

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT – I, MUMBAI BENCH

MA No. 919 OF 2019
IN
CP (IB) NO. 1063 OF 2017

(Application under section 54 of the Insolvency & Bankruptcy Code,
2016)

Dushyant Dave
Liquidator of Shree Radhe Industries Limited
...Applicant

In the matter of:

Punjab National Bank *...Financial Creditor*
Versus
Shree Radhe Industries Limited
...Corporate Debtor

Order Delivered on: 04.02.2021

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri. V. Nallasenapathy, Member (Technical)

Appearance:

For the Applicant : Advocate Navid Memon

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

(Pronounced on: 02.03.2020)

1. The present application is filed by the Liquidator of Shree Radhe Industries Limited, seeking dissolution of the Corporate Debtor under Section 54 of the Insolvency and Bankruptcy Code, 2016 (the Code).
2. The counsel for the Applicant submits that the Petition was filed by Financial Creditor i.e. Punjab National Bank which was admitted by this Tribunal on 04.12.2017 and Mr. Dushyant Dave was appointed as an Interim Resolution Professional (IRP). Further, the IRP issued a public notice inviting the creditors of the Corporate Debtor company to submit their proof of claims on or before 21.12.2017.
3. The IRP i.e. Mr. Dushyant Dave filed a list containing the name of the sole creditor i.e. PNB along with the amount claimed and reported back before this Tribunal on 28.12.2017. The IRP was confirmed as RP in the first COC meeting and mentions that the assets mentioned in the audited accounts were not available physically and were completely sold off by Punjab National Bank. The Corporate Debtor had no intangible assets in the books and the company was closed for nearly 10 years. Further, since the Corporate Debtor had no tangible assets, the Corporate Debtor ought to be liquidated and this was kept before the COC and was approved by the single member of the COC i.e. the PNB.

4. The Applicant further submits that prior to the appointment of the IRP, the Punjab National Bank took steps under SARFAESI and sold off the two properties of the Corporate Debtor i.e., the land and the building and shed constructed thereon. Thus, as on the date of SARFAESI, there is no assets in the name of the Shree Radhe Industries.

5. In the second COC meeting which was held on 21.02.2018, it was decided with 100% attendance that the RP would act as a Liquidator for the purpose of the Liquidation unless replaced under sub-section (4) and the fees of Rs. 1,50,000/- was fixed by the CoC.

6. On perusal of this application, it appears that a M.A. No.186/2018 was filed under section 33(2) of the Code wherein an order was passed by this Tribunal for the liquidation of the Corporate Debtor company on 11.09.2018 and appointed the Applicant as Liquidator to carry out the liquidation process since there is no assets in the company and the COC has approved for liquidation of the Corporate Debtor company.

7. It is submitted that based on 11.09.2018 order passed by this Bench, the Applicant issued a Public Announcement dated 18.09.2018 intimating initiation of liquidation process against the Corporate Debtor and calling upon the stakeholders to submit their claims. Pursuant to the said public announcement the applicant received claim from the sole financial creditor of the Corporate Debtor, details as follows:

Sr. No.	Details of Stakeholders	Claim received	Claim Admitted
1	Punjab National Bank (PNB) – Financial Creditor	₹165,88,73,961/-	₹165,88,73,961/-

8. Further, the Applicant on 05.12.2018 submitted to this Tribunal the Preliminary Report giving the details of the capital structure of the Corporate Debtor, the estimates of the assets and liabilities of the Corporate Debtor and the proposed plan of action for carrying out the liquidation process of the Corporate Debtor.
9. It is submitted that as per the Preliminary Report and Asset Memorandum the Corporate Debtor has no assets and therefore the question of valuation and distribution of property does not arise.
10. Thus, the Applicant has filed this application for dissolution of the Corporate Debtor for nothing being present in the company but to distribute to the creditors of the company.
11. We have heard the Counsel for the Applicant and perused the records. The Applicant as Liquidator of the Corporate Debtor has discharged his duties by filing preliminary report, list of stake holders and asset memorandum detailing as to how the liquidation process of the Corporate Debtor has been conducted. We are of the view that nothing is left in the Corporate Debtor except to dissolve the company under Section 54 of the Code.
12. For the purpose of pronouncement of Dissolution of a Corporate Debtor, Section 54 of the Code 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."

13. In the light of the above section it is noticed that the Corporate Debtor do not have assets to be liquidated hence an Application is moved for the "Dissolution of the Corporate Debtor". This Section is to be read along with Regulation 14 of IBBI (Liquidation Process) Regulations 2016 which says that any time after the preparation of a Preliminary Report if it appears to the Liquidator that the realizable properties of the Corporate Debtor are insufficient to cover the cost of Liquidation process, and the affairs of the Debtor do not require further investigation may apply to NCLT for early dissolution of the Corporate Debtor.

14. That pima facie as there is no tangible assets of realization or saleable value of the Corporate Debtor, therefore the applicant herein submits that there are absolutely no means or sources available with the corporate Debtor to discharge its liabilities. That this application for dissolution is the last resort option available with the applicant herein to wind up the proceeding of

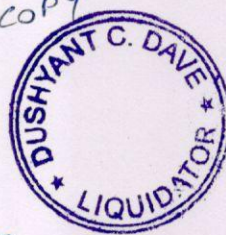
the Corporate Debtor in absence of any other mode for paying off the creditors of the Corporate Debtor

15. As a consequence, through this Order it is hereby declared that not only it is just and equitable but because of the fact that no asset is available for the purpose of 'Liquidation' as reported by Learned Resolution Professional, this is a fit case of a Corporate Debtor to be dissolved as prescribed u/s. 54 of the Code. Ordered accordingly, stood 'Dissolved' from the date of this Order.
16. Since the Debtor Company stood Dissolved vide this order and no proceedings are now pending, therefore the Registry is directed that the case file be consigned to records.
17. 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.

Sd/-
V. NALLASENAPATHY
Member (Technical)

Sd/-
SUCHITRA KANUPARTHI
Member (Judicial)

TRUE COPY



DUSHYANT C. DAVE
LIQUIDATOR

Dave