

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
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IA (IB) No. 2/CB/2022
and
IA (IB) No. 143/CB/2021
in
TP No. 04/CTB/2020
[earlier CP (IB) No. 1802/MB/2018]

In the matter of:

Insolvency and Bankruptcy Code, 2016;

-And-

In the matter of:

An application under Section 54 read with Section 60(5) of Insolvency and Bankruptcy Code, 2016;

-And-

In the matter of:

FRIENDS AGENCIES;

... Operational Creditor

-Versus -

BIW FABRICATORS PVT. LTD.

... Corporate Debtor

-And-

In the matter of:

Mr. Bankim Shukla, residing at C/o ADB & Company, First Floor, Mahavir Gaushala Complex, K. K. Road, Moudhapara, Raipur, (C.G)- 492001.

... Appellant/Liquidator

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For the Applicant : Ms. Aakshancha Nehar, Adv.
Mr. Ajay Sharma, Adv.

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IN THE NATIONAL COMPANY LAW TRIBUNAL
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IA No.143/CB/2021 in TP No.04/CTB/2020
[earlier CP (IB) No.1802/MB/2018]
In res: Dissolution of Biw Fabricators Pvt. Ltd.

Order reserved on: 25.02.2022

Order pronounced on: 09.03.2022

ORDER

Per: Satya Ranjan Prasad, Member (Technical)

1. The Present Application has been filed by the Liquidator, Mr Bankim Shukla, under Section 54 of the Insolvency and Bankruptcy Code, 2016 and Regulation 45 of IBBI (Liquidation Process) Regulations, 2016 for dissolution of Corporate Debtor, BIW Fabricators Private Limited.
2. The Liquidator submits that NCLT, Mumbai Bench, *vide* its orders dated 14th January 2019, had admitted the captioned Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016, and Shri Pankaj Khetan, was appointed as Interim Resolution Professional (hereinafter referred to as “IRP/RP”) in the Insolvency Resolution Process.
3. The Learned Liquidator submits that IRP/RP published Form A in the newspapers on 16.01.2019 in accordance with Section 15 of the Code in newspaper viz., Navbharat Times (Hindi) and Central Chronical (English) and also on the website of IBBI (Insolvency Resolution Process of Corporate Person) Regulation, 2016 and received, considered and admitted claims in accordance with the provisions of the Insolvency & Bankruptcy Code, 2016. Thereafter, in the meeting of the Committee of Creditors held on 12.04.2019, a resolution was passed, wherein Mr. Pankaj Khetan as RP was removed and Mr. Bankim Shukla was appointed as Resolution Professional. Further, the NCLT Mumbai Bench *vide* order dated 23.07.2019 confirmed the appointment of Mr. Bankim Shukla as RP and directed the applicant to proceed with the CIRP. In pursuance to the provisions of Regulation 27 of the IBBI (CIRP) Regulations, 2016 after

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following due procedure, erstwhile Resolution Professional has appointed valuers on 28th February 2019 and 01.03.2019 within time prescribed under Regulation 40A of IBBI (CIRP) Regulations, 2016 and the copy of the appointments letter issued to the valuers are attached with the said petitions of I.A 119/CTB/2019.

4. The Liquidator submits that in terms of the relevant provisions of the Insolvency & Bankruptcy Code, 2016 the applicant took necessary steps as required so that the Corporate Debtor can be revived and accordingly the applicant has invited EOI from the prospective resolution applicants to submit their resolution plan. Further, as per the timeline mentioned in form G, last day for receipt of Expression of Interest was 06.04.2019 and some of the prospective Resolution Applicants have also shown their interest and submitted the same electronically. Therefore, seeing the possibility for the Corporate Debtor that more resolution applicants had shown their interest in Resolution Plan the application was made to Adjudicating Authority for extension of CIRP process for the further period of 90 days from the last date of 13th July 2019.
5. The applicant, has stated that as per Form G published by the erstwhile RP dated 27th May 2019 last day for submission of Expression of Interest was 10th August, 2019. In the event that no EOI was received by 10th August 2019, then RP has proposed to CoC for initiating the Liquidation of the Corporate Debtor and the same has been approved by CoC in its meeting dated 13.09.2019. Upon hearing the applicant this Tribunal passed an order of Liquidation of the Corporate Debtor on 22.11.2019 and further directed the applicant to act as the Liquidator on and from 22.11.2019.
6. It is further submitted that subsequently, in terms of the directions contained in the order dated 22.11.2019, the applicant has diligently performed his duties and obligations as envisaged under the I & B Code, 2016 and further

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complied with all the compliances as per the Rule 13 & 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 by filing its preliminary report dated 05.02.2020, First Progress Report dated 24.01.2020, Second Progress Report 07.12.2020, Third Progress Report dated 07.12.2020, Fourth Progress Report dated 11.12.2020, Fifth Progress Report dated 05.01.2021, Final Progress Report dated 21.12.2021 and Compliance Certificate filed on 21.12.2021.

Compliances under Liquidation Regulations

7. That in the meanwhile, the following compliances were duly completed by the Liquidator on the best effort basis:
 - a. Upon receipt and verification of the claims received from the creditors of the Corporate Debtor, the List of Stakeholders was drawn up. Accordingly, the Stakeholder's Constitution Committee was constituted. The List of Stakeholders was filed before this Hon'ble Tribunal on 27.01.2020.
 - b. The Preliminary Progress Report and Asset Memorandum were filed by the Liquidator on 30.01.2020.

Sale of Assets

8. That as per the provisions of the Liquidation Regulations, the Liquidator had published following two advertisements for calling of interests:
 - a. 1st Auction vide Notice dated 16.02.2020: for sale of the Corporate Debtor as a going concern.

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- b. 2nd Auction vide Notice dated 20.03.2020: for sale of assets of the Corporate Debtor as different sets of assets bundled (as per Regulation 32 (c) of the Liquidation Regulations.
- i Land and Buildings
 - ii Plant and Machinery and other Fixed Assets.
 - iii Inventory
 - iv Vehicles (1 Swift Dzire and 1 Tata Ace)
9. That in furtherance of the above notices, the auctions were due to be held on 12.03.2020 and 15.04.2020. However, the process was not successful due to non-receipt of any conclusive bids.
10. That the Liquidator had published 3rd advertisement calling of Interest on 28.05.2020 for sale of bundled assets as described hereinabove and also published the Information Memorandum and Process Memorandum dated 28.05.2020. Subsequently, the Liquidator issued corrigendum on 23.06.2020 whereby Auction date was fixed on 24.06.2020.
- a. The assets mentioned in Set IV (Vehicles) was sold by the Liquidator to successful Bidder Mr. Sunit Kumar Ghosh at the price of 1,70,000/- (One Lakh Seventy Thousand Only) as per Regulation 32 (C) of the Liquidation Regulations. Balance sale consideration was received by the Liquidator on the dates as specified in Appendix "A" to the present application.
 - b. The auction in respect of Sets I, II and III remained inconclusive.

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11. The Liquidator had published 4th Advertisement calling of interest on 11.07.2020 for sale of bundled assets Sets I, II and III, as described hereinabove. Moreover, the Liquidator issued the Information Memorandum and Process Memorandum dated 11.07.2020 and the auction for sale of bundled assets was scheduled on 22.07.2021.
- a. The Liquidator sold the Assets mentioned in Set III (Inventory) at Sale of Rs. 84,91,000/- (Eighty-Four Lakh Ninety-One Thousand Only) to the successful Bidder Stuc-Rite Metal Building Systems. Balance Sale consideration was received by the Liquidator on the dates as specified in Appendix 'A' of the application.
 - b. The auction in respect of Sets I and II remained inconclusive.
12. The Liquidator had published 5th Advertisement calling of interest on 25.07.2020 for sale of bundled assets Sets I and II, as described hereinabove. The Liquidator also issued the Information Memorandum and Process of Memorandum dated 25.07.2020 whereby the auction was scheduled 04.08.2020.
- a. The Liquidator sold the asset mentioned in Set II (Plant & Machinery) at sale price of Rs. 1,54,77,000/- (Rupees One Crore Fifty-Four Lakh Seventy-Seven Thousand Only) to the successful Bidder Bansal Industries. The Liquidator received the balance sale consideration on the dates specified in Appendix-A of the present application.
 - b. The auction in respect of Sets I remained inconclusive.

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13. That the Liquidator has conducted 6th, 7th 8th Auction on 15.09.2020, 29.09.2020 and 24.10.2020 respectively for sale of Set I, by publication of notices on 04.09.2020, 18.09.2020 and 113.10.2020. However, these endeavours were not successful due to non-receipt of any conclusive bids.
14. That the Liquidator had published 9th advertisement calling expression of Interest on 10.12.2020 to sell the remaining assets of the Corporate Debtor i.e., Land Building under Regulation 32(c) of the Liquidation Regulations. The auction was conducted on 22.12.2020 and the Land & Machinery was sold to the successful bidder Stuc-Rite Metal Building Systems at the price of Rs. 4,29,23,000/- (Rupees Four Crore Twenty-Nine Lakh Twenty-Three thousand only). The Liquidator received the Balance sale consideration on the dates as specified in Appendix- "A" of the petition.
15. That the proceeds from the sale of assets have been distributed under section 53 of Insolvency and Bankruptcy Code, 2016 and a table showing CIRP / Liquidation cost and proceeds of sale to give complete details on this aspect is as follows:

Set No.	Details of the Assets Auctioned	Date of Auction	Successful Bidder	Realization Amount Exclusive of GST (In INR)
I	Land & Building	22.12.2020	Stru-Rite Metal Building Systems	4,33,74,473/-
II	Plant and Machinery	05.08.2020	Bansal Industries	1,59,16,129/-
III	Inventory	22.07.2020	Stuc-Rite Metal Building Systems	4,35,266/-

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IV	Vehicles (1 Swift Dzire & Tata Ace	24.06.2020	Sunit Kumar Gosh	1,71,272/-
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16. That with the conclusion of the 9th Auction on 22.12.2020 and receipt of balance sale consideration on the dates as specified in Appendix- "A" to the present application, all the assets of the Corporate Debtor stood liquidated. Summary of the successive rounds of auction conducted by the Liquidator and their result is described in Appendix-B. Summary of the assets of the Corporate Debtor auctioned and payments received are described in Appendix- "C" to the petition.

Distribution Of Amounts in The Liquidation Estate

17. That pursuant to the auction of Corporate Debtor's assets, the Liquidator has made distribution of the proceeds from the sale of the Liquidation Assets
- towards reimbursement of insolvency resolution process costs and liquidation costs (including various expenses incurred towards security of the plant of the Corporate Debtor, fee paid to professionals appointed by Liquidator and other expenses incurred by the Liquidator during the liquidation process of the Corporate Debtor, which are briefly described in APPENDIX – "D" funded by the financial creditor; and
 - debts owed to secured Creditors.
18. The Liquidator submits that he has prepared final report and compliance certificate in Form H stating the affairs of Liquidator in Liquidation process of Corporate Debtor in accordance with Regulation 45 IBBI (Liquidation Process) Regulations, 2016.

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19. The Liquidator submits that in accordance with Sub-Regulation 5 of Regulation 15 of the IBBI (Liquidation Process) Regulations, 2016, the Receipts and Payments of the Liquidator during the Liquidation Process have been duly audited by a Chartered Accountant.
20. The Liquidator submits that he has complied with all his statutory obligations to liquidate the Corporate Debtor and conducted all due diligence in liquidation process.
21. Regulation 45 of IBBI (Liquidation Process) Regulations 2016, by is reproduced hereunder:
- a) *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.*
 - b) *The Liquidator shall submit an application along with the final report and the compliance certificate in Form H to the Adjudicating Authority for –*
 - i) *Closure of the liquidation process of the corporate debtor where the corporate debtor is sold as going concern: or*
 - ii) *for the dissolution of the corporate debtor, in cases not covered under clause (a).*
22. Further, 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 Adjudication Authority for the dissolution of such Corporate Debtor.*

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(2) The Adjudication 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.”

23. In light of the above facts, it is observed that liquidator has completed the sale of Corporate Debtor through ~~e~~-auction and distributed entire sale proceeds received from the sale amongst the creditors. Section 54 of the Insolvency & Bankruptcy Code read along with Regulation 45 of IBBI (Liquidation Process) Regulations, 2016, which says that the liquidator shall submit an application to NCLT for dissolution of the Corporate Debtor along with the final report and the compliance certificate in Form H to the Adjudicating Authority for closure of the liquidation process of the Corporate Debtor. Hence, liquidator has filed present application seeking dissolution of the Corporate Debtor.
24. Considering the facts on record and provision of law, we order that Corporate Debtor stands dissolved as prescribed under Section 54 of The Insolvency & Bankruptcy Code,2016.
25. On disposal of IA No. 143/CB/2021 as aforesaid the associated IA (IB) No. 2/CB/2022 filed by the Liquidator under Regulation 44 of the Liquidation Regulations for extension of liquidation period by a further period of 60-days is also disposed of.
26. 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 and for updating the status of Corporate Debtor.

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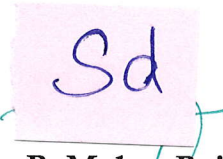
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27. The Registry is hereby directed to communicate this Order to the petitioner and respondent.
28. Let the certified copy of the Order be issued upon compliance with the requisite formalities


Satya Ranjan Prasad
Member (Technical)


P. Mohan Raj
Member (Judicial)

Signed this 9th day of March, 2022

Ravijeet_P.S.