



DIVISION BENCH
COURT - II

MENTIONING
NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P. (IB)/1270(KB)2019
IA(IBC)(DIS.)/13(KB)2024,

ORDER SHEET OF THE HEARING ON 11th July 2024

IN THE MATTER OF	MAROTIA STEEL TRADERS PVT. LTD. VS S.B ISPAT INDIA PVT. LTD.
UNDER SECTION	IBC UNDER SEC 9

C O R R I G E N D U M O R D E R

1. This matter was not on Board today. However, upon mentioning, the matter was taken up on Board.
2. In the Pronouncement of Order dated **05.07.2024** in IA(IBC)(DIS.)/13(KB)2024 under C.P. (IB)/1270(KB)2019, some necessary changes are required to be made in the manner specified as under:
 - a) Para No. 5 at Page 6 of this Order will be replaced by the paragraph as mentioned hereinbelow:

“5. During 5th SCC meeting held on 13.09.2023, it was discussed and decided amongst the SCC members that in terms of Regulation 44A of the Liquidations Regulations, after the dissolution and closure of the Liquidation, the HDFC Bank Limited in its sole rights will pursue the proceeding in respect of avoidance transactions and shall kept the proceeds, if any from the Avoidance matter. It was further clarified that all the cost/expenses w.r.t pursuing the avoidance matter before the dissolution or closure of liquidation shall form part of the liquidation cost and shall be borne by the contributories and after the dissolution or closure of liquidation, the same shall be borne by the HDFC Bank Limited.”
3. Rest of the Order will remain unchanged.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (Court – II)
KOLKATA**

IA(IBC)(DIS.)/13(KB)2024

C.P. (IB)/1270(KB)2019

***An application under Section 54(2) of the Insolvency &
Bankruptcy Code, 2016 and Read with Regulation 45(3) of
the Insolvency and Bankruptcy Board of India (Liquidation
Process) Regulations, 2016.***

In the matter of:

(1) S.B. ISPAT (INDIA) PRIVATE LIMITED.

... Corporate Debtor (In Liquidation)

-And-

**(2) MR. NITIN DAGA, LIQUIDATOR OF S.B. ISPAT (INDIA) PRIVATE
LIMITED, an Insolvency Professional, having its office at 68-A,
Metropolitan Co-Operative Housing Society, 2nd Floor, Kolkata –
700 105.**

... Applicant/Liquidator

Date of pronouncing of the order: 05/07/2024

Coram:

SMT. BIDISHA BANERJEE HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND HON'BLE MEMBER (TECHNICAL)

Appearances (via video conferencing/physically):

Mr. Shaunak Mitra, Adv.

:

For the Liquidator

Mr. Saurav Jain, Adv.

:



ORDER

Per: D. Arvind, Member (Technical)

1. The court convened through hybrid mode.
2. Ld. Counsel appearing on behalf of the liquidator was heard in extenso.
3. This application **IA(IBC)(DIS.)/13(KB)2024** has been preferred to seek the following reliefs, inter alia: -

(a) That this Court be pleased to pass an Order to dissolve the Corporate Debtor under Section 54(2) of IBC, 2016; and

(b) This this Court be pleased to direct the Registrar of Companies to update the status of the Corporate Debtor as dissolved; and

*(c) This this Court be pleased to take note of the Final Report of the Liquidation Process as annexed in the 'Annexure - 21';
or*

(d) Any other directions which the National Company Law Tribunal, Kolkata Bench may deem fit in the facts and circumstances of the matter;

4. Factual matrix of the case is as under: -

- (a)** The Corporate Insolvency Resolution Process was initiated against **S.B. ISPAT (INDIA) Private Limited** herein the Corporate Debtor by our Order dated 07.01.2022.
- (b)** During the process of CIRP, as no Resolution Plan was received, and consequently, the applicant filed application under Section 33(1)(a) of the Insolvency and Bankruptcy



Code, 2016. The liquidation Order was passed on 18.11.2022.

- (c) In accordance with Regulation 41(1) of the Liquidation Regulations, the Applicant has opened a new current bank account bearing account no. 270505500112 with ICICI Bank, Metropolitan Branch in the name of the Corporate Debtor followed by words **“under liquidation”** in a Scheduled Bank, for the receipt of all moneys due to the Corporate Debtor which was activated for undertaking Financial Transactions from 01.12.2023.
- (d) The applicant meanwhile had filed an application under Sections 43, 45 & 66 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 being application numbered IA(I.B.C)/484(KB)2022 before this Adjudicating Authority which deals with PUF/E/Avoidance transactions for a sum of Rs. 9,39,21,113.00/-.
- (e) Subsequently, the liquidation estate comprising of the assets of the Corporate Debtor was formed and the applicant duly constituted the Stakeholders Consultation Committee (in short “SCC”) as per the provision of the Regulations 31A of the Liquidation Regulations, 2016 on 17.01.2023.
- (f) The liquidation value was insignificant, and consequently, the applicant did not get any bid to sell the company as a going-concern, and consequently, the private sale was recommended by the SCC Members.
- (g) Upon receiving quotation from scrap buyers, the quotation of M/s. Trendy Bazar was accepted, and accordingly, SCC Members gave approval for making sale of assets of the



Corporate Debtor to sell the assets of the Corporate Debtor to M/s. Trendy Bazar through Private Sale, under regulation 33(2) of Insolvency and Bankruptcy Board of India (in short “IBBI”) (Liquidation Process) Regulations, 2016.

- (h)** Upon receipt of Order approving through private sale by this Adjudicating Authority on 17.07.2023, the assets of the Corporate Debtor were sold with the said M/s. Trendy Bazar.
- (i)** In capacity of RP/liquidator, the liquidator sent various emails, letters including legal notices from its legal counsel for recovery of dues from the debtors of the Corporate Debtor. The applicant apprised the SCC Members that none of the debtors of the Corporate Debtor being body corporate having outstanding debts in excess of more than Rs. 1 Crore, no proceeding can be initiated under IBC and, therefore, need to explore proceedings before the appropriate Courts/Forums for recovery.
- (j)** However, since the SCC Members was in view not to initiate any legal proceedings since it only incur cost and time and they do not apprehend any recoveries from the said debtors. All these debts and recoverable debts were classified as not realizable of the assets and publication was made to receive Expression of Interest (in short “EOI”), but no EOI was received.
- (k)** The SCC Members denied for distribution of such assets not realizable and the assets were mostly not recoverable and valued NIL by the valuers. Accordingly, a decision was taken by the SCC Members to seek dissolution of the Corporate Debtor in terms of (Liquidation Process) Regulations, 2016.

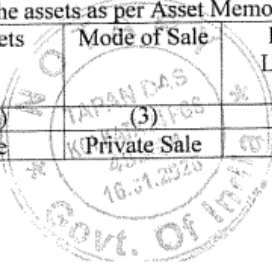
IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court –II)
KOLKATA



(1) It is evident from the 'Form H' that assets as per Asset Memorandum and Final Sale Report are as under: -

3. The details of the assets as per Asset Memorandum and Final Sale Report are as under:

Sl. No.	Assets	Mode of Sale	Estimated Liquidation Value	Realization Amount (Rs.)	Date of Transfer to Liquidation Account
(1)	(2)	(3)	(4)	(5)	(6)
1	Tangible	Private Sale	39,937	9440	30.09.2023



Ref

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	Assets				
2	Deferred Tax	NA	NIL	NIL	-
3	Inventory	NA	NIL	NIL	-
4	Trade Receivable	NA	NIL	NIL	-
5	Balances with Bank	NA	29339.08	30600.74 ^{*a}	07.03.2024 ^{*b}
6	Cash in Hand	NA	101/-	NA ^{*c}	-

4. (a) Liquidation value of the liquidation estate: Rs. 69,327/-

(b) Amount realized during the liquidation process:

Sl. No.	Realisations	Amount (Rs.)
1.	Opening balance as on liquidation commencement date (A)	N.A.
Realisations (B)		
2	Auctions of assets	N.A.
3	Private sales of assets	9,440
4	Assignment of not readily realizable assets	N.A.
5	Distribution of unsold asset	N.A.
6	Realization from current bank account no. 05312020000149 maintained with HDFC Bank, Howrah Liluah Branch	30,600.74
Total (A+B)		40,040.74

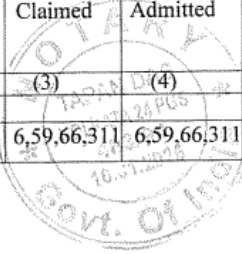
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KOLKATA



(c) The amounts distributed to stakeholders as per section 52 or 53 of Code are as under:

(Amount in Rs. lakh)

Sl. No.	Stakeholders* under section 53 (1)	Amount Claimed	Amount Admitted	Amount Distributed	Amount Distributed to the Amount Claimed (%)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2	(a) Liquidation Costs			10,45,040.74	100	Note-1
3	(b) Secured Financial Creditor	6,59,66,311	6,59,66,311	Nil	Nil	



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4	(c) Unsecured Financial Creditor	79,40,476	79,40,476	Nil	Nil	
5	(d) Operational Creditors (Government Dues)	3,37,34,298	3,37,34,298	Nil	Nil	
6	(e) Operational Creditors (other than Workmen, Employees and Government Dues)	1,27,92,654	1,27,92,654	Nil	Nil	

5. We would infer that approval of the Resolution Plan shall not affect the proceedings of the PUFÉ applications and the Resolution Professional shall continue to pursue those applications sans any barrier. We would refer to the judgment rendered by the Hon'ble Delhi High Court in **Tata Steel BSL vs. Venus Recruiters** reported at **2023/DHC/000257** wherein it it held that:

“89. Conclusion:

XXX

XXX

XXX

d) It follows that the RP will not be functus officio with respect to adjudication of avoidance applications in a situation, as described hereinabove. There being a clear demarcation between the scope and nature of the CIRP and avoidance application within the scheme of the IBC, the RP can continue to pursue such

applications. The method and manner of the RP's remuneration ought to be decided by the Adjudicating Authority itself."

(Emphasis Added)

6. Hence, the rival contentions were noted.
7. At this juncture, we would go through the various provisions of the Insolvency & Bankruptcy Code dealing with the dissolution of the Corporate Debtor which are as follows: -

**Section 54 of the Insolvency & Bankruptcy 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 –*

(a) *closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or*

(b) *or the dissolution of the corporate debtor, in cases not covered under clause (a).*

8. We would note that the Applicant in compliance to the Code and its Regulations 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.

9. In compliance of regulation 15 of the Liquidation Process Regulations, the Liquidator has filed six quarterly Progress Reports from time to time before this Adjudicating Authority and also the final report disclosing all the material facts and information with respect to the liquidation process of the Corporate Debtor. As per mandatory requirement under regulation 45(3) of the Liquidation Process Regulations, the Liquidator has prepared a compliance certificate under prescribed '**Form H**'. Both



the final report and compliance certificate under form H is annexed with the application and marked as annexure **Annexure – ‘O’**.

10. A conjoint reading of these the statutory provisions as noted supra, mandates upon completion of the liquidation of the assets of the corporate debtor, filing of subsequent application to the Adjudicating Authority to seek 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, or where the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process, the liquidator may apply to the Adjudicating Authority for early dissolution.
11. 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, **S.B. ISPAT (INDIA) PRIVATE LIMITED** from the date of this Order, thus stands **dissolved** and consequently, the Liquidator stands relieved from his responsibilities, subject to procedural compliances.
12. 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.
13. 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.



14. All the assets of Corporate Debtor have been disposed of and distributed in accordance with the code and rules and regulations framed thereunder and the final report has been submitted.
15. **IA(IBC)(DIS.)/13(KB)2024** along with **C.P. (IB)/1270(KB)2019** is **allowed** with the above directions and the **IA(IBC)(DIS.)/13(KB)2024** and **C.P. (IB)/1270(KB)2019** are hereby **disposed of** accordingly.
16. 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.
17. Urgent certified copy of this Order may be issued, if applied for, with the Registry, upon compliance of all requisite formalities.
18. File be consigned to records.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on: 05th of July, 2024.

Ar. [steno]