made a request before the CoC for their approval of publication of Form 'G' inviting EOI. But the Committee of Creditors did not approve the publication of Form 'G'. Thus there was no publication and no resolution applicant, and no resolution plan as argued by the Counsel for the Resolution Professional.

7. The 5<sup>th</sup> meeting of the Committee of Creditors was held on 11.01.2019 in which the main agenda was Publication of Form 'G' inviting EOI. Since it is a mandatory requirement in compliance of CIRP Regulation, the Resolution Professional attempted to conduct the meeting. However, the Resolution for issuing

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publication was put to e-vote among the members of the Committee of Creditors. 86.85% majority abstained from voting and the Committee of Creditors with 13.15% majority did not participate in the meeting for the voting and thereby the meeting was adjourned to 15.01.2019. On failure of taking a decision, the Resolution Professional again called for a meeting on 28.01.2019. On 28.01.2019 the meeting could not be convened and thereby it was adjourned to 29.01.2019 by informing the members of the Committee of Creditors by e-mail but on 29.01.2019 nobody turned up.

8. Highlighting the above said facts and circumstances, the Resolution Professional contends that he could not obtain any Resolution Plan and that the Committee of Creditors having not attended the meeting, no approval of the decision as to exclusion of unutilised period of CIRP at his instance was obtained and that decision for moving an application for liquidation also he could not obtain and in the meanwhile CIRP period has expired and hence he cannot proceed further without any direction from this Bench and hence he filed the final report. It is in this background, the Resolution Professional has prayed for passing an order for liquidation of the Corporate Debtor Company.

9. Heard the Ld. Counsel for the Financial Creditor, Ld. Pr. CS for the Erstwhile IRP Mr. Alok Kumar Kuchha and the Ld. Counsels for the Resolution Professional. Nobody appeared on the side of the Financial Creditors.

10. It is significant to note here that the Committee of Creditors seems to have not fully co-operated with the Resolution Professional so as to have a successful completion of the CIRP. The

Resolution Professional was unable to get the details of the assets. The Resolution Professional was unable to complete the valuation of the assets of the Corporate Debtor and the steps taken against the District Magistrate could not be completed before the period of CIRP.

11. In view of the above said circumstances wherein the Committee of Creditors has not taken any due interest in completing the process by getting a prospective Resolution Applicant, I find no other alternative other than to pass an order of liquidation requiring the corporate debtor to be liquidated in the manner as laid down in Section 33, Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016. Accordingly, I hereby order requiring the Corporate Debtor, namely, M/s. JHV Distilleries and Sugar Mills Limited, to be **liquidated** in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016, upon the following directions:-

#### **ORDER**

1) The Resolution Professional Mr. Shravan Kumar Vishnoi has given his consent to continue as the Liquidator. That being so, Mr. Shravan Kumar Vishnoi is appointed as the Liquidator to continuing the Liquidation Process.

2) Mr. Shravan Kumar Vishnoi 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.

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3) The Registry is directed to communicate this Order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India.

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

5) 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 the Insolvency and Bankruptcy Code, 2016.

6) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.

7) The Liquidator shall submit a Preliminary Report to the Adjudicating Authority on or before 15<sup>th</sup> May 2019 from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

8) Copy of this order be sent to the Financial Creditor, Corporate Debtor and the Liquidator by post and by e-mail for taking necessary steps.

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C.P. (IB) No. 221/2018 is **disposed of** accordingly.

C.A. (IB) No. 1194/2018 was filed u/s 19(2) of the Insolvency and Bankruptcy Code, 2016 for issuing directions to the suspended Board of Directors of the Corporate Debtor. Since the C.P. (IB) 221 of 2018 being disposed of by ordering Liquidation, this C.A. 1194/2018 requires no further consideration, hence **dismissed**.

Urgent certified copy of this order, if applied for, be issued to the parties upon compliance of all requisite formalities.

52

(Jinan K.R.)

Member (Judicial)

*Signed on this 12<sup>th</sup> day of February, 2019.*

/vc/