

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

**C.P.(IB)No.42/BB/2017**  
U/sec.10 of I & B Code, 2016  
Order Delivered on: 17<sup>th</sup> November, 2017

**IN THE MATTER OF:**

**1.) DCS International Private Limited** ..... **Petitioner/Corporate Debtor**  
No.18/2,7<sup>th</sup> Mile  
Srinivasa Industrial Estate.  
Next to Metro  
Mudaliar Road, Richards Town, Bangalore,  
Karnataka-560 001

Coram: Hon'ble Shri RatakondaMurali, Member (Judicial)  
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

Parties Present: Sh.Thirupal Gorige, PCS (Interim/ Resolution Professional)  
No.87, 2<sup>nd</sup> Floor, 21<sup>st</sup> Cross, 7<sup>th</sup> Main,  
NS playa, BTM Layout, 2<sup>nd</sup> Stage  
Bangalore-560 076

Per: **Hon'ble Shri Ratakonda Murali, Member (Judicial) - Author**

**O R D E R**

This Company Petition was filed on behalf of the Corporate Debtor under Section 10 of the Insolvency and Bankruptcy Code 2016 read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process.

Since, the Corporate Debtor was unable to pay its large pending dues and had committed default in repaying to the respective creditors to the tune of Rs.10,65,18,254/-, the Board of Directors of the Corporate Debtor in their meeting held on 29<sup>th</sup> May, 2017 passed a Resolution to initiate Corporate Insolvency Resolution Process.

This Bench on perusal of the documents and averments made in the Petition passed vide Order dated 10<sup>th</sup> July, 2017 admitted the application and declared Moratorium under Section 14 of the Insolvency and Bankruptcy Code 2016 and appointed Mr. Thirupal Gorige bearing Registration No. IBBI/IPA-002/IP-N00016/2016-17/10030 as Interim Resolution Professional, directing him to take necessary actions in accordance with the relevant provisions of the Insolvency and Bankruptcy Code.

The said Interim Resolution Professional in pursuance to the Regulation 13(2)(d) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, has submitted the list of Creditors along with amount claimed, claim admitted, security interest in respect of claims and Publication as required under Section 13 of the Code. The said list of creditors and a copy of Publication are shown as **Annexure A & B in Memo dated 9<sup>th</sup> August, 2017.**

In pursuant to Section 21 of the Insolvency and Bankruptcy Code, 2016 and Regulation 17(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, a copy of constitution of committee of all financial Creditors as on 4<sup>th</sup> August, 2017 is shown as **Annexure C in Memo dated 9<sup>th</sup> August, 2017** which is as shown hereunder:

Sl. No.	Name of the Bank	Status	Whether related party or not	Amount claimed/admitted
1	Syndicate Bank, Vasanthanagar Branch, 3 <sup>rd</sup> Cross, Vasanthanagar, Bangalore-560052	Financial Creditor	Not	1,29,61,978.01*
2	Ms. Anupama Sathyesh	Financial Creditor	Related Party	25,880
3	Ms. Durgapameshwari Pedamale	Financial Creditor	Related Party	76,84,154
4	Mr. Sathyesh Marakakini	Financial Creditor	Related Party	61,02,157
5	Shakthi clothing Pvt. Ltd.,	Financial Creditor	Related Party	52,39,016
		<b>TOTAL</b>		<b>32,013,185.01</b>

\*Amount due and payable by the CD as on admission date.

In Pursuant to Section 22 of the Insolvency and Bankruptcy Code, 2016 and Rules made thereunder a Notice dated 4<sup>th</sup> August, 2017 for convening the First Meeting of the Committee of Creditors was issued to the Creditors. The copy of said Notice is shown as **Annexure A in Memo dated 10<sup>th</sup> August, 2017.**

The First Meeting of Committee of Creditors was held on 9<sup>th</sup> August, 2017. The Meeting was attended by all the Financial Creditors, 25 Operational Creditors, where Committee of Creditors approved the appointment of IRP as Resolution Professional. The Minutes of the said meeting of the Committee of Creditors is shown as **Annexure B in Memo dated 10<sup>th</sup> August, 2017.**

The Second Meeting of Committee of Creditors was called on 7<sup>th</sup> September, 2017. A Notice for convening the second meeting is shown as **Annexure B in Memo dated 15<sup>th</sup> September, 2017.**

The Resolution Professional for the Committee of Creditors (CoC), as per the discussions in the Second Meeting held on 7<sup>th</sup> September, 2017 has filed **Memo dated 15<sup>th</sup> September, 2017** submits as follows:

The Petitioner Company had before filing the Insolvency Petition had supplied various consignment of Garments wherein to Reliance Retail Limited (“buyer”) to their local office at Survey No.54/1 Nandihalli Village, 55<sup>th</sup> KM Stone NH-4 Tumkur Road, Tumkur, Karnataka -570 101. The payment against which has not been paid yet and the Resolution Professional has sent several reminders to the concern buyer and also submitted the copies of detailed mail exchange between the him and the buyer. The Copies of goods received Notes (GRNs issued by buyer) and their summary is shown as **Annexure A** and detailed mails exchanged between IRP/RP and buyer is shown as **Annexure B**

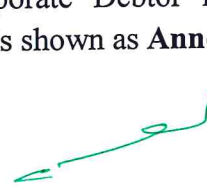
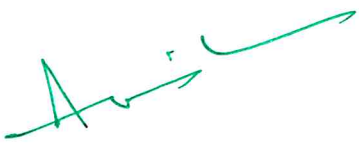
The Resolution Professional also submits that Syndicate Bank has opened a No Lien bank Current Account in the name of DCS international Private Limited to deposit the money either received from the recovery of debtors, i.e. Reliance Retail Limited or realisation from sale of assets of the Corporate Debtor. The Account details are mentioned in **Annexure C**.

This Tribunal vide Order dated 28<sup>th</sup> September, 2017 issued Notice to the Debtor of the Petitioner Company and matter was listed for next hearing on 16<sup>th</sup> October, 2017, the notices were returned unserved and Resolution Professional was present and informed that he has received message from the Reliance Retails Limited (the Debtor) and he is pursuing the matter and he was directed to report the steps he has initiated basing on the Creditors Resolution. The Resolution Professional has sought 15 days time and the matter was listed on 3<sup>rd</sup> November, 2017.

In pursuant to Section 22(3)(a) of Insolvency and Bankruptcy Code, 2016, the Resolution Professional has submitted the Minutes of the Second Meeting stating that the meeting was attended by the representative of Financial Creditor- Syndicate Bank. As there was no Resolution Plan submitted to Resolution Professional and he is unable to propose any Resolution plan before the Committee of Creditors. Therefore, the Member of the CoC were of the view that considering the current position of the Company, revival of the Company is not possible and have unanimously decided to file for Liquidation of the Corporate debtor Under Section 33 of the Insolvency and Bankruptcy Code, 2016.

The Resolution Professional had filed **Memo dated 27<sup>th</sup> October, 2017** for early hearing of the matter and submitted the Report dated 27<sup>th</sup> October, 2017 stating that in pursuant to Section 29 of the Insolvency and Bankruptcy Code, 2016 , the Resolution Professional has provided Information Memorandum to the Syndicate Bank, Financial Creditor. A copy of Information Memorandum is shown as **Annexure A**.

The Resolution Professional vide **Memo dated 27<sup>th</sup> October, 2017** has submitted that one of the Debtors i.e. Reliance Retails Limited of the Corporate Debtor has paid Rs.4143,687.04 through Online transfer. A copy of Bank Statement is shown as **Annexure A**.



The Resolution Professional vide **Memo dated 27<sup>th</sup> October, 2017** has filed the proposal for Liquidation of the Company. The same is shown as hereunder:

	Registered Valuer Report-1	Registered Valuer Report-2	Expected realisation
Value of Machinery	42,40,000	35,81,000	33,92,000.00
Furniture and fixture (Scrap)	0	1,95,000	1,00,000.00
Finished Goods	18,06,000	23,28,395	8,50,000.00
Stock Details (including Dead stock)	2,16,000		2,50,000.00
Receivable	42,00,000	42,00,000	41,91,548.94
<b>Liquidation value</b>	<b>1,04,62,000</b>	<b>1,03,04,395</b>	<b>87,83,548.94</b>

Liquidation Value as per Registered Valuer Report					87,83,548.94
Distribution as per S-53	Creditors	Amount Due	Security Int	Liquidation Value	Remarks
NA	Gratuity	52,55,547	NA	52,55,547	As per 36(4)(iii)
NA	Provident Fund	22,01,817	NA	22,01,817	
a	Liquidation Cost	2,50,000	NA	2,50,000	
b(i)	Workmen Due	75,17,764		10,76,481	
b(ii)	Secured Creditors	1,29,61,978	Director Personal Guarantee	0	
c	Employee Dues	36,30,116	NA	0	
d	Unsecured Financial Creditors	1,90,51,207	NA	0	
e	Statutory Dues	48,44,230	NA	0	
f	Operational Creditors	5,17,66,821	NA	0	
g	Preference Shareholders	0	NA	0	
h	Equity Shareholders	4,50,00,000	NA	0	
		<b>10,74,79,480</b>		<b>87,83,548.94</b>	

The Resolution Professional has submitted vide **Memo dated 14<sup>th</sup> November, 2017** that due to alleged short circuit major fire broke out to next factory adjacent to Corporate Debtor.

Plant and Machinery and Stock of the Corporate Debtor also got damaged due to excess heat and smoke spread from other factory. In view of condition of the building occupied by the Corporate Debtor, it was decided to move the Books of Accounts, Computers and Other Records to nearby safer and secured place. The assets of the Corporate debtor are insured with United Insurance Company Limited. At the instance of Banker, a standard fire and special perils policy vide Policy No. 0726001117P10769440 has been obtained and in order to recover the value of damaged plant and machinery, the RP moved a claim before Insurance Company and it is under consideration.

The Resolution Professional has filed **Memo dated 17<sup>th</sup> November, 2017** stating that he has made continuous reporting to Insolvency and Bankruptcy Board of India (IBBI) from time to time and is shown as **Annexure A** along with the Memo. The Resolution Professional has filed proposed liquidation process for the perusal of this Tribunal shown as **Annexure B** along with the Memo.

After perusal of the documents and averments made by the Resolution Professional that he has not received any Resolution Plan and he is unable to propose any Resolution plan before the Committee of Creditors. Therefore, Committee of Creditors and RP has proposed Liquidation Process under Section 33 of the Insolvency and Bankruptcy Code, 2016.

In the circumstances as stated, we are of the view that, there are sufficient grounds to initiate liquidation process and to pass the following liquidation order.

- i.) That the Resolution Professional appointed by the Committee of Creditors shall act as Liquidator in pursuant to Section 34(1) of Insolvency and Bankruptcy Code, 2016,
- ii.) The Liquidator shall vest all powers of the Board of directors, Key Managerial Personnel of the Corporate debtor, as the case may be, shall cease to have effect and shall vest with the Liquidator.
- iii.) The Corporate Debtor shall extend all existence and cooperation to the Liquidator in managing the affairs of the Corporate Debtor as may be required by the Liquidator.
- iv.) Issue a public announcement stating that the Corporate Debtor is in liquidation within 5 days of receipt of certified copy of this Order;
- v.) The Liquidator appointed shall discharge his functions pursuant to the powers and duties conferred under Section 35 and other relevant provisions of the Insolvency and Bankruptcy Code, 2016
- vi.) The fee of the liquidator shall be proportionate to the liquidation estate assets as specified by the Board and it shall be paid from the proceeds of the liquidation estate u/s 53 of the Code.

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL