IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI COURT-III

IA-4855/2023
In
(IB) – 280(ND)/2022

Order under Section 54(1) of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

M/s. GMM BARTER PVT. LTD. .... Financial Creditor

VERSUS

M/s. VALUE SOLAR ENERGY PVT. LTD.

.... Corporate Debtor

AND IN THE MATTER OF:

Mr. Shamsher Bahadur Singh

Resolution Professional of M/s. Value Solar Energy Pvt. Ltd.

...... Applicant/Resolution Professional

Order Pronounced On: 29.11.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Ms. Anushka Sarkar, Adv.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This Application has been filed by the Resolution Professional of M/s. Value Solar Energy Private Limited on 19.07.2023 before this Adjudicating Authority under Section 54 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code"), for seeking the following reliefs:

"a) Allow the instant Application;

b) Allow the dissolution of the Corporate Debtor;

c) Issue appropriate or further directions as regards the Corporate Debtor herein in terms of the Insolvency and Bankruptcy Code, 2016; and

d) Pass such other or further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."

2. The Corporate Debtor namely M/s. Value Solar Energy Private Limited was incorporated on 29.04.2008 as a Company Limited by Shares (Non- govt. Company) having CIN: U74900DL2008PTC177409 under the erstwhile Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana. The Authorised Share Capital of the Corporate Debtor is Rs. 1,00,000/- (Rupees One Lakh Only) and the Paid-up Share Capital of the Corporate Debtor is Rs. 1,00,000/- (Rupees One Lakh Only).

3. **<u>Brief Background of the Case</u>**

   An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e., M/s. GMM Barter Pvt. Ltd. against the Corporate Debtor i.e., M/s. Value Solar Energy Pvt. Ltd. and the said application was admitted by the order of this Adjudicating Authority vide order dated 03.01.2023 and a moratorium was declared including the appointment of Mr. Shamsher Bahadur Singh as an Interim Resolution Professional. Subsequently, his appointment was confirmed as Resolution Professional.

4. In terms of Regulation 6 of the CIRP Regulations, the public announcement in respect of the commencement of CIRP of the Corporate Debtor vide Form-A was published in Financial Express in English (Delhi Edition) and in Jansatta in Hindi (Delhi Edition) on 07.01.2023.

5. As per the Public Announcement, the last date for the submission of the claim was 19.01.2023. Only one claim was received by the

RP from the Financial Creditor. Therefore, the CoC was constituted with the Financial Creditor as the sole member and the Applicant filed a report dated 23.01.2023 in accordance with Regulation 17(1) of the CIRP Regulations before this Adjudicating Authority with respect to the constitution of the Committee of Creditors ("CoC"). In terms of provision of Regulation 13(2)(d) of the CIRP Regulations, the Applicant filed the list of creditors on 23.01.2023 before this Adjudicating Authority. The Total amount of claims received was Rs. 7,51,68,740/-.

6. Pursuant to the constitution of the CoC and filing of the report under Regulation 17(1) of CIRP Regulations, the first meeting of the CoC was convened on 02.02.2023. The Second meeting of the CoC was convened on 28.02.2023.
7. The Applicant appointed two Registered Valuers namely Mr. Naveen Singal (Registration No. IBBI/RV/06/2019/10662) and Ms. Ashima Banodha (Registration No. IBBI/RV/03/2019/12510) on 09.02.2023 for the valuation of Security & Financial Assets. As per the Valuation Reports submitted by both the valuers on 22.03.2023 and as per Form-H, the Fair Market Value of the Corporate Debtor is Rs. 47,266/- and the Liquidation Value of the Corporate Debtor is Rs. 47,266/-. The Final Valuation Reports stated that the Corporate Debtor has no assets whatsoever and only has a balance amount of Rs. 47,266/- which is only cash in hand and at the Bank. However, it is submitted that the said amount of Rs. 47,266/- has already been adjusted against the CIRP Cost.
8. In accordance to Regulation 27 of CIRP Regulations, Mr. Rajeev Dhingra was appointed as Transaction Auditor on 22.02.2023, for the determination and evaluation of transactions, if any, of the nature as specified under Sections 43, 45, 50 and 60 of Insolvency and Bankruptcy Code, 2016 and furnished its report thereon in terms of power conferred under section 20(2) (a) of IBC. The transaction auditor submitted the Final Transaction Audit Report

on 31.05.2023. The said Transaction Report has recorded that there has been no preferential transaction under Section 43, no undervalued transaction under Section 45, no extortionate transaction under Section 50 and no fraudulent transaction under Section 66 of the Code. Upon concluding that no adverse remarks/observations have been recorded in the Transaction Audit Report dated 31.05.2023, the RP informed the same to CoC member in the 4th CoC meeting dated 05.06.2023.

9. Further, the Applicant submitted the First Progress Report dated 23.03.2023 before this Adjudicating Authority. The Applicant thereafter apprised the CoC member that all necessary compliances had been carried out by the Applicant.

10. The Applicant intended to publish Form G, whereby Expression of Interest ("EoI") would be called from eligible Prospective Resolution Applicants. However, the CoC was inclined to initiate liquidation of the Corporate Debtor, rather than continuing the CIRP of the Corporate Debtor since there were no viable assets available with the Corporate Debtor and for the same reason, there was no need to incur further expenses in the process of conducting the entire CIRP of the Corporate Debtor. The Applicant being the RP of the Corporate Debtor, had also informed the CoC member that as per the provisions of the Code, the CIRP cost would be met from the accruals of the Corporate Debtor, if available, otherwise shall be borne by the CoC member in proportion to their voting share.

11. The CoC member thereafter requested the RP to not proceed with issuance of EoI inviting PRAs to submit Resolution plans in the instant matter.

12. Further, the Sole CoC member concluded that since the Corporate Debtor does not have any assets, it is only pragmatic that proceedings for initiation dissolution of the Corporate Debtor shall be initiated in terms of Section 54 of the Code read with the Regulation 14 of IBBI (Liquidation Process) Regulations, 2016 read with Rule 11 of NCLT Rules, 2016 whereby inherent powers are

conferred upon this Adjudicating Authority to pass such orders as may be necessary for meeting the ends of justice read with the Section 64 of the Code whereby this Adjudicating Authority is vested with the power to expeditiously dispose of Applications/Petitions whenever required in light of justice.

13. Further after a detailed discussion, the Sole member of the CoC decided to get the Company dissolved and requested the Resolution Professional to initiate the process of dissolution instead of liquidation. Thereafter, in the said CoC meeting, voting was conducted by the RP as regards the dissolution of the Corporate Debtor on the ground that the Corporate Debtor has no assets. It is submitted that the agenda for approval of the dissolution of the Corporate Debtor has been approved by 100% of the members of the CoC in the 4th CoC meeting dated 05.06.2023 and the following resolutions were passed:

    *"**RESOLVED THAT** the consent of the Committee of Creditors (CoC) be and is hereby accorded for Dissolution of the Corporate Debtor ("Value Solar Energy Private Limited") under Section 54 of IBC, 2016 read with Regulation 14 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*

    ***RESOLVED FURTHER THAT** the Resolution Professional or Liquidator (as the case may be) be & is hereby authorized to file application and approach the Adjudicating Authority, Hon'ble NCLT, to intimate the decision of the committee of creditors with a request to pass an order of Dissolution of Corporate Debtor, as the company has left with no assets and the only member constituting CoC unanimously resolved for dissolution of corporate debtor."*

14. The Final Report is filed before this Adjudicating Authority on 15.06.2023 intimating with regard to the progress in the CIRP of the Corporate Debtor. The Applicant has filed a Compliance Certificate in the prescribed Form, i.e. Form-H in compliance with the Code and with the Regulation.

15. The Present Interlocutory Application appears to be bonafide and in the interest of the Corporate Debtor and to enable the Applicant to perform his duties under the Code.
16. The Hon'ble Supreme Court in the matter of **K. Sashidhar Versus Indian Overseas Bank & Ors**. in Civil Appeal No. 10673 of 2018 has held that the commercial decision of CoC is non-justiciable. In this case, it is seen that the CoC with 100% majority has passed the resolution seeking the Dissolution of the Corporate Debtor.
17. We relied on the Order passed by the Coordinate Bench in the matter of **M/s. Air Pegasus Private Limited [I.A. No. 198/2020 in C.P.(IB) No. 180/BB/2018],** wherein NCLT Bengaluru Bench approved the direct dissolution of the Corporate Debtor without going through the Liquidation Process on similar reasoning. On an appeal by the Managing Director of the Corporate Debtor, the Hon'ble NCLAT, Chennai in **Shyson Thomas vs. Mr. Madhugiri Venkatarayappa Sudarshan** [T.A. (AT) No. 8 of 2021 in C.A.(AT)(CH)(INS)/925/2020; order dated 01.06.2023] had upheld the National Company Law Tribunal, Bengaluru Bench's order dated 24.06.2020 of passing an Order of Dissolution of the Corporate Debtor (M/s. Air Pegasus Private Limited), with immediate effect. While upholding the order of direct dissolution passed by the Adjudicating Authority, Hon'ble NCLAT, Chennai had observed, which are as follows:

    "43. It cannot be lost sight off that the `Corporate Debtor', had `No Realisable Financial Assets', and the only `Valuable Asset', was of `Intangible' in nature of the `Air Operator Permit', a `License', issued by the `DGCA' and the `Validity' of the said `License', had lapsed on 23.03.2020.

    44. It cannot be brushed aside that the `Dissolution' of the `Corporate Debtor', was approved by the `Financial Creditor' with `100% Voting Rights', and in IA No. 198 of 2020, filed by the 1st Respondent / Resolution Professional (under Section 54 of the I & B Code, 2016), an `Order', dissolving the `Corporate Debtor' /

`M/s. Air Pegasus Private Limited' (Applicant Company), was passed with an immediate effect, etc.

45. At this juncture, this `Tribunal', pertinently points out that there is no fetter that the `Corporate Debtor', cannot be `Dissolved', without undergoing the `Process of Liquidation'.

53. Suffice it for this `Tribunal', to make a pertinent mention that in the absence of any `Asset(s)' / the `Resolution Plan(s)', the Resolution Professional, had no other go, but to pray for an `Order of Dissolution', to be passed by the `Adjudicating Authority'. After all, the end of `Liquidation', requires complete `Dissolution' of an `Entity'."

18. Further, in the case of **M/s. Shoes on Loose Private Limited in IA/2598/ND/2022 In (IB)-862/ND/2020 vide order dated 30.10.2023**, the NCLT New Delhi Bench, Court-IV allowed direct dissolution of the Corporate Debtor on an application made by Mr. Madan Mohan Dhupar, the Resolution Professional of the Corporate Debtor as directed by the Committee of Creditors based on unanimous resolution declaring that all tangible assets have already been realized and no useful purpose would be served by placing the Corporate Debtor under Liquidation Process.
19. We are of the considered view that the Judgment passed by the Hon'ble NCLAT and the Order passed by the Coordinate Benches of NCLT leads us to the view that the ultimate objective of the Code is either to resolve the insolvency by way of the Resolution Plan or to dissolve the Corporate Debtor, as expeditiously as possible so as to maximize the value of the assets.
20. Upon hearing the Applicant and on perusal of the documents annexed to the application, it appears that the affairs of the Corporate Debtor have been completely wound up and its assets have been completely liquidated.
21. In view of the above facts and circumstances, there is no impediment to the Corporate Debtor being dissolved.

22. In the above circumstances, this Adjudicating Authority finds that it would be just and proper to order the dissolution of the Corporate Debtor as per Section 54 of the Code.
23. Hence, **IA-4855/2023** stands **allowed** and the Corporate Debtor is ordered to be **dissolved**.
24. The Resolution Professional is further directed to serve a copy of this order upon the Registrar of Companies, NCT of Delhi and Haryana, 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.
25. The Resolution Professional shall stand discharged from his responsibilities, subject to procedural compliances. The Corporate Debtor stands dissolved from the date of this Order.
26. **IA-4855/2023** and **IB-280(ND)/2022** shall stand disposed of in accordance with the above directions.
27. The Registry is directed to send copies of this order to all the parties for information, for taking necessary steps and to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
28. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
29. File be consigned to the record.

No order as to costs.

Sd/-	Sd/-
(ATUL CHATURVEDI) **MEMBER (TECHNICAL)**	**(BACHU VENKAT BALARAM DAS)** **MEMBER (JUDICIAL)**