

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, COURT-III

IA-2490/2022

IN

(IB) – 607(ND)/2018

Order under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with regulation 44(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

IN THE MATTER OF IB-607(ND)/2018:

M/s. PLATINA BULKERS PRIVATE LIMITED

..... Operational Creditor

Versus

M/s. STAR MINERAL RESOURCES PRIVATE LIMITED

.....Corporate Debtor

AND IN THE MATTER OF IA-2490/2022:

Mr. NARESH KUMAR BANSAL

..... Applicant/Liquidator

Order Pronounced On: 07.12.2023

CORAM:

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

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant: Mr. Gaurav Chaudhary Proxy Counsel for Mr. Gaurav
Kejriwal, Advocate

For the Liquidator: Mr. Naresh Kumar Bansal, Liquidator in person

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This is an Application filed by Mr. Naresh Kumar Bansal, the Liquidator of the Corporate Debtor before this Adjudicating Authority under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 44(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, for seeking the following reliefs:

- a) *“to Exclude the time period of (11.02.2020 to 28.02.2022) i.e. 746 days from the total time taken for the completion of Liquidation of Corporate Debtor in terms of section 60(5) of the IBC, 2016 read with regulation 44(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*
- b) *to wave the period of 01.03.2022 to 30.04.2022 as the situation was beyond the control of any human being.*
- c) *to fix the date for completion of liquidation of the corporate debtor as 28.02.2023.*
- d) *to pass any other order/orders which this Hon’ble Adjudicating Authority may deem fit in the facts and circumstances of the case in the interest of equity, justice and good conscience.*

2. Brief Background of the Case

- i. An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Operational Creditor i.e., M/s. Platina Bulkers Private Limited against the Corporate Debtor i.e., M/s. Star Mineral Resources Private Limited and the said application was admitted and CIRP was initiated by this Adjudicating Authority vide order dated

17.12.2018. A moratorium was declared and Mr. Akarsh Kashyap was appointed as an Interim Resolution Professional. Subsequently, his appointment was confirmed as Resolution Professional.

- ii.** It is submitted that the Resolution Professional could not call for Resolution Plan in the absence of any specific information relating to the assets, liabilities, and business operation of the Corporate Debtor. Therefore, as the statutory period of the insolvency had lapsed and there being no resolution plan, liquidation was followed as recommended by the CoC.
 - iii.** This Adjudicating Authority was pleased to allow the liquidation application vide order dated 10.02.2020 including appointing of Mr. Naresh Kumar Bansal as the Liquidator. Thereafter, the applicant made a public announcement.
- 3.** The Liquidator submitted that he has been unable to find any handy information with respect to the transaction details of the Corporate Debtor. Further, the Resolution Professional and Liquidator have not received any payment towards the expenses incurred and remuneration as approved by the CoC for the CIRP and Liquidation period. Thereafter, the Liquidator filed IA-1047/2021 before this Adjudicating Authority to seek direction against the persons who took the payment from the Corporate Debtor and were not providing any details pertaining to the respective transactions. The Liquidator filed a second IA-1042/2021 seeking a direction to the CoC to make the payment of CIRP cost, expenses incurred and remuneration of the Liquidator. This Adjudicating Authority vide Order dated 29.08.2023 dismissed IA-1042/2021 as infructuous and recorded as follows:

“This application has been filed by the Liquidator seeking a direction to the Respondents to pay liquidation cost. Mr. Naresh Kumar Bansal, for the Liquidator appearing in person has submitted that the CIRP has been initiated against N S P Associates India Private Limited, the Financial creditor in IB-

1082/ND/2020 in the matter of Canara Bank Vs. M/s. N S P Associates (India) Private Limited and consequent upon the initiation of CIRP, the Applicant has already filed a claim before the RP appointed in the said CIRP.

In view of the statement made by the Liquidator in person, the application has become infructuous and dismissed as infructuous.”

4. It is submitted that in the last week of March 2021, due to the Covid-19 breakdown, there was a lot of problems with the functioning of Courts and Tribunals. The Applicant relied on the order dated 10.01.2022 passed by the Hon'ble Supreme Court of India in **SMWP (C) No.3 of 2020 in the matter of Re: Cognizance for the Extension of Limitation**, wherein the period of Limitation was extended from 15.03.2020 till 28.02.2022.
5. It is submitted that the Liquidator is trying to sell out the assets of the Corporate Debtor and trying to realize the money due from the different entities so that the maximization of the value of the Corporate Debtor can be achieved.
6. It is submitted by the Liquidator that the delay in the completion of the Liquidation process is completely unintentional and inadvertent and out of the control of the Liquidator.

7. Analysis and Findings:

- i. We have heard the Ld. Counsel appearing for the Applicant and also perused the documents on record.
- ii. We find that this Adjudicating Authority (Bench-III) vide order dated 17.12.2018 was pleased to admit the Company Petition (IB)-607(ND)/2018. Since, then the suspended Board of Directors of the Corporate Debtor have not been cooperating with the IRP/RP and with the Liquidator to provide any statutory books and accounts. This Adjudicating Authority issued private notice, summons and warrants still no one appeared and provided any details. Resolution professional had filed an application under section 70 of the IBC, 2016 which was

forwarded to the IBBI for action. IBBI had filed the prosecution against all the members of the Board with the Court of District and Sessions Judge, South West, Dwarka, New Delhi as Ct. Case 170/2020 and the case is pending for execution. After analyzing all the reasons mentioned above we are of the view that no useful purpose will be served if exclusion or extension is granted to the Liquidator.

- iii.** Having regard to the facts and circumstances of the case, we deem it appropriate to pass an order directing the termination of the Liquidation Process, in the exercise of powers under Rule 11 of the NCLT Rules, 2016 to meet the ends of justice and to prevent abuse of the process of the Adjudicating Authority.
- iv.** For the sake of convenience Rule 11 of NCLT Rules is reproduced below:

“11. Inherent powers. - 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.”
- v.** The language used in Rule 11 of NCLT Rules, 2016 clearly shows that the Tribunal has the inherent power to pass such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Adjudicating Authority.
- vi.** We deem it appropriate to pass an order of dissolution of the Corporate Debtor under Section 54 of IBC, 2016. In exercise of inherent power under Rule 11 of NCLT Rules, 2016.

8. Order

- i.** In light of the above facts and circumstances, the Application bearing **IA-2490/2022** filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with regulation 44(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 is **dismissed** and accordingly **disposed of**.
- ii.** We direct the termination of the Liquidation Process and the Corporate Debtor is ordered to be dissolved.

- iii.** The Order of Moratorium passed under Section 33(5) of the Code shall cease to have its effect.
- iv.** The Liquidator is 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.
- v.** The Liquidator shall stand discharged from his responsibilities, subject to procedural compliances. The present Liquidator is directed to hand over the relevant documents to the Corporate Debtor forthwith.
- vi.** 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.
- vii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
File be consigned to the record.
No order as to costs.

Sd/-

**ATUL CHATURVEDI
(MEMBER TECHNICAL)**

Sd/-

**BACHU VENKAT BALARAM DAS
(MEMBER JUDICIAL)**