

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT III

I.A. No. 2746 of 2023
IN
C.P.(IB)-1179(MB)/2017

(Under Section 54 of Insolvency & Bankruptcy
Code, 2016)

Mr. V. Mahesh
Liquidator of Brinzk Powertech Private Limited
Office at #555, Anna Salai, Capital Towers, B Wing,
8th Floor (Opp. To Grand Hyatt Hotel), Teynampet,
Chennai-600018

.... Applicant/Liquidator

In the matter of
M/s. Valia & Co.

...Operational Creditor

V/s.

Brinzk Powertech Private Limited

... Corporate Debtor

Order Reserved on: 28.08.2023

Order Pronounced on: 11.09.2023

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)
Hon'ble Shri. Charanjeet Singh Gulati, Member (Technical)

Appearance:

For the Liquidator: Mr. Shuvam Agarwal, Advocate

ORDER

Per: Shri. Charanjeet Singh Gulati, Member (Technical)

1. This is an application filed by the Liquidator under Section 54 of the Insolvency and Bankruptcy Code, 2016 (IBC) for dissolution of the Corporate Debtor.
2. On a petition filed by the Operational Creditor under Section 9 of the Code the Adjudicating Authority vide its order dated 26.06.2018 directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor ('CD') namely 'Brinzk Powertech Private Limited' wherein Mr. V. Mahesh was appointed as Interim Resolution Professional ('IRP'). Thereafter, the IRP was appointed as Resolution Professional ('RP') and the same was approved by this Bench.
3. The Applicant submits that the applicant herein received a Resolution Plan from the Promoter of the Corporate Debtor cum Suspended Director, Mr. Arvind. P. Karwat. The same was put forth before the Committee of Creditors ('COC') at their meeting held on 15.03.2019 for consideration. The CoC after detailed discussion and due deliberations, **"Rejected"** the Resolution Plan and recommended Liquidation of the Corporate Debtor and directed the Resolution Professional to file appropriate Application with the Adjudicating Authority under Section 33 of the IBC, 2016.
4. Thereafter, the Applicant filed the application under Section 33 of IBC for liquidation of the Corporate Debtor. The same was allowed and order for liquidation was passed on 15.07.2019 and the applicant was

appointed as Liquidator to carry out duties as a Liquidator under Section 35 of IBC.

5. The Liquidator submits that on receipt of the order for liquidation, he made Public Announcement in Business Standard, in English and Loksatta Jansatta, in Gujrati on 21.08.2019 and Navshakti, in Marathi on 22.08.2019 inviting claims from the stakeholders to submit their claims on or before 18.09.2019. Copy of the public announcement is enclosed as **Annexure 'H'** to the application.
6. The Liquidator appointed the Registered Valuers viz., Mr. Kedar Arvind Chikodi and Mr. Rakesh Shah for valuation of the Plant & Machinery and Mr. Parag Sheth and Mr. Keshav Arvind Chikodi for valuation of Land and Building on 24.08.2019. The Valuers submitted their Valuation Reports between 17.10.2019 and 08.11.2019.
7. Based on the claims received, the Liquidator formed a Stakeholders Consultation Committee ('SCC') in terms of Regulation 31A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, on 07.11.2019 and the first meeting of the SCC was conducted on 20.12.2019.
8. The Liquidator submits that a new bank account was opened in Kotak Mahindra Bank- Anna Salai Branch and the balance amount of Rs.12,90,000.00 lying in the Corporate Debtor's Bank account with Central Bank of India as on 09.09.2019 was transferred to Kotak Mahindra Bank.

9. The Liquidator has submitted that following two Interim Finances were given;

Sr.	Name of the Financer	Amount Funded as Interim Finance
1	B. Vrajlal & Co.	5,00,000.00
2	Mr. Rajesh Shah	38,96,001.32

It is noticed from the list of pending litigations given in Annexure-C to the Final Report that B. Vrijlal & Co. who provided Interim Finance to the Corporate Debtor on 19.08.2019 had initiated litigation against the Corporate Debtor under section 138 of the Negotiable Instruments Act, 1881 which is pending since November 2009.

It is also noticed that M/s. Shah Brothers Ispat Pvt. Ltd. has filed case against the Corporate Debtor under section 138 however the details relating to the pendency of the case is not mentioned. Be that as it may, it is seen from the MCA website that Mr. Rajesh Chinubhai Shah is a director of M/s. Shah Brothers Ispat Pvt. Ltd. since 2004. The pending cases of Section 138 NI Act are dealt with later in this order at Para 27.

10. It is submitted that there was no business in the Corporate Debtor during liquidation as operations stopped nearly two years back.

11. The Liquidator submitted the Preliminary Report and Asset Memorandum to the Adjudicating Authority on 24.02.2020.
12. Public notice for sale of assets of the Corporate Debtor through e-auction was made on 16th March, 2020 in Free Press Journal (English) and Nav Shakti (Marathi) in Maharashtra. It was also issued in Gujarat Samachar (Gujrati), Sandesh (Gujarati) and in Business Standard (English) in Gujarat, where the factory premises of the CD is situated. Necessary arrangements were also made with the e-auction providers. The e-auction was supposed to be held on 9th April, 2020. However, in view of the nation-wide lockdown imposed by the Government of India, the e-auction was not conducted and was postponed.
13. Applicant submits that, after few relaxations w.r.t. the lockdown were announced by the Government, he took steps, to conduct e-auction on 8th October, 2020 and gave public announcement on 23rd September, 2020. However, applicant did not find any bidders at this e-auction conducted on 8th October, 2020. The Copy of the public announcement made on 23.09.2020 is attached as '**Annexure-K**' to the application.
14. Another public announcement was made on 21st November, 2020 to conduct e-auction on 17th December, 2020. E-auction was conducted in three blocks: -
 - I. The entire factory premises i.e. land and building, Plant & Machinery, furniture and fixture as a whole.
 - II. Land and Building alone.

III. Plant and Machinery along with furniture and fixture.

15. As per the Asset Memorandum and final sale report realisation amount from sale of land and building was Rs.7,05,00,000.00 and from Plant and Machineries was Rs. 72,00,000.00. Thus the amount realised from sale of liquidation estate was Rs. 7,77,00,000.00 (Rs. Seven Crores Seventy Seven Lacs).
16. The Liquidator submits that, the sale proceeds have been distributed among the stakeholders after adjusting the statutory payments and other liquidation expenses, including interim finance along with interest in accordance with Sec. 53 of the IBC code. All the stakeholders were duly intimated about the amount that would be paid to them after meeting the liquidation expenses and same was duly disbursed to them, strictly in accordance with the waterfall mechanism specifically U/s. 53, as there was no adverse view or objection/s from any of the stakeholders.
17. The Applicant further submits that he received claims belatedly from EPF Department, however since it involved welfare of employees, the same was considered and duly paid along with interest and penalty. No other claim was received from any other statutory authorities.
18. The Applicant further submits that he obtained certificate from a Chartered Accountant w.r.t. audit of receipts and payments of the Corporate Debtor in liquidation and the same is annexed as '**Annexure-R**' of the application.

19. The Applicant further submits that he has filed bank closure confirmation of the Corporate Debtor dt. 02.08.2022 by way of an additional affidavit as **Annexure 'A'** attached to the additional affidavit.
20. The Liquidator has filed final report in compliance of Regulation 45(3) of The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016, which is attached to the application as **Annexure 'Q'**.
21. According to the final report, the assets of the Corporate Debtor have been disposed off and an amount of Rs. 6,09,94,882.00 have been distributed to the Secured and Unsecured Financial Creditors in accordance with the provisions of Sec. 53 of the IBC, 2016. No amount could be paid toward claim of the Operational Creditors as the amount received after disposal of the assets of the Corporate Debtor was just enough to settle the Secured Financial Creditors and some portion of the claims of Unsecured Financial Creditors.
22. The Compliance Certificate (FORM H) dated 22.08.2022 duly certified by the Liquidator [Under Regulation 45(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016] is duly annexed with the Application as **Annexure 'S'**.
23. As per Form-H amount distributed to the stakeholder's as per Section 53 of the Code are as under:

Sr. No.	Stakeholders U/s. 53 (1)	Amount Claimed	Amount Admitted	Amount Distributed	Amount Distributed to the Amount Claimed (%)	Remarks
1	(a): CIRP Cost	53,38,642	53,38,642	53,38,642	100%	-
2	(a): Liquidation Costs	1,42,02,850	1,42,02,850	1,42,02,850	100%	-
3	(b)(i) Not applicable	-	-	-	-	-
4	(b) (ii) Secured Creditor	5,09,94,882	5,09,94,882	5,09,94,882	100%	-
5	(d) Not applicable	-	-	-	-	-
6	(d) Unsecured financial creditors	3,34,29,045	3,34,29,045	1,00,00,000	29.91%	-
7	€ (i) Not applicable	-	-	-	-	-
8	€ (ii) Not applicable	-	-	-	-	-
9	(f) Operational Creditors	7,97,36,251	7,97,36,251	0	0	-
10	(g) Not applicable	-	-	-	-	-
11	(h) Not Applicable	-	-	-	-	-
Total		18,37,01,670	18,37,01,670	8,05,36,374	43.84%	

24. Applicant submits that, the shareholders had given unsecured loan to the CD for which they had raised claims and were paid in accordance with Section 53 of the IBC.

25. The Applicant further submits that the affairs of the Corporate Debtor has been completely liquidated in compliance to the provisions of IBC,2016 read with IBBI (Liquidation Process) Regulations, 2016.
26. The Liquidator has submitted Bank Closure Certificate of Kotak Mahindra Bank Account No. 7012810382 duly closed on 25.07.2022 and the same is submitted by way of an additional affidavit.
27. The Liquidator has given list of pending litigations as per Annexure 'C' annexed to the final report:-
 - (a) It is seen from the list that four Lawyers notices' have been received as late as January 2016 to September 2016. It appears that no case has been filed by the parties hence lawyers' notices do not constitute pending litigations.
 - (b) As far as pending cases U/s. 138 N.I. Act are concerned neither any amount is mentioned in the status of the cases are not mentioned. In the case of B. Vrijlal & Co. case is pending since November 2009 and in case of Paxal Steel it is mentioned case is pending since March 2012 and in case of Shah Brothers Ispat Pvt. Ltd. no specific period/year is mentioned. Moreover, the claims against the Corporate Debtor have been liquidated as per Section 53 of the IBC. Any action against the signatory of the bounced cheque(s) is separate from the action against Corporate Debtor and the Corporate Debtor is not required to continue for this purpose.

28. On careful perusal of the Application, this Bench observes that neither any Assets are left with the Corporate Debtor nor any trade receivables are available.

29. For the purpose of pronouncement of Dissolution of a Corporate Debtor Section 54 of The Insolvency and Bankruptcy Code, 2016, reads as under:

“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 subsection (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.

30. As a consequence, through this Order it is hereby declared that not only it is just and equitable but also because of the fact that no asset is available for the purpose of ‘Liquidation’ as reported by Liquidator, all the money released on account of sale/auction of assets have been distributed in accordance with Section 53 of the IBC, 2016 and further even the bank account pertaining to Corporate Debtor has been closed, this is a fit case of a Corporate Debtor to be dissolved as prescribed under Section 54 of The Insolvency and Bankruptcy Code, 2016.

Ordered accordingly, the Company stands '**Dissolved**' from the date of this Order.

31. Copy of this Order shall be forwarded within 7 (seven) days to the concerned authorities and the Registrar of Companies having jurisdiction, for further necessary action as prescribed under Law.
32. Accordingly, I.A. No. 2746 of 2023 is hereby **allowed** and disposed of and C.P.(IB)-1179(MB)/2017 is hereby closed.

Sd/-
CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

Sd/-
LAKSHMI GURUNG
MEMBER (JUDICIAL)

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