

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB) 168(ND)/2017

CORAM:

PRESENT: SH. S. K. MOHAPATRA
HON'BLE MEMBER(T)

SMT. INA MALHOTRA
HON'BLE MEMBER (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 18.09.2017

NAME OF THE COMPANY: M/s Su-Kam Power Systems Ltd. Vs. M/s Uniforce Energy Systems India Pvt. Ltd.

SECTION OF THE COMPANIES ACT: 9 of IBC, 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
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	For the Petitioner (s) :	Mr. Shashank Mishra, Advocate		
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	For the Respondent (s) :	None		
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ORDER

The facts of the case are little peculiar. On the appointment of the IRP, publication was effected. The only other creditor viz. IndusInd Bank put in appearance as a financial creditor to constitute the Committee of Creditors. However, keeping in view the fact that there are no assets of the company and the whereabouts of the Directors are not known, resolution of the company also appears to be an impossibility. The financial creditors do not wish to proceed with the resolution because appointing an RP would be throwing good money after bad with no hope of any recovery. The IRP who had submitted his report prayed for a discharge as there is no one to bear the expenses.

The Chief Manager of the IndusInd Bank was summoned to the Court on the last date. He has categorically submitted that pursuing the remedy of resolution in the absence of any asset of the company would be an exercise in futility. The Bank which is the only financial creditor and had initially responded, now seeks to withdraw, leaving the operational debtor in a lurch.

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The Operational Creditor's predicament is that given the fact that the IndusInd Bank has joined in as Financial Creditors in the Committee of Creditors, their unwillingness to proceed further has stalled further proceedings and they on their own cannot proceed, and even otherwise they alone cannot burden the process.

From the aforesaid, it has become clear that no Resolution Professional can be appointed nor any resolution plan initiated. Accordingly, liquidation proceeding under Chapter III has to follow.

Notice was given to the OL who has not appeared today. Show Cause Notice under Order 16 Rule 12 be issued to the Official Liquidator to explain his absence despite service of notice.

Copy of the order be also communicated to the IBBI to recommend the name of the liquidator given the aforesaid facts.

Court Notice be also issued to the ROC to confirm whether Directors of the company are also Directors in any other company and apprise this Bench of the status of filing of the Statutory Returns. In the absence of the same, they shall also report what action has been taken by them.

To come up on 4th October, 2017.


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(S. K. Mohapatra)
Member (T)


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(Ina Malhotra)
Member (J)