IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, (Court – II)
KOLKATA

IA(IBC)313(KB)2023
In
CP(IB)/54(KB)2020

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.

In the matter of:

An application u/s. 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

And

In the matter of:

Arvinder Singh, carrying on business under the trade name and style of M/s. A. B. Singh & Associates, in sole proprietorship, from his office at SCO: 59-60, Phase – 3B2, SAS Nagar (Mohali) 160055;

…**Operational Creditor**

Versus

M/s. Sanmati Distributors Private Limited, a company incorporated under the Companies Act, 1956 and under the Companies Act, 2013, having CIN: U51102WB2005PTC101265 and its registered office at 52, Weston Street, Kolkata 700072, in the state of West Bengal;

…**Corporate Debtor**

And

In the matter of:

Santanu Bhattacharjee, an Insolvency Professional having registration number IBBI/IPA-001/IP-P01141/2018-2019/11868 having its office at N-527, Diamond Heritage, 16, Strand Road, Kolkata700 001, West Bengal

…Resolution Professonal/Applicant

Date of Hearing: 21/09/2023

Date of Pronouncement: 13/10/2023

Coram:

Smt. Bidisha Banerjee : Member (Judicial)

Shri Arvind Devanathan : Member (Technical)

Appearances through hybrid mode:

For the Applicant : Ms. Urmila Chakraborty, Adv.
Mr. Saurav Jain, Adv.

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.

2. **IA(IBC)/313(KB)2023** is an application filed under section 60(5)) of the Insolvency and Bankruptcy Code, 2016 (*hereinafter called the **"Code")*** read with rule 11 of the National Company Law Tribunal Rules, 2016 by the Resolution Professional of **Sanmati Distributors Private Limited** (**CIN: U51102WB2005PTC101265**) (*hereinafter called the **"Corporate Debtor"***) praying for dissolution of the Corporate Debtor. This application is duly supported by an affidavit[1] affirmed by Mr. Santanu Bhattacharjee, Resolution Professional.

3. This Adjudicating Authority *vide its* order[2] dated 27/04/2022 on a Petition filed by Arvinder Singh (*Operational Creditor*) under section 9 of the Code directed initiation of the Corporate Insolvency Resolution Process (*hereinafter called the* **"CIRP"**) against M/s. Sanmati Distributors Private Limited (*Corporate Debtor*) appointing Mr. Santanu Bhattacharjee, an Insolvency Professional as Interim Resolution Professional (*hereinafter called the* **"IRP"**).

4. In terms of regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") public announcement[3] in Form A was published in two newspapers in "*Financial Express*" (English) and "*Ekdin*" (Bengali) on 29/04/2022. A copy of the same was uploaded on the Website

[1] At pages 22 and 23 of the application
[2] Annexure A at pages 25 to 31 of the application
[3] Averments in para 2 at page 10 and copy being Annexure C at pages 33-34 of the application

of Insolvency and Bankruptcy Board of India. A copy for Form A forms **Annexure "C"**[4]

5. Committee of Creditors[5] ("CoC") was duly formed with sole petitioning Operational Creditor, Mr. Arvinder Singh. The CoC at its 1st meeting held on 26/05/2022 confirmed the appointment of IRP as RP. Copy of the minutes of the 1st CoC meeting forms **Annexure E**[6].

6. It is stated in the application that the applicant duly informed about the CIRP process to all the statutory authorities including the Registrar of Companies and jurisdictional Income Tax Authority and complied with all the Rules and Regulations as prescribed under the provisions of the Code and Regulations framed thereunder from time to time to revive the Corporate Debtor in a best possible manner for the better interest of the stakeholders[7]. The applicant has conducted CoC meetings from time to time to discuss on possibility to revive the company and further to update the progress in the matter. Copy of the minutes of 2nd CoC to 4th CoC meetings form **Annexure F**[8].

7. Since the Corporate Debtor was not in operation for last several years as well as there was no transactions for the last few years, the sole CoC member has decided not to issue Form G and/or to appoint any transaction/forensic auditor[9]. The audited financial statements of the Corporate Debtor revealed that it has no fixed assets, no inventory, no employees/workers and "nil" revenue and is a loss making company. The copy of the audited financial statement of the Corporate Debtor for the last two financial years forms **Annexure G**[10].

8. It is stated in the application that the applicant has appointed two IBBI Registered Valuers for ascertaining the fair and liquidation value of the Corporate Debtor, who

[4] At pages 33 and 34 of the application
[5] Annexure D at pages 35 to 36 of the application
[6] Annexure E at pages 37 to 43 of the application
[7] Averments in para 6 at page 11 of the application.
[8] At pages 44 to 70 of the application
[9] Averments in para 8 at page 12 of the application
[10] At page 71 to 94 of the application

have submitted their reports which reveals fair value and liquidation value as Rs.2,35,403.33 respectively. Copy of the valuation reports of the registered valuers form **Annexure H**[11].

9. It is stated in the application that after getting the valuation report, the applicant has called 3rd CoC meeting on 08/08/2022 for approval of publication of Form G inviting Expression of Interest from prospective resolution applicants but the sole member of the CoC dissented the same and passed resolution for liquidation considering the facts and circumstances of the case. Accordingly, an application being IA(IBC)/1090(KB)2022 was filed[12].

10. It is also stated that during the hearing of IA(IBC)/1090(KB)2023, this Adjudicating Authority has observed certain issues with respect to liquidation of the Corporate Debtor due to non-availability of assets, funds, etc. Accordingly, the applicant had called the 5th CoC meeting on 06/01/2023 to discuss the main issue for early dissolution since the Corporate Debtor has no assets during the liquidation process to meet liquidation cost including fees of the liquidator. Based on details discussions, the CoC resolved to file an application for dissolution before this Adjudicating Authority without going for liquidation of the Corporate Debtor. The resolution for dissolution was passed with 100% voting share, which is reproduced below:

> *"**Resolved that** the consent of the members of the CoC be and is hereby accorded that the RP should go for early dissolution of the corporate debtor without sending the CD into the liquidation considering the present facts and circumstances"*

Copy of notice, minutes and voting sheet of the 5th CoC meeting form **Annexure I**[13]**.**

11. The applicant has stated that the only cash balance available with the suspended members of board of directors of the Corporate Debtor and also as per the valuation

[11] At page 95 to 117 of the application
[12] Averments in para 12 at page 14 of the application
[13] At page 118 to 129 of the application

reports, has been realised from them. Upon realisation of the said cash balance from the suspended members of the Board of Directors, the same was immediately deposited into the bank account of the applicant, so that the necessary payment of CIRP cost could be made since the Corporate Debtor did not have any operative bank account[14].

12. The applicant has also stated that CIRP cost was fully ratified and the applicant has been paid out of the cash and bank balance available in the Corporate Debtor's account and additionally after taking necessary contribution from the only CoC member, the petitioning Operational Creditor, who has initiated the CIRP process, the fees of the applicant have been fully settled and/or paid. The applicant declares that no CIRP cost is due and payable as on the date of filing of the instant application. Copy of receipt and payment prepared by the applicant forms **Annexure J[15]**.

13. Accordingly, based on the 5th CoC meeting, the applicant has filed the instant application being IA(IBC)/313(KB)2023 for early dissolution of the Corporate Debtor. Hence, vide order dated 07/02/2023, this Adjudicating Authority has dismissed IA(IBC)/1090(KB)2022 as infructuous and IA(IBC)/313(KB)2023 was 'reserved for orders'.

14. Vide order dated 29/03/2023 clarification was asked from the applicant with regard to depositing the cash balance in the bank account of the applicant which was realised from the suspended members of the Board of Directors in order to payment of CIRP cost.

15. In response to the aforesaid order dated 29/03/2023, the applicant has filed a supplementary affidavit clarifying the position, which are reproduced below: -

"8(a)(i) The Corporate Debtor is a loss-making company and has not done any business for last several years and has been non-operational for the last several years. The said fact is also evident from the audited financial

[14] Averments in para 15 at pages 15 and 16 of the application
[15] At page 130 to 132 of the application

statements of the Corporate Debtor that it has no fixed assets and no inventory. Further, the Corporate Debtor has no employees/workers. The revenue from the operations of the Corporate Debtor is also nil. Additionally, the bank accounts of the Corporate Debtor were also inoperative as there were no transactions in the account over the years. Hence, all the transaction post commencement of CIRP were done from the personal account of the Applicant. A copy of the document evidencing the inoperative bank accounts of the Corporate Debtor is annexed hereto and marked as annexure ***"B".*** *A copy of the Financial Statement of the corporate debtor is already annexed to the application being IA(IBC)/313(KB)2023 and marked as annexure "G" at pages 71 to 94."*

The document evidencing inoperative bank account has been issued by Axis Bank, SCO 343-344, Sector 35B, Chandigarh 160 022 dated 25/04/20263 regarding account number 041010200016472 forms **Annexure "B"[16].**

"(ii) Further, the Applicant had appointed 2 registered valuers for securities or financial assets of the Corporate Debtor as per the provisions of the Code, 2016. Pursuant to such appointment, the Applicant had received the average value of the assets as per valuation done by the registered valuers:

Sl. No.	*Group of Assets*	*Book Vlue*	*Fair value*	*Liquidation Value*
1.	*Non-current investment (Securities) or Financial Assets*	*Rs.9,37,20,000/-*	*Nil*	*Nil*
2.	*Cash and Cash equivalent (Securities or Financial Assets)*	*Rs.3,35,403.33*	*Rs.2,35,403.33*	*Rs.2,35,403.00*

"(iii) Pursuant to such valuation, the applicant realised and received the cash amounting to Rs.2,35,403.00 as per the liquidation value and fair value from the suspended board of directors of the Corporate Debtor and also received cash amounting to Rs.50,000/- in two tranches on from the Operational Creditor as directed by the Hon'ble Tribunal vide CIRP

[16] At page 10 of the Supplementary Affidavit affirmed on 28/04/2023

commencement order dated 27/04/2022 which are duly deposited into the account of the Applicant as the Corporate Debtor were inoperative so that the necessary payments during the CIRP could be made."

"(iv) The applicant further states that Regulation 41 sub-regulation 4 of the IBBI (Liquidation Process) Regulations, 2016 states that all payments out of the account by the liquidator above five thousand rupees shall be made by cheques drawn or online banking transactions against the bank account. Hence, considering the above regulation and the inoperative bank accounts of the Corporate Debtor, the Applicant had to transfer the entire cash balance into his account and make the payments through his personal account."

"8(b)(i) In the 5th CoC meeting held on 6th January 2023, the total amount of CIRP cost was ratified by the only member of the CoC and all the payments were made from the available cash and bank balance with the Applicant on behalf of the Corporate Debtor and the remaining payments were done by borrowing an amount of Rs.2,405/- from the only CoC member."

"(ii) The Applicant further states that on the date of filing of the instant applicant, no payments were pending as the entire CIRP cost with regard to the fees of the IRP, expenses for public announcement, lawyer's fees, RP's fees and/or other expenses are duly paid and cleared by the Applicant. A copy of detailed chart showing the receipts and payments of the CIRP cost forms ***Annexure "C"***[17]*."*

"8(c)(i) After the commencement of the CIRP and after all the documents were handed over to the Applicant, the Applicant upon enquiry came to know that none of the accounts of the Corporate Debtor were operative. The Applicant further states that no new bank account was opened by the Applicant during the CIRP of the Corporate as the company had no ongoing business operations and there was no transfer or receipt of funds from any creditor or customers. Hence, keeping in view of the above circumstances, the applicant started using his personal account for the transactions on behalf of the Corporate Debtor and the payment of the CIRP was also made from his account. The copy of the bank statement of the applicant forms ***Annexure "D"***[18]*."*

16. Meanwhile, the 180 days CIRP period had expired on 23/10/2022.

[17] At pages 11 to 18 of the Supplementary Affidavit affirmed on 28/04/2023
[18] At pages 19 and 20 of the Supplementary Affidavit affirmed on 28/04/2023

17. We have heard the Ld. Counsel for the RP, perused the application and the documents attached therewith.

18. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass an order of liquidation where no resolution plan is received before the expiry of the CIRP. Sub-section (2) thereof requires the Adjudicating Authority to pass the liquidation order where the Resolution Professional intimates to the Adjudicating Authority the decision of the Committee of Creditors approved by not less than 66% of the voting share to liquidate the Corporate Debtor.

19. Section 54 of the Code reads as follows: -

> *"54(1) Where the assets of the Corporate Debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.*
> *(2) The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.*
> *(3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered."*

20. Rule 14 of the IBBI (Liquidation Process) Regulations, 2016 reads as follows: -

> *"Rule 14.* ***Early dissolution*** *- Any time after the preparation of the Preliminary Report, if it appears to the liquidator that –*
> *(a) The realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and*
> *(b) The affairs of the corporate debtor do not require any further investigation; he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution".*

21. Rule 11 of the NCLT Rules, 2016 confers inherent powers on NCLT, which reads as follows: -

"Rule 11 : Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal."

22. Section 12 of the Code stipulates time-limit for completion of insolvency resolution process, which reads as follows: -

> *"12(1) Subject to sub-section (2) the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.*
> *(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent of the voting shares;*
> *(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eight days by such further period as it thinks fit, but not exceeding ninety days.*
> ***Provided** that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once."*

23. Upon conjoint reading of the above provisions, the ultimate objective of the Code is either to resolve the issue by way of approval of Resolution Plan or to liquidate and then to dissolve the Corporate Debtor, as expeditiously as possible. In the instant case, the Corporate Debtor has 'nil' fixed assets as well as 'nil' inventory, no employees/workers and also non-operational for the last several years, which would be evident from the audited financial statements of the Corporate Debtor. Since the Corporate Debtor does not prima facie own any valuable assets whose value is capable of maximization and as per valuation reports submitted by two IBBI approved Valuers, the liquidation value in the nature of cash and cash equivalent only comes to a meagre sum of Rs.2,35,403. Moreover, the Corporate

Debtor has entirely eroded its share capital, 'nil' assets, 'nil' inventory, non-operational for the last several years, inoperative bank accounts and perceptible state of affairs was not a going concern when it was admitted under CIRP, no useful purpose would be served by ordering liquidation of the Corporate Debtor.

24. Since the Corporate Debtor does not have either any fixed assets or any inventory and over and above it's non-operational for the last several years, no useful purpose would be served by instituting liquidation process as required under section 33 of the Code.

25. It is submitted by the Ld. Counsel for the RP that the CoC, which comprises of the petitioning Operational Creditor only, has taken decision to dissolve the Corporate Debtor without going for liquidation at first and then for dissolution, since the Corporate Debtor having 'nil' assets and 'nil' inventory. It would be in order to resort to direct dissolution of the Corporate Debtor rather than first sending it to liquidation fruitlessly and then attempting to liquidate non-existent assets and then dissolving the Corporate Debtor, particularly when it is clear that even the part of CIRP cost and RP's fees have been borne by the Operational Creditor. In view of the "nil" assets it is presumed that the assets of the Corporate Debtor have been liquidated. As regards the compliance regarding bank account, the bank account opened with Axis Bank, SCO 343-344, Sector 35B, Chandigarh 160 022 having Account No.041010200016472 has been closed since 15-03-2016, which is evident from the certificate dated 25/04/2023 issued by Axis Bank, Chandigarh (Annexure "B" to Supplementary Affidavit affirmed on 28/04/2023 by the Resolution Professional).

26. In view of the above facts and circumstances, it is prudent to **dissolve the Corporate Debtor, and it is ordered accordingly**. However, personal liability/Guarantee of any Director/Promoter of the Corporate Debtor, if any, would not absolve them of their liability by virtue of this order. Aggrieved party/parties, if any, shall be at liberty to continue or to take appropriate legal remedies against them.

27. The Resolution Professional is further directed to serve a copy of this order upon the Registrar of Companies, West Bengal, immediately and, in any case, within fourteen days of receipt of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.

28. The Resolution Professional shall stand discharged from his responsibilities, subject to all procedural compliances.

29. ***IA(IBC)/313(KB)2023*** in ***CP(IB)/54(KB)2020*** is allowed with the above directions and both the ***IA(IBC)/313(KB)2023*** and ***CP(IB)/54(KB)2020*** are hereby **disposed of** accordingly**.**

30. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

31. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

32. File be consigned to records.

(Arvind Devanathan)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Signed on this, the 13th day of October, 2023.

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