

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH [COURT II]
KOLKATA**

C.A. NO. 68/KB/2022

and

C.P. No. 42/KB/2019

*Company Application under section 273(1)(b), (c) and section 280 of the
Companies Act, 2013 read with rule 14 of the Companies (Winding-up) Rules,
2020*

In the matter of:

JJ Exporters Ltd., (CIN : L17112WB1972PLC028631) a company incorporated under the Companies Act, 1956 and having its registered office at 64 Bright Street, Kolkata- 700019; in the State of West Bengal.

... Applicant

And

C.A. NO. 68/KB/2022

An application under section 273(1)(b), (c) and section 280 of the Companies Act, 2013 read with rule 14 of the Companies (Winding-up) Rules, 2020.

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... Applicant

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via hybrid mode):

For the Petitioner

: Mr. Shaunak Mitra, Advocate

Mr. Kanishk Kejriwal, Advocate

Ms. Neha Somani, PCS

For IDBI

:Ms. Urmila Chakraborty, Advocate

Mr. Snehasish Chakraborty, Advocate

COMMON ORDER

Per Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode today.

C.P. No. 42/KB/2019

2. The Company Petition is filed by J J Exporters Limited (“Petitioner” or “Company”) under Sections 271 (a) and (e) of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 seeking an order to wind up the Company.
3. *Submissions of the learned Counsel appearing on behalf of the Petitioner*
 - 3.1. The learned Counsel for the Petitioner states that the Company was incorporated on 26 December 1993 and was engaged in trading activity.
 - 3.2. The Petitioner’s business has been reeling under losses for the past eight years as is evident from the copies of the Annual Reports for the years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18.
 - 3.3. There are no active business operations at present and the financial condition of the Petitioner is deteriorating and the liability of the Petitioner is exceeding its assets. In view of the increasing liabilities, the management of the company decided to wind up the company in a Board Meeting held on 30 May 2018.
 - 3.4. The shareholders have consented to the resolution for winding up of the company subject to the approval of the Tribunal *vide* their special resolution passed on 02 August 2018.

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3.5. The Petitioner assets are mortgaged with the bank and all units of the company have practically no business and the Petitioner is unable to repay the debts due to its creditors.

3.6. The Petitioner further states that being a public company, it is required under law to maintain all statutory compliances as framed from time to time by the regulatory authorities. Since there is no commercial activity in the company and the losses are surpassing the assets, it is just and equitable that the Petitioner be wound up in accordance with law.

3.7. *Vide* order dated 10 January 2019, were directed to issue notice upon the Statutory Auditors. An affidavit of service has been filed by the Petitioner on 27 February 2019 proving service to the Registrar of Companies, West Bengal, the BSE Ltd. and Calcutta Stock Exchange. The Registrar of Companies, West Bengal has filed his report stating his no objection to the winding up of the company.

3.8. Pursuant to an order dated 04 July 2019, the Petitioner has published notice of the Petition in "*The Telegraph*" and "*Anandabazar Patrika*" on 12 July 2019. An affidavit of compliance in this regard has also been filed by on 19 July 2019.

3.9. By an order dated 23 October 2019, the Petitioner was directed to serve notice to all the departments and creditors, i.e. GST, Service Tax, Sales Tax, etc. An affidavit of service has been filed by the Petitioners on 24 December 2019 proving service to the GST, Service Tax, Sales Tax authorities and all the creditors of the company.

3.10. IDBI Bank has filed an affidavit-in-reply. IDBI has stated that the loan account of the Petitioner has been declared as a Non-Performing Asset and IDBI has proceeded under SARFAESI Act and has taken physical possession of the properties that were given as security for the loan. IDBI has submitted in its reply that the present petition has been filed to stall the SARFAESI proceedings and hence is liable to be dismissed.

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C.A. NO. 68/KB/2022

4. The Company Application is filed by J J Exporters Limited (“Applicant” or “Company”) under section 273(1)(b), (c) and section 280 of the Companies Act, 2013 read with rule 14 of the Companies (Winding-up) Rules, 2020 seeking the following reliefs:
 - a. *C.P. No. 42/KB/2019 be heard expeditiously and order of winding-up be passed in respect of the Company;*
 - b. *Pending disposal of C.P. No. 42/KB/2019 a provisional liquidator be appointed in respect of the Company, from amongst the insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016 with a direction to exercise the same powers of a liquidator and on such terms and conditions as this Hon’ble Tribunal may deem fit and proper, to take into his custody and control all the properties, assets and effects of the Company and to take appropriate steps to discharge the tasks and obligations pertaining to the administration of the Applicant Company protect and to preserve and protect the Company till the making of a winding up order;*
 - c. *Ad-interim order in terms of prayer (b) above;*
 - d. *Such Further orders and/or directions be passed as this Hon’ble Tribunal deems fit and proper.*
5. The learned Counsel appearing on behalf of the Petitioner submitted that the Company Petition has been pending from January 2019, all the employees have resigned and the Company has no employees.
6. Further, the Company is having to bear hardship and large expenses for discharge of such duties and obligations.
7. In December 2020, IDBI Bank and IOB sold the mortgaged property of the Company, located at Dodaballapur, Bangalore by way of

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auction/private sale. The proceeds from such sale, amounting to Rs.9.76Crore was appropriated by IDBI Bank and IOB.

8. Heard the Ld. Counsel for the Petitioner and learned Counsel for IDBI and perused the records.
9. Upon perusal of the record it is seen that the Company has been incurring losses and is not in a position to repay its loans.
10. All statutory formalities requisite for obtaining sanction of winding up order by the Tribunal have been duly complied with by the Petitioner. The assets of the Petitioner have been sold and IDBI Bank and IoB have realized the auction price. We feel that it would be just and equitable that the Company be wound-up.
11. In view of the above observations, we hereby pass the following order :
 - a. The present company petition stands admitted. The respondent company being **J. J. Exporters Limited** is to be wound up by this Tribunal under the provisions of Companies Act, 2013.
 - b. The **Official liquidator** attached with the Hon'ble High Court at Calcutta is appointed as a **Company liquidator** of the respondent company in terms of section 275(1) of the Companies Act, 2013
 - c. In terms of section 277 (1) and 277 (2) of the Act, the registry is directed to cause intimation to the company liquidator and the Registrar of Companies, West Bengal. On receipt of the copy of such Order, the Registrar shall make an endorsement to that effect and notify in the Official Gazette that such an order has been made.
 - d. The company liquidator is directed to file a declaration in Form WIN 10, disclosing conflict of interest or lack of independence in respect of his appointment, if any, with this Tribunal within seven days from the pronouncement of this order.

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- e. In accordance with section 277 (3) of the Act, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the company, except when the business of the company is continued.
- f. The company liquidator shall initiate liquidation process in accordance with section 277 (4), 277 (5), 277 (6), 277 (7), 277 (8), 293 and 294 of the Act. The company liquidator shall fulfil the following functions, namely:—
- (i) taking into custody, all properties, actions and actionable claims to which the respondent company appears to be entitled to;
 - (ii) preservation and protection of the properties of the respondent company
 - (iii) examination of the statement of affairs;
 - (iv) recovery of property, cash or any other assets of the company including benefits derived there from;
 - (v) review of audit reports and accounts of the company;
 - (vi) sale of assets;
 - (vii) finalization of list of creditors and contributories;
 - (viii) compromise, abandonment and settlement of claims;
 - (ix) payment of dividends, if any; and
 - (x) any other function, as the Tribunal may direct from time to time.
- g. As envisaged under section 279 (1) of the Act, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose.
- h. In accordance with section 281, the Company Liquidator shall submit to the tribunal, a report in Form 16 within sixty days of passing this order. Further the company Liquidator shall file

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- periodical reports to the Tribunal as envisaged under section 288.
- i. The company liquidator shall prepare and file in the Tribunal a provisional list of contributories of the company in terms of rule 28 of the Companies (Winding Up) Rules, 2020 within twenty-one days after the date of the instant order.
 - j. There shall be an advisory committee, having powers and functions in terms of section 287. The meetings of the said advisory committee will commence in accordance with the provisions of section 287(3). The company liquidator shall report the result of such meeting to the Tribunal within 7 days from the holding of the said meeting.
 - k. All powers and duties of the company liquidator will be exercised in accordance with section 290 and section 292.
 - l. The company liquidator shall also file its report with the Tribunal as per section 281 of the Act.
12. We have considered C.P. 42/KB/2019 hence, ***C.A. No. 68/KB/2022 becomes infructuous and is hereby disposed of as such.***
13. List the **Company Petition 42/KB/2019 on 29/01/24** for filing periodical reports.
14. Copy of the order be sent to the parties, the company liquidator, Registrar of Companies, West Bengal and the Authorised Representative for the Petitioner, within seven days through email and registered post.
15. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order pronounced on the 20th day of December, 2023.

GGRB[LRA]