



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

**I.A- 6658/2023
IN
CP(IB)-1626/PB/2019**

(Under Section 54 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

M/S L & T HOUSING FINANCE LTD.

... FINANCIAL CREDITOR

VS

M/S COSMOPOLITAN TECHNOFAB TEXTILES PRIVATE LTD.

... CORPORATE DEBTOR

And in the matter of

MS. AMIT TALWAR
LIQUIDATOR OF CORPORATE DEBTOR

... APPLICANT

Coram:

**Shri Rahul Bhatnagar (Member Technical)
Shri Mahendra Khandelwal (Member Judicial)**

Appearance

For the Liquidator: Advocate Prashant Chauhan for Liquidator Mr. Amit Talwar



ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date of pronouncement: 22.03.2024

1. This is an application for dissolution of Corporate Debtor M/s Cosmopolitan Technofab Textiles Private Limited that has been filed by the Liquidator in accordance with Section 54 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IBC, 2016).

The prayer made by the Liquidator in the Application is as follows –

- i. That this Hon'ble Tribunal be pleased to pass an order for dissolution of the Corporate Debtor under the Code.*
- ii. Pass an order that Liquidator is discharged from his role as Liquidator of the Corporate Debtor.*
- iii. Pass an appropriate order to reimburse the Liquidation expenses to the Liquidator by the Stakeholder's Consultation Committee.*
- iv. Pass any such order and further orders as this Hon'ble Tribunal may deem fit and appropriate in the interest of justice.*

2. To put it briefly, the facts of the case are as under: -

- i. That an application in accordance with the Section 7 of the Code was filed by M/s L&T Housing Finance Limited ("Financial Creditor") before this Tribunal to initiate Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against the Corporate Debtor being Company Petition no. IB-1626/PB/2019. This Tribunal by the virtue of order dated 05.11.2019 ("Admission Order")



admitted the aforesaid petition and appointed Mr. Harish Taneja as the Interim Resolution Professional (“IRP”) for the Corporate Debtor.

- ii. Consequently, the IRP issued the requisite announcements and invited claims from creditors of the Corporate Debtor and constituted Committee of Creditors.
- iii. That on 04.12.2019, the 1st meeting of the Committee of Creditors was held wherein the IRP placed the agenda for the appointment of the said IRP as the Resolution Professional or to replace the IRP with another Resolution Professional in terms of the Section 22 (2) of the Code, before the members of Committee of Creditors.
- iv. Consequently, the Committee of Creditors discussed the proposal of the IRP and confirmed the appointment of the IRP, Mr. Harish Taneja, IBBI Registration No. IBBI /IPA-002/IP-N00088 /2017-18/10229 as the Resolution Professional for the Corporate Debtor.
- v. Further, in the said meeting, the COC discussed the current status of business operations, financial position and cash flow of the Corporate Debtor. Subsequently, the IRP apprised the COC that the Registered Office of the Corporate Debtor is under construction and the building is locked, it can be concluded from the lack of evidence that the office of the corporate debtor was not situated in the aforesaid premises. The IRP investigated on his own and tried very hard to trace the present whereabouts of the Corporate Debtor but despite several attempts made by the IRP, the same could not be traced owing to which the operations of the Company could not be revived.



- vi. It has been submitted by the Liquidator that, in the 5th meeting of the COC, the RP informed to the COC members that since the complete details of the Corporate Debtor were not available, as a consequence of due discussion and deliberation by the COC members it was concluded that, the option of liquidation may not be feasible owing to the fact that corporate debtor did not possess any assets to defray the procedural costs pertaining to the liquidation process and very minimal recoveries will be made from the liquidation process. The COC members stated that they will consult this with their management and will take decision on this in the next COC meeting.
- vii. That in the 7th meeting, the COC deliberated upon the agenda pertaining to the filing of application with this Tribunal in accordance with regulation 33(2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 i.e., initiation of liquidation and/or dissolution of corporate debtor and to appoint the existing resolution professional as the liquidator and to fix the fee of liquidator thereof.
- viii. Further, on the aforesaid issue it was opined by the COC that since the Corporate Debtor has no assets which can be realized during the process of liquidation, so they should directly go for the Dissolution of the Corporate Debtor and should file an application before this Tribunal seeking dissolution of the Corporate Debtor directly and if the Adjudicating Authority do not allow for the direct dissolution of the Corporate Debtor then the requisite steps should be taken for



the Liquidation of the Corporate Debtor. Subsequently, Dissolution of the Corporate Debtor will commence.

- ix. In light of the aforesaid, the COC resolved to have the Corporate Debtor dissolved and requested the RP to commence the process of dissolution in lieu of the liquidation. Thereafter, in the aforesaid COC meeting, voting was conducted by the RP, regarding 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 was been approved by 53.78% of the members of the COC in the adjourned 7th COC meeting dated 20.02.2021.
- x. That the application for dissolution in accordance with section 54 of the Insolvency & Bankruptcy Code, 2016 was filed on 09.03.2021 through IA/1317/2021 and order was pronounced on 02.01.2023 whereby the NCLT, Principal Bench dismissed the Dissolution Application.
- xi. In accordance with the aforesaid order dated 02.01.2023 passed by this Tribunal, the RP called the 8th meeting of COC which was held on 17.01.2023 wherein, the COC decided to file an Application for Liquidation of the Corporate Debtor in accordance with section 33(1) of the IBC, 2016.
- xii. Consequently, the order of Liquidation of the Corporate Debtor was passed by the Hon'ble NCLT on 31.08.2023. By the virtue of the same order the applicant, Mr. Amit Talwar IBBI Registration No.



IBBI/IPA-002/IP-N01178/2021-2022/13887 was appointed as the Liquidator for the Corporate Debtor.

- xiii. Accordingly, the Public Announcement was made within 5 days of the appointment on 05.09.2023 as per the requirements of IB Code, 2016 read with the IBBI (Liquidation Process) Regulations, 2016. The last date of receipt of claims from the public was 04.10.2023.
- xiv. Subsequently, the Liquidator filed the First Progress Report on 10.10.2023 which was taken on record by the Hon'ble Adjudicating Authority dated 13.10.2023.
- xv. That in accordance with Reg 31A of IBBI(Liquidation Process) Regulations 2016, the Liquidator constituted a Stakeholders Consultation Committee (hereinafter "**SCC**") on the basis of claims received pursuant to the public announcement dated 05.09.2023 and prepared a list of Stakeholders and submitted the same with the Hon'ble Adjudicating Authority on 25.10.2023 and it was taken on record on 31.10.2023. It is submitted that the Liquidator received the following claims :

- ARCIL (Unsecured to the extent) - Rs 4,96,90,182
- ARCIL (Secured to the extent) - Rs 6,51,18,115
- CGST (Government Dues) - Rs 66,80,183
- Income Tax (Government Dues) – Rs 7,90,570



the Liquidator applied to Kotak Mahindra Bank on 12.07.2022 to open the liquidation account. Kotak Mahindra Bank opened the account on 29.07.2022.

- xvi. That the Liquidator conducted 1st SCC meeting on 11.09.2023 in wherein Agenda No. 5 (Approval Of The Contribution Of Estimated Liquidation Expenses) was put up for voting by the SCC members and the Polling Result was circulated by the Liquidator on 20.09.2023.
- xvii. That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The liquidator filed the Preliminary Report along with Asset Memorandum under Regulation 34 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 on 06.11.2023 and was taken on record on 21.11.2023.
- xviii. That the Liquidator conducted 2nd SCC meeting on 13.11.2023 in which Item No. 9 and Item No. 10 (*“To consider and approve the Dissolution/Future Course of action to be taken in the current matter due to non-availability of assets”*) were put up for voting before the SCC in which one of the member ARCIL having 87.33% of voting right approved both the aforesaid Items including “Dissolution of the Corporate Debtor”. Consequently, the Polling Result favouring “Dissolution of the Corporate Debtor” was circulated by the Liquidator.



- xix. The details of the requisite compliances as mandated in accordance with Section 54 of the IBC, 2016 read with the IBBI (Liquidation Process) Regulations, 2016 are listed hereunder –

S.No	Compliance/s	Averments	Remarks
1	Regulation 12	Public Announcement dated 05.09.2023	Complied with
2	Regulation 35(2)	Appointment of Registered Valuers	No valuation was conducted during CIRP owing to the non-availability of the Corporate Debtor and nil information was available with regards to the assets of the CD.
3	Regulation 31(2)	List of Stakeholders to be produced within 45 days of Liquidation Commencement date.	Taken on record.
4	Regulation 31A	Constitution of Stakeholders Consultation Committee (SCC)	Taken on record.
5	Regulation 13	Preliminary Report dated 21.11.2023	Taken on record.
6	Regulation 34	Asset Memorandum dated 21.11.2023	Taken on record.
7	Regulation 41	Opening of Bank Account in the name of the CD in Liquidation in “_” Bank dated	No account was opened hence not available.



8		Proof of closure of the above Bank account of Corporate Debtor	NA
9	Regulation 15	Quarterly Progress Reports and proof of filing the same before this Tribunal	Taken on record
10	Regulation 36	Asset Sale Report after sale of Assets	NA
11	Regulation 42(2)	Proof of Distribution within Ninety days from the receipt of realization	NA
12	Regulation 45(3)	Final report	Taken on record.
13	Regulation 51(1)(e)	Compilation of minutes of SCC	Taken on record.
14	Regulation 15	Audited Account of receipts and payments	Taken on record.
15	Regulation 37	Completion of Liquidation Process within one year from Liquidation Commencement Date or extension if any, date of the order & period	NA
16	Regulation 45(3)	Form-H dated	Annexed with the present application.

xx. It has been submitted by the Applicant that Corporate Debtor has no assets and the liability is rising with every passing day due to continuation of the liquidation process, it is in the best interest of the Stakeholders that the present application under Section 54 read



with Regulation 45(3) of the Liquidation Regulations and Rule 11 of the NCLT Rules be allowed and the Corporate Debtor is dissolved.

- xxi. Further, the SCC member concluded that since the Corporate Debtor does not have any assets, it is only pragmatic that proceedings for initiation of 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.
- xxii. It is also submitted by the Applicant that the COC has also passed an approval for Dissolution of the Corporate Debtor in its 7th Meeting dated 05.01.2021.
- xxiii. In light of the aforesaid the Applicant seeks approval of the this Adjudicating Authority for the early dissolution of the Corporate Debtor in accordance with Law and in the interest of justice.

3. Subsequent to consideration of the submissions made by the Applicant, the Adjudicating Authority perused the Application filed by the Liquidator and has gone through the documents placed on record filed by the Liquidator. Here, it is worthwhile referring to Section 54 of IBC, 2016 and Regulation 45 IBBI (Liquidation Process) Regulations, 2016:

“Section 54 IBC-Dissolution of corporate debtor.

(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.”

“IBBI (Liquidation Process) Regulations, 2016

45. Final report prior to dissolution.

1) When the corporate debtor is liquidated, the liquidator shall make an account of the liquidation, showing how it has been conducted and how the corporate debtor’s assets have been liquidated.

(2) If the liquidation cost exceeds the estimated liquidation cost provided in the Preliminary Report, the liquidator shall explain the reasons for the same.

(3) The liquidator shall submit an application along with the final report and the compliance certificate in Form H to the Adjudicating Authority for –

- (a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or*
- (b) for the dissolution of the corporate debtor, in cases not covered under clause (a).”*

4. That from the conjunct reading of the above provisions, this Adjudicating Authority is required to see whether the assets of the Corporate Debtor are completely liquidated or not. In the instant case, the applicant submits that the assets of the Corporate Debtor are not available owing to fact that the business operations of the Corporate Debtor cannot be traced.

5. It has also been observed by the Adjudicating Authority that an application was filed before the Principal Bench of this Adjudicating Authority on 09.03.2021 vide IA/1317/2021, seeking the early dissolution of the Corporate Debtor. However, the aforesaid application



was dismissed vide order dated 02.01.2023 on the grounds that due procedure has not been followed prior to filing of the application seeking early dissolution i.e.

“Order of Liquidation will only be passed when the Application was filed by the Liquidator and the Resolution Professional cannot skip the process of Liquidation and go straight for Dissolution of the Corporate Debtor after the CIRP Process.”

In light of the aforesaid dismissal on the grounds of non-compliance with the due procedure, the applicant was appointed as the liquidator by the virtue of an order of this Adjudicating Authority dated 31.08.2023. Subsequently, the liquidator was mandated to carry out the process of liquidation.

6. It has been observed that the applicant submits that the COC has also opined that the assets of the Corporate Debtor cannot be realized to defray the costs pertaining to the liquidation. Consequently, the COC concurred with the early dissolution of the Corporate Debtor in light of the aforesaid.
7. Further, in the second SCC meeting held on 13.11.2023, early dissolution of the corporate debtor had also been approved by the virtue of the vote of one member, ARCIL who possessed 87.33% of the voting right. In pursuance of the early dissolution of the Corporate Debtor, the Liquidator has furnished his Final Report and Form-H.



8. The Liquidator has stated that all the requirements of Regulation 45 of IBBI (Liquidation Process) Regulations, 2016 have been fulfilled, therefore, we are inclined to allow the present Application to dissolve the Corporate Debtor.
9. It has also been observed that the applicant has submitted that no bank account was opened in the name of the Corporate Debtor for the process of liquidation as the Corporate Debtor had no assets that warranted liquidation and other costs associated with the procedures pertaining to the aforesaid process of liquidation.
10. At this juncture it is pertinent to note that the Hon'ble NCLAT in Shyson Thomas V. Mr. Madhugiri Venkatarayappa Sudarshan and Others **(Company Appeal (AT) (CH) (INS.) No. 925 of 2020)** observed that
- “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`.”*
11. Accordingly, there being no other impediment, the present application is **allowed** and the Corporate Debtor is ordered to be dissolved with immediate effect



12. The Registry is directed to send a copy of this order passed under Section 54(2) to the ROC Delhi & Haryana, with which the Corporate Debtor is registered and the IBBI within seven days from the date of this order.

-SD/-
(Rahul Bhatnagar)
Member (Technical)

-SD/-
(Mahendra Khandelwal)
Member (Judicial)