



IN THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I,
AHMEDABAD

Item No. 304

IA (Dis)/14(AHM) 2024 in
CP (IB)/71(AHM) 2023

Order under Section 54 of IBC, 2016

Janak Jagivan Shah
RP of Rainbow Infrabuild Pvt. Ltd.

.... Applicant

Order Delivered on: **11.06.2024**

Coram:

Mr. Shammi Khan, Member (Judicial)
Mr. Sameer Kakar, Member (Technical)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is being pronounced in the open court, vide spread sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I,
AHMEDABAD**

**I.A. (Dis.)/14(AHM)/2024
in CP (IB)/71(AHM)/2023**

(Filed under Section 54 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 14 of IBBI (Liquidation Process) Regulations, 2016 r/w Rule 11 of the NCLT Rules, 2016 for dissolution of the Corporate Debtor)

In the matter of:

Mr. JANAK JAGJIVAN SHAH

Resolution Professional

RAINBOW INFRABUILD PVT. LTD.

Having Address at:

201, Kamdhenu Complex, Nr. Toran Dining Hall,
Opp. Sales India, Income Tax, Ashram Road,
Ahmedabad, Gujarat - 380009

.... Applicant

Order Pronounced on 11.06.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)

SH. SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant: Mr. Dheeraj Garg, Advocate.

ORDER

1. The present Application IA(Dis.)/14(AHM)/2024 has been filed under Section 54 of the Insolvency and Bankruptcy Code, 2016 r.w. Regulation 14 of IBBI (Liquidation



Process) Regulations, 2016 r.w. Rule 11 of the NCLT Rules, 2016 by the Resolution Professional seeking relief as follows;

- a) *Your Lordships be pleased to allow this Interlocutory Application;*
- b) *Your Lordships may be pleased to pass an order for dissolution of the Corporate Debtor namely Rainbow Infrabuild Pvt. Ltd. Bearing CIN U21098GJ2010PTC063364 and relieve the Applicant from his duties as the Resolution Professional;*
- c) *Your lordships may be pleased to direct the Registrar of the Companies to update the status of the Corporate Debtor as dissolved pursuant to allowing of this application;*
- d) *Your Lordships may be pleased to pass any other order as may deem fit in the interest of justice.*

2. It is submitted that the Corporate Debtor (CD) is a private limited company incorporated under the Companies Act, 1956 having its registered office at the address mentioned in the cause title of the application. M/s AVB Global Ventures Pvt. Ltd., one of the financial creditors of the CD filed an application u/s 7 of IBC



2016 on 17.03.2023 for initiation of Corporate Insolvency Resolution Process (CIRP) against the CD for having defaulted in payment of its outstanding dues of Rs. 2,38,95,357/-.

3. It is submitted that this tribunal after hearing both the parties passed an order admitting the aforesaid petition, and appointed Mr. Janak Jagjivan Shah as Interim Resolution Professional (IRP) to commence the CIRP and also to directed the said IRP to make a public announcement as prescribed by the Code vide its order dated 09.11.2023 received on 10.11.2023. Further, the said IRP made public announcement in Form A inviting claims from the creditors of the corporate debtor in **Financial Express** (English) and **Lokmitra** (Gujarati) circulated in the state of registered office of corporate debtor and also uploaded the same over the web-portal of the IBBI.
4. It is further submitted that the last date to receive the claims from creditor as mentioned in the public announcement was 24.11.2023. Pursuant to the receipt



of claims from financial creditors, COC was constituted and a report certifying the constitution of COC and list of claims were filed with this tribunal by the IRP on 07.12.2023. Claims were also invited from the Income Tax Department and pursuant to the email dated 24.11.2023 sent to the Income tax department to file the claim, the IRP received claim of Nil Rupees from Income Tax Department vide claim form No. B dated 28.11.2023.

5. **1st CoC Meeting:**

- a) The first COC meeting was held on 08.12.2023, wherein it was decided by the majority that the IRP (Mr. Janak Jagjivan Shah) will continue as Resolution Professional to carry out CIRP of CD.
- b) Pursuant to the first meeting of COC held on 08.12.2023 the IRP/RP filed the progress report with the Hon'ble NCLT as Interlocutory Application No. 11/2024 which was taken on record dated 17.01.2024.



- c) In line with the discussion that took place in the 1st meeting of the CoC, the RP appointed two Registered Valuers under the provisions of the IBC 2016 to value the Securities and Financial Assets of the CD. It is important herein to mention that the CD had no land building and/or Plant & Machinery, thus, no valuers for those categories came to be appointed. Reports from the valuers were obtained by the RP. Copy of the Financial Statements as on CIRP Date and the Copy of Reports of the two registered valuers is attached in this application as **Annexure G** and **Annexure H** respectively.

6. **2nd CoC Meeting:**

- a) It is submitted that the Applicant convened second meeting of COC on 06.01.2024. The CoC approved the minimum eligibility criteria for inviting Expression of Interest for submission of resolution plan.
- b) Resultantly, the RP issued Form G in the Lokmitra Gujarati newspaper and the Financial Express



English Ahmedabad edition and over the web-portal of the IBBI. (Copy of Invitation of Expression of Interest (FORM-G) published by RP is annexed and marked as **Annexure J**).

- c) The RP also prepared and shared the Information Memorandum prepared by him. Copy of Information Memorandum is attached herewith and marked as **Annexure K** in the present application.

7. **3rd CoC Meeting:**

- a) The Applicant further submitted that, he convened third meeting of COC on 06.02.2024. RP informed the member of COC that no expression of interest was received against the Invitation for Expression of Interest dated 07.01.2024.
- b) In the interest of resolution, it was resolved to re-publish the Invitation for Expression of Interest with reduced Eligibility criteria. The RP published revised form-G on 08.02.2024 in the Lokmitra Gujarati newspaper and the Financial Express English



newspaper Ahmedabad edition and over the web-portal of the IBBI. (Copy of revised FORM-G is attached herewith and marked as **Annexure M.**)

8. **4th CoC Meeting:**

- a) It is submitted that the Applicant forthwith convened fourth meeting of COC on 28.03.2024. The RP informed the members of COC that he has admitted 2 more claims were received by him from financial creditors *viz-a-viz* Mr. Ajay Goenka and Mrs. Sangeeta Goenka; however they will not be a member of the COC because they are related parties to the CD.
- b) The RP also informed in the meeting that in spite of re-issuance of Invitation for expression of Interest, again no expression of interest was received and suggested for Liquidation of the CD. However, the members of COC enquired if they can directly opt for dissolution of the CD instead of going through the Liquidation process as there are no realisable assets in the CD and going through liquidation process



would only increase their expenses without yielding any positive result. They asked the RP to obtain an expert's opinion for the same before proceeding any further. Copy of list of updated claims is annexed and marked as **Annexure O** in this application.

9. **5th CoC Meeting:**

- a) It is submitted that the Applicant convened fifth meeting of CoC on 29.04.2024 wherein the resolution for passing of liquidation was proposed by the RP.
- b) The CoC rejected the proposal for initiating the liquidation process and for appointment of liquidator. The CoC also did not consider contributing to the liquidation expenses and after a thorough deliberation and consideration of the expert's opinion, the CoC unanimously decided to proceed with the dissolution of the corporate debtor without resorting to the liquidation process and directed the RP to file an application before the Adjudicating Authority for the same.



10. It is submitted that where the corporate debtor has no realisable assets, the liquidation would not yield any return with incurring of various costs such as publication costs, filing cost, and liquidator's fee which, in fact, is in deviation with the Code's cardinal principle of value maximization. A copy of audited financial statement as on 31.03.2024 is attached as **Annexure Q**. An audited statement of receipts and payments for the CIRP period from 09.11.2023 to 04.05.2024 and bank account closure certificate issued by the bank dated 04.05.2024 along with bank statement showing nil balance and marked as closed are attached as **Annexure R**.
11. The applicant in their submissions have relied on following precedents:
- a) *Naresh Kumar Munjal vs. M/s Laksh Foods Pvt. Ltd. and Ors.*, IA 6092/2022 of CP (IB) 1181/2018 (NCLT, New Delhi Bench).



- b) *Mr. Mandar Shrikant Wagh, IRP of M/s. Synew Steel Private Limited, I.A 435/2020 in CP (IB)/96/BB/2020 (NCLT Bengaluru Bench).*
- c) *Shyson Thomas vs. Mr. Madhugiri Venkatarayappa Sudarshan, TA (AT) No.8 of 2021 CA (AT)(CH)(INS)/925/2020; order 9 I.A- 6092/2022 in CP(IB)-1181/ND/2018 dated 01.06.2023. (NCLAT Chennai).*

12. It is submitted that Regulation 14 of IBBI (Liquidation Process) Regulations provides for early dissolution of the corporate debtor. Extract of the regulation are reproduced as follows:

"14. Early dissolution any time after the preparation of the Preliminary Report, if it appears to the liquidator that-

(a) the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and

(b) the affairs of the corporate debtor do not require any further investigation;



he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution."

13. It is pointed out by the applicant that conjoint reading of these provisions leads to the requirement of completion of the liquidation of the assets of the corporate debtor and subsequent application to the Adjudicating Authority by the liquidator for dissolution. The intent is that the assets of the corporate debtor should be completely liquidated and also the distribution be a made in terms of various provisions of the code and the associated regulations, which would then culminate the entire process and thus no purpose would be served by keeping the identity of the corporate debtor as a corporate person and as such the same is required to be dissolved. In many cases, the present one included, when there are no assets to be liquidated, a question arises as to how to comply with the regulation 14 which stipulates early dissolution, which requires the appointment of a liquidator who shall then make an estimate and say whether there are any assets worth liquidating and upon



such a certification only an early dissolution application is to be filed. This leads to a dichotomy, as one hand we have assets of the corporate Debtor which can barely cover the CIRP costs and on the other hand we appoint another professional for liquidation, thus incurring additional cost. To get out of this predicament, it would be necessary and sufficient for the RP to certify and submit that there are no assets with the Corporate Debtor, which would satisfy the requirements of Section 54(a), in which case following a route of regulation 14 would be just academic.

14. Lastly, it is submitted that in the instant case, since there are no assets with the Corporate Debtor and in absence of any contribution approved by the CoC, there would be insufficient funds to meet the Liquidation Expenses. Therefore, under the provisions of section 54 of the Code read with Regulation 14 of the IBBI (Liquidation Process) Regulations, 2016 and Rule 11 of the NCLT Rules, 2016, the applicant pleads before this tribunal to consider the prayers in these applications.



15. We heard the Learned Counsel for the Applicant and perused the material available on record.

16. **Observation of this Tribunal**

a) Regulation 14 of the IBBI (Liquidation Process)

Regulations, 2016 states that:

"14. Early dissolution any time after the preparation of the Preliminary Report, if it appears to the liquidator that-

(a) the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and

(b) the affairs of the corporate debtor do not require any further investigation;

he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution."

b) Section 54 of the IBC, 2016 provides as follows: -

Section 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 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.”

c) Upon a comprehensive examination of Regulation 14 of the IBBI (Liquidation Process) Regulations and Section 54 of the Insolvency and Bankruptcy Code, 2016, this Tribunal observes that “**only the Liquidator**” is empowered to make an application to the Adjudicating Authority for the dissolution of a Corporate Debtor. As the liquidation process has not yet commenced in this matter, there is no specific provision that authorizes an early dissolution prior to the initiation of liquidation.

d) It has been observed that the Applicant, in his capacity as the Resolution Professional, has submitted a compliance certificate under Form-H in accordance



with Regulation 45(3) of the IBBI (Liquidation Process) Regulations. Additionally, the Applicant has designated himself as the Liquidator under **Annexure-S** of this application. However, it is pertinent to note that no order for liquidation has been passed by this Tribunal to date. Consequently, there is no Liquidator or any authorized person in the capacity of the Liquidator who can file the said compliance certificate.

- e) It is seen that the applicant has not filed the copy of Transaction Audit Report along with its application and no averment has been made in this regard by the applicant.
- f) Applicant has attached the valuation report by two valuers, both of whom have given the valuation of Rs. 1535/- being cash and bank balance as on the CIRP commencement date and no value has been ascribed to any other current asset/fixed asset of the Corporate Debtor. Applicant has attached the audited financials of the Corporate Debtor as on 31.03.2023 and at page 191 of the application, is the audited balance sheet as



on 31.03.2024. Perusal of the same reveals that the cash and cash equivalents as on that date were Rs. 1,44,880/- which are much more than the liquidation value ascribed by the two valuers.

17. Based on the above observations and in exercise of the powers conferred under Section 54 of IBC, 2016, we are not inclined to order for dissolution of the Corporate Debtor at this stage.
18. In light of the observations noted in paragraphs 16(e) and 16(f), the applicant is hereby directed to carry out transaction audit from 01.04.2020 to the date of commencement of the CIRP.
19. Accordingly, with the above directions, the present application i.e. **IA(Dis)/14(AHM)/2024** in CP(IB)/71/AHM/2023 stands rejected and stands disposed of. RP may take appropriate action as per the law.

-SD-

**SAMEER KAKAR
MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN
MEMBER (JUDICIAL)**

HG/LRA