

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

I.A. (IB) No. 1048/KB/2023

In

Company Petition (IB) No. 96/KB/2018

***An application under section 54 of the Insolvency &  
Bankruptcy Code, 2016 read with regulation 45 of IBBI  
(Liquidation Process) Regulations 2016.***

**IN THE MATTER OF:**

**Seco Tools India Private Limited**

**... Operational Creditor.**

***Verses***

**AS Sales and Exports Private Limited**

**... Corporate Debtor.**

***And***

**IN THE MATTER OF:**

**Shyamal Kumar Bhattacharjee,  
Liquidator** of AS Sales and  
Exports, working for gain at 27/1,  
B.T. Road, Green View Apartment,  
Flat – 1 -001, Kamarhati, Kolkata –  
700058.

**... Applicant.**

**Date of Pronouncement: February 23, 2024.**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)  
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**Appearance:**

**For the Applicant:**

**Mr. Shaunak Mitra, Adv.**

**Mr. Vikash Singh, Adv.**

**Ms. Shayana Singhal, Adv.**

**Mr. Shyamal Kumar Bhattacharjee  
(Liquidator)**

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**ORDER**

***Per: Bidisha Banerjee, Member (Judicial)***

1. The Court congregated through hybrid mode.
2. This Application being **I.A.(IBC)1048/KB/2023** has being preferred by **Shyamal Kumar Bhattacharjee**, the Liquidator of **AS Sales and Export Private Limited**, Corporate Debtor herein, under section 54 of the Insolvency and Bankruptcy Code, 2016, for brevity “IBC” of the seeking the following reliefs:
  - a. To pass necessary order under section 54 of Insolvency and Bankruptcy Code, 2016, read with regulation 45 of IBBI (Liquidation Process) Regulations, 2016 for dissolution of the Corporate Debtor;*
  - b. Such further order or orders to be passed and/or direction be given as to the Learned Adjudicating Authority may deem fit and proper;*
3. Vide an order dated 09.07.2018 this Adjudicating Authority admitted the Corporate Debtor in CIRP, and the applicant was appointed as the IRP.
4. On 06.08.2018, the Committee of Creditors (for brevity “CoC”) in its first meeting, appointed the applicant as the Resolution

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Professional (RP) to conduct the CIRP and the same was approved by this Adjudicating Authority on 09.08.2018.

5. During the CIRP Period, it is noted that despite the efforts from the RP and the CoC of the Corporate Debtor, they did not receive any plan for the Corporate Debtor. Since, no resolution plan was received this Adjudicating Authority vide an order dated 25.04.2019 upon the decision taken by the CoC in 100% voting share at its last meeting appointed the applicant herein as the Liquidator of the Corporate Debtor.
6. On 29.04.2019, the public announcement was made in Form B of Schedule II in two newspapers namely "The Financial Express" (English Daily) and "Sukhobor" (Bengali daily) having circulation in West Bengal.
7. It is submitted that the last date of submitting the claims by the stakeholders of the Corporate Debtor was 25.05.2019 (30 days from the Liquidation commencement date). Up to the last date of submission of claims, the liquidator has received claims from only the following Operational Creditors and one Financial Creditor who is related party of one of the directors) which are as under:

<b>Sl. No</b>	<b>Name of the Creditor</b>	<b>Amount(s)</b>	<b>Status</b>	<b>Form</b>
1	Seco Tools India Private Limited	Rs. 30,48,667.00	Operational Creditor	C

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2	Sarmistha Bajpayee	Rs. 14,47,303.00	Financial Creditor (related party of one of the Director)	D
3	Indrajit Bhattacharjee	Rs. 13,000.00	Employee	E
4	Tusher kanti Sarakr	Rs. 14,000.00	Accounting Consultant	E

8. Further to contend that the Liquidator, in accordance with terms of the IBC and the Regulations framed there under, prepared and submitted the Preliminary Report with this Adjudicating Authority including *inter alia* asset memorandum, proposed plan of actions etc. on July 8, 2019.
9. Further it is submitted that the Liquidator conducted the Stakeholders Consultation Committee (SCC) Meetings, appraising the members about the progress in the matter, and also filed the Progress Reports each quarter with this Adjudicating Authority, pursuant to IBC and the Regulations framed there under and liquidator in compliance has sent letter to ROC Kolkata thereby updating the status of the corporate debtor undergoing liquidation process. A copy of the master data of the Corporate Debtor is attached hereto and marked as "Annexure C".
10. The Liquidator of the Corporate Debtor on 01.04.2020 have appointed Nantu Ranjan Pal & Co as a Consultant to conduct various process related to liquidation including the process of

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Auctioneering till the completion of liquidation process (including Dissolution of the Corporate debtor).

- 11.** On 13.04.2020 The liquidator engaged MSTC Ltd (Erstwhile Metal State Trading Corporation), a Govt. of India Undertaking as Auctioneer who would auction the assets. Due to outbreak of COVID-19 and lockdown imposed by Govt, MSTC have declared to start the process.
- 12.** The MSTC Ltd informed vide E-mail that they fixed the date for auction and accordingly as a liquidator the same was informed to operational Creditor on 25.06.2020. But the auction could not take place on the schedule date, and it was deferred on 03.07.2020. The auction took place in six different dates and final auction with final bidding took place on 20.11.2020.
- 13.** Auction bidding history is tabulated below: M/s. A S Sales & Exports Pvt.Ltd:  
Auction conducted by MSTC (A Govt of India Undertaking).  
Summary is as below:

<b>Bidding No.&amp; Date</b>	<b>Highest Bidder</b>	<b>Bid Value (Rs.)</b>	<b>Security Deposit (Rs)</b>	<b>Final Payment(Rs.)</b>
1 <sup>st</sup> bidding on 03.07.2020	M/s. MAA VAISHNO TRADING Co.	Rs. 8,95,006/-	Rs. 89,501/-	Not paid. Security Deposit Forfeited.

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2 <sup>nd</sup> bidding on 07.09.2020	No bidder no bidding			
3 <sup>rd</sup> bidding on 25.09.2020	M/s. Saravanna Manchine Tools	Rs. 9,82,000/-		A party blacklisted by MSTC, CHENNAI Bid disqualified.
4 <sup>th</sup> Bidding on 05.10.2020	No bidder no bidding			
5 <sup>th</sup> bidding on 21.11.2020	No bidder no bidding			
6 <sup>th</sup> & Bidding on 20.11.2020	M/s. MAA VAISHNO TRADING Co.	Rs. 6,10,015/-	Rs. 61,001/-	Rs. 5,49,014/-
Total receipts	Rs. 6,10,015/- and Rs. 89,501/- being security deposit forfeited in first bidding			Rs. 6,99,516/-

- 14.** That the present liquidator at the time of conducting CIR Process as a Resolution professional appointed two registered valuers as per provision of IBC, 2016 to conduct valuation of the materials lying as per stock statement mentioned in the Balance Sheet as on the date of commencement of insolvency process. While appointed as a liquidator again a Balance sheet and Profit and Loss Account at the date of liquidation was also prepared and submitted by Corporate Debtor. But as there was no change in the Assets of the Corporate Debtor, no further valuation was undertaken and the value which has

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been reported by the existing valuers was taken into consideration at the time of liquidation also. There is no significant variation between the values of the materials reported by the Registered Valuers and the average value stood at Rs.7,83,001.00 (seven lakh eighty-three thousand and one only).

- 15.** In 6th bidding held on November 20, 2020, it was reported by MSTC that there were 105 bidding and no of bidders was 6(5ix) and the highest bidder was M/S. MAA VAISHNO TRADING COMPANY having bid value of Rs. 6,10,015/- and requested Liquidator to inform about acceptance/ rejection of the bid.
- 16.** Liquidator informed the latest bid value as reported by MSTC to the operational Creditor (Main sole stakeholder) and requested to inform the liquidator within 24 hours stating the entire fact from the first bid to sixth bid whether they (O.C) can arrange for more value on selling the materials of the Corporate Debtor than the value already available from the latest bid conducted by MSTC as Rs. 6,10,015.00.
- 17.** Operational Creditor informed via E-mail that they are agreeable to the value and liquidator can proceed further with the value as is available from the 6th bidding process of MSTC and accordingly liquidator accepted the bid value and informed MSTC to proceed further with the highest bidder considering that the same bidder stands as highest bidder two

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times, firstly on 1st bidding conducted on July 3, 2020 and deposited Rs 89,501/- (being 10% of security value) but could not pay the balance amount and hence it was rejected by MSTC and for the second time on 6th bidding (held on 20/11/2020) and deposited the entire amount of Rs.6,10,015.00 as was directed by MSTC. Therefore, the total amount deposited by the same party in two bidding is Rs 6,99,516.00 i.e., (Rs. 89,501.00+ Rs. 6,10,015.00) which, though it is short of Rs. 83,745.00 from the average value calculated by the valuers (Rs. 7,83,001.00) but it was felt by the liquidator observing the number of times of bidding and the value fetched of the materials lying with the corporate debtor, Auction process should be closed.

- 18.** Acceptance of bid value of Rs.6, 10,015.00 by liquidator has been communicated by MSTC authority to the party with an order of lifting the materials from the site of the Corporate Debtor within January 15, 2021, and accordingly the Party contacted with the liquidator and requested for a convenient date so that the materials can be lifted from the site of the Corporate Debtor.
- 19.** The date of lifting of material was fixed by liquidator on December 23, 2020, and on the same date entire materials were lifted by the Party in a good condition and on the same date the room occupied by the Corporate Debtor as tenant at a rent of Rs. 7500.00 per month was vacated and handed over

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to the landlord after payment of Rent in full up to the month of November 2020 and also the remuneration of the person engaged as security as well as office staff @Rs 13000.00 per month was also paid in full up to the month of November 2020 and he was released from his service as security and office staff.

- 20.** The Liquidation cost including the amount available for stakeholder 2028 have been disbursed and the balance amount after disbursement as mentioned above standing in the Bank Account against the amount received is attached hereto and marked as "Annexure-E".
- 21.** It is submitted that the Applicant in compliance to the Code and its Regulation has discharged his duties diligently and has made several efforts for the maximum realization from the assets of the corporate debtor. The liquidation Process is fully completed. However, it may be noted that during litigation with Steel Authority of India Ltd (SAIL), this Learned Tribunal imposed fine for an amount of Rs. 10,000.00 to SAIL to be paid to the Applicant (Liquidator) vide order dated November 30,2021 it is contended that the said amount has not yet been received by liquidator necessary order is annexed herewith and marked as Annexure F.
- 22.** That the Liquidator is filling the final progress report along with audited receipts and payments account and bank

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statement of the Liquidation account as a part of this application and the same is attached hereto and marked as Annexure G.

- 23.** That Liquidator has filed “Form H” in compliance Certificate to the code and IBBI (Liquidation Process) Regulation, 2016 and the same is attached hereto and marked as Annexure. It would be evident from the Form “H” annexed at page 62-66 to the application that the first distribution has been occurred on 23.12.2020 and the second and final distribution has been done on 28.10.2021.
- 24.** Further, the attention is drawn at page 64 (Form “H”) annexed to the application that the liquidation value of the liquidation estate is Rs. 7,83,001/- and the amount realised from sale of liquidation estate of Rs. 6,79,431/-.
- 25.** Further, the Learned Counsel took us through the Statement of Receipt and payment as on 31.03.2023 annexed at page 33 to the application which shows that total receivable amount from the liquidation process is of Rs. 11,16,037/- and the liquidation expenditure from 25.04.2019 to 31.03.2023 including the payment towards its stakeholders is of Rs. 10,21,838.89/-. The Balance amount left from distribution is of Rs. 94,198.11/- (as on 31.03.2023). It is contended that the Legal Charges has not yet been paid as the Lawyer has yet not

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submitted his bills and the balance is kept for the purpose.  
The Statement of Receipt and payment as on 31.03.2023 is reproduced herein:

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*Annexure - E*  
~~ANNEXURE~~

Statements of Receipts and Payments as on 31/03/2023

	<u>Amount (Rs)</u>
Credit Balance at Bank Of Baroda as on 25/04/2019	326803.00
<b><u>Amount Received:</u></b>	
Amount Received M/S Vaishno Trading	Rs.
(10% of Auction Value)	89501.00
....Do..... (auction Sale Security)	61002.00
Fund from MSTC (Auction Sale)	<u>638731.00</u> 789234.00
<b>TOTAL RECEIPT</b>	<b>1116037.00</b>
<b><u>PAYMENTS:</u></b>	
<u>Liquidation Expenditures from 25/04/2019 to 31/03/2023</u>	
1) Salary & Other Expenses	314819.49
2) Rent	150000.00
3) Electricity Charges	1768.00
4) Liquidators Travelling (for two times from Durgapur to Kolkata & Back)	5000.00
5) Miscellaneous Exp	2000.00
6) GST	109803.00
7) Liquidators TA (For two years)	60000.00
8) Consultation Fee	240000.00
9) Payment To stakeholders	102199.00
10) Liquidators Fee	22000.00
11) Insurance	13791.00
12) Bank Charges	458.40
<b>Total Payments</b>	<b>1021838.89</b> 1021838.89
Balance as on 31/03/2023	94198.11
(Legal charges has not yet been paid as Lawyer has yet not submitted his bills and the balance is kept for the purpose)	



*Shayamal Kumar Ghosh*  
SHAYAMAL KUMAR GHOSH  
INSOLVENCY PROFESSIONAL  
IBBI/IPA-003/IPA-000092/2017-18/10892

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**26.** At this juncture, we would go through the various provisions of the I&B Code dealing with the dissolution of the Corporate Debtor are as follows:

**Section 54 of the I&B Code**

**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.”*

**Rule 45 of Insolvency and Bankruptcy Board of India  
(Liquidation Process) Regulations, 2016:**

**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 –*

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*(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).*

**27.** We would note that the Applicant in compliance to the Code and its Regulation has discharged his duties diligently and has made several efforts for the maximum realization from the assets of the corporate debtor. The liquidation Process is fully complete. Thus, the Liquidator in compliance has filed the present application under Section 54 read with Regulation 45 of IBBI (Liquidation Process) Regulation, 2016, seeking an order of dissolution of the corporate debtor. The Liquidator has also filed the final progress report along with this dissolution application.

**28.** A conjoint reading of these the statutory provisions as noted supra requires mandates completion of the liquidation of the assets of the corporate debtor and filing of subsequent application to the Adjudicating Authority by the liquidator seeking dissolution under Section 54 of the IBC where the assets of the Corporate Debtor either have been completely liquidated after distribution among the Stakeholders or for early dissolution under Regulation 14 of the Liquidation Process Regulations, when the realizable properties of the corporate debtor are insufficient to cover the cost of the

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liquidation process, the liquidator may apply to the Adjudicating Authority for early dissolution.

- 29.** In view of the above facts and circumstances, this Adjudicating Authority in exercise of the powers conferred under sub-section (2) of section 54 of the Code hereby orders dissolution of the Corporate Debtor, viz., AS Sales and Export Private Limited from the date of this Order, and the Corporate Debtor stands **dissolved** and consequently, Liquidator stands relieved subject to all procedural compliances.
- 30.** Further, we would infer that a balance amount of Rs. 94,198.11/-is kept towards the legal expenses. The Liquidator shall upon receipt of the bills from the concerned Learned Counsel(s) release payments forthwith. In the event, bills are not furnished within two weeks from the pronouncement of this order, the Stakeholders' Consultation Committee (SCC) shall take a pragmatic and holistic view of redistributing the same amount among its stakeholders.
- 31.** Be it noted that we have taken a similar view in **SPS Steels Rolling Mills Ltd. v. Indian Overseas Bank and Ors.** in **I.A. (IB) No. 501/KB/2022** in **C.P. (IB) No. 595/KB/2017** reported in **(2023) ibclaw.in 1078 NCLT** that:

*“25. Therefore, we are of the view that the Corporate Debtor which is now under the control of SRA is not entitled to get the proceeds of the Fixed Deposits lying*

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*with the Respondent Bank. In fact, whatever amount they have already received to the tune of Rs. 79,24,041/- will have to be refunded by them along with rate of Interest applicable to the FDR. Once the matter is placed before the erstwhile members of the CoC of Corporate Debtor, and the distribution of this amount is decided by them in the CoC meeting which will include the respondent Bank as well, **the amount so refunded will have to be distributed, as per the commercial wisdom of the Committee of Creditors.***

**(Emphasis Added)**

- 32.** The Liquidator and the Registry are hereby directed to serve a copy of this order upon the Registrar of Companies, West Bengal, 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.
- 33.** Further, the Liquidator is directed to serve a copy of this order upon the **Insolvency and Bankruptcy Board of India (IBBI)** within fourteen days of receipt of this order. The IBBI shall take further necessary action upon receipt of a copy of this order.
- 34.** **I.A. (IBC) No. 1048(KB)2023** along with **C.P. (IB) No. 96(KB)2018** is **allowed** with the above directions and the **IA(IBC)/1048(KB)2023** and **C.P. (IB)/96(KB)2018** are hereby **disposed of** accordingly.

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- 35.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 36.** Certified Copy of this order may be issued, if applied for with the Registry, upon compliance of all requisite formalities.
- 37.** File be consigned to records.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**This Order is signed on 23<sup>rd</sup> February, 2024.**

Tiwari, V. [LRA]/ Bose, R. K. [LRA]