IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT-VI AT NEW DELHI

I.A. No. 5312/2021 In C.P. No. (IB)- 1782 (PB)/2020

Under Section 60(5) of IBC

In the matter of:

M/s. WIN-HOLT INDIA PRIVATE LIMITED

.... CORPORATE DEBTOR

In the matter of:

Mr. PRAVIN R. NAVANDAR

.... INTERIM RESOLUTION PROFESSIONAL

Order delivered on: 26.11.2021

CORAM
Dr. P.S.N. PRASAD
HON'BLE MEMBER (JUDICIAL)
SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Applicant : Mr. Sameer Rastogi, Advocate

ORDER
PER- SH. HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

1. The present application is being filed by the IRP, under Rule 11 of the NCLT Rules, 2016 r/w Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('I & B Code'), for the purpose of dissolution of the Corporate Debtor ("CD") as per Section 54 of the Code, in Company Petition No. IB-1782(ND)/ 2019.
2. The Applicant through this application seeks the following reliefs;
    a. This Hon'bleTribunal may be pleased to allow the present Application and pass appropriate order under Section 54 of the Insolvency and Bankruptcy Code, 2016;
    b. This Hon'ble Tribunal may be pleased to pass appropriate order permitting dissolution of the Corporate Debtor;
    c. The Hon'ble Tribunal be pleased to discharge the Interim Resolution Professional Pravin R. Navandar from his duty as Resolution Professional of the Corporate Debtor;
    d. The Hon'ble Tribunal may be please to pass appropriate order to direct the concerned ROC through the Regional Director to allow striking off/ dissolve the Corporate Debtor as per the relevant provisions of the Companies Act, 2013
    e. That this Hon'ble Tribunal may be pleased to pass such further and other orders as this Hon'ble Tribunal may deem fit and proper in view of the facts and circumstances of the case; and
    f. That this Hon'ble Tribunal may be pleased to pass any orders/ directions as deem fit and necessary by this Hon'ble Tribunal in the interest of justice and equity.

3. The Applicant states that the original petition for initiation of CIRP, was filed by an Operational Creditor, under Section 9 of the I & B Code r/w Rule 5 & 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, was admitted by the Hon'ble Tribunal, New Delhi vide order dated 22.01.2020, CIRP of the Corporate Debtor ('CD'), was triggered and Mr. Pravin R. Navandar was appointed as the IRP.
4. The IRP then constituted the CoC, having M/s. APMH & Associates as the sole member of the CoC of the CD and submitted the report under regulation 17(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In the first CoC meeting held on 20.02.2020, the Applicant apprised the CoC that as per audited balance sheet of the CD, for the F.Y. 2018-19, the asset side only shows security deposit to the tune of Rs.25,000 and an Income Tax Refund of Rs.4,014.
5. The Applicant states that since he had tendered his resignation to the CoC on its first meeting dated 20.02.2020 citing several reasons therein, the CoC filed an Interlocutory Application ('I.A.') for change of IRP to RP with Hon'ble NCLT, New Delhi on 16.03.2020. As the I.A. for change of IRP to Rp is not yet heard, in view of the same, the Applicant, i.e., IRP is continuing doing his duties enshrined in the Code.
6. The CoC has discussed the non-viability of the resolution process on various grounds, as there are no substantial assets hence preparation of Information memorandum and inviting expression of interest for the resolution of the Corporate Debtor is a non-starter. The Applicant submits that, in the matter of Mr. Raghuram, Resolution Professional of

M/s. Sattur Sri Ganga Chit Funds Private Limited- Applicant (MA/ 540/2019 in CP/ 490/ IB/ 2018) filed under Section 54 of the Insolvency and BAnkruptcy Code, 2016, the Hon'ble NCLT, Chennai (Single Bench) allowed dissolution application u/s. 54(2) by-passing the process of Liquidation of the Corporate Debtor. Hereto marked and annexed as "Exhibit 6" is the copy of order in C.P. 490/IB/2018.

7. The Applicant states and submits for the sake of brevity, Section 54 of the I & B, Code 2016 is reproduced herein 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 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."*

Also, Regulation 14 of the IBBI (Liquidation Process) Regulation, 2016 states as follows;

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

8. The Applicant states that in the third meeting of CoC held on 06.11.2020, a Resolution was passed wherein, the CoC disapproved the resolutions sought under Regulation 39B, 39C & 39D of the IBBI (CIRP) Regulations, but have given consent towards filing application, under Section 54 of the I & B, code. The Excerpt of the Resolution Passed, or consent given to proceed for Dissolution u/s. 54 of the code is hereby reproduced:

*"**RESOLVED THAT** as there is no business activity and also the fact that there are no sufficient assets of the Company for the liability of the operational creditor as well as for CIRP cost it is commercially viable not to conduct further CIRP.*

***RESOLVED FURTHER THAT** CoC be and is hereby given consent towards filing an application with the Adjudicating Authority for the Dissolution of the Corporate Debtor u/s. 54 and other relevant provisions of the Code and regulations made thereunder.*

***RESOLVED FURTHER THAT** Mr. Pravin R. Navandar, IRP be and is hereby authorized to take all necessary steps to give effect to the above resolution."*

9. The sole member of CoC, M/s. APMH & Associates LLP, has filed an affidavit, wherein it states that;

> *"4. That the CoC perused the audited balance sheet of the Corporate Debtor for the financial year 2018-19- the asset side only showing security deposit to the tune of Rs. 25,00/- and an income tax refund of Rs. 4,014/- only. The Corporate Debtor does not only have fixed assets and is also non-operational. Further, the Corporate Debtor does not have any employees as per the information memorandum.*
>
> *5. That it is not commercially viable to appoint a valuer and transaction auditor. Thus, the CoC in he first meeting held on 20th February, 2020, after examining the audited financial statements agreed and passed the resolution for the same. The Resolution to file for early dissolution under section 33(2) of IBC, 2016 before the Hon'ble Adjudication Authority was also passed in the fist CoC Meeting.*
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> *6. That the CoC is not in a position to engage a counsel to make its submissions hence filing this affidavit through the Counsel of IRP. It is submitted that there is no business activity and as also the fact that there are no sufficient assets of the Company for the liability of the Operational Creditor as well as for CIRP cost. Therefore it commercially not viable to conduct further CIRP and the Corporate Debtor requires to be dissolved."*

10. In view of the above, there are no physical assets available for sale, this Authority in exercise of the powers conferred under Sub- section (2) of Section 54 of the I & B Code, 2016, hereby orders the dissolution of the

Corporate Debtor, viz, M/s. **WIN-HOLT INDIA PRIVATE LIMITED** from the date of this order, and the Corporate Debtor stands dissolved. Consequently, the Resolution Professional stands relieved.

11. The Resolution Professional and the Registry are directed to send the copy of this order within 7 days from the date of pronouncement to the RoC with which the Corporate Debtor is registered.

12. In terms of the above, the application stands disposed of.

Let a copy of order be served to parties.

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

(Dr. P.S.N. PRASAD)
MEMBER (JUDICIAL)

Pronounced today under Rule 151 of NCLT Rules, 2016 as the Hon'ble Member (T) Sh. Hemant Kumar Sarangi, is not holding the court today.

Court Officer
26.11.2020