

IN THE NATIONAL COMPANY LAW TRIBUNAL

ALLAHABAD BENCH, PRAYAGRAJ

IA No.170/2021 IN CP (IB) NO.344/ALD/2018

(An application under Section 54 of Insolvency and Bankruptcy Code, 2016 read with Regulation 45 of the IBBI (Liquidation Process) Regulations, 2016)

IN THE MATTER OF:

Sundar Kumar (Proprietor)

(For and on Behalf of Goldy Garment)

.... Applicant/Operational Creditor

Versus

Komorebi Exports Private Limited

...Corporate Debtor

AND IN THE MATTER OF

Mr. Sarvesh kashyap

Liquidator for Komorebi Exports Private Limited

Address:101, Nipun Plaza,(Near Max Hospital),

Sector 1, Vaishali, Ghaziabad, Uttar Pradesh-201010

.....Applicant

Order pronounced on- 02.05.2025

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

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Appearances:

Sh. Anil Kumar, PCS

: For the Liquidator

ORDER

1. This application bearing IA no.170/2021 in CP IB No. 344/ALD/2018 has been filed for dissolution of Corporate Debtor under Section 54 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as Code) read with Regulation 45 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as Regulations 2016) praying for the following reliefs:

- a) *Pass an order for dissolution of the corporate debtor, i.e., Komorebi Exports Private Limited, as the affairs of the corporate person have been completely wound up and its assets have been fully liquidated in compliance with the provisions of the IBC Code read with IBBI Regulations;*
- b) *Pass an order for manner of distribution of liquidation estate if any recovered as per IA-271/2019 filed by the Resolution Professional.*
- c) *Pass an order for discharge of Sarvesh Kashyap, liquidator of the corporate debtor as no assets of the Corporate Debtor remains to be liquidated.*
- d) *Pass such other or further order(s) which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*



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2. To put it briefly, the facts of the case are that the Application under section 9 of IBC for initiating CIRP was admitted by this Adjudicating Authority vide order dated 10.01.2019 and Mr. Sarvesh Kashyap was appointed as IRP. Thereafter, Mr. Sarvesh Kashyap was further appointed as the Liquidator by this Tribunal vide its Order dated 05.02.2020.
3. The Applicant submitted that pursuant to liquidation, a public announcement in Form "B" was made in two newspapers, namely "Business Standard" in English and Hindi editions inviting claims from stakeholders of the Corporate Debtor and the last date for submitting claims was 08.03.2020.
4. It is submitted that a liquidation account of the Corporate Debtor was opened on 18.02.2020 in the name of "Komorebi Exports Private Limited in Liquidation" with Bank of India, Bhangel SME Branch Kumar palace, Near Police Chowki, main Noida Dadri Road, Bhangel, Noida -201304, Dist-Gautam Budh Nagar, U.P.
5. It is submitted that till last date of submission of claim, few claims were received which were collated and verified by the Liquidator and a List of Stakeholders was filed electronically by the Liquidator on 26.06.2020. A public announcement for notice of List of Stakeholders was also made in

two newspapers, namely "Business Standard" in English and Hindi editions on 22.06.2020.

6. It is stated that the liquidator has prepared and submitted the Asset Memorandum and filed electronically before this Tribunal on 27.06.2020.
7. The Applicant stated that he had filed the following Progress Report electronically:

Date	Particulars
29/06/2020	First Progress Report for the period 05/02/2020 to 31/03/2020
15/07/2020	Second Progress Report for the period 01/04/2020 to 30/06/2020
15/10/2020	Third Progress Report for the period 01/07/2020 to 30/09/2020
07/11/2020	Third Revised Progress Report for the period 01/07/2020 to 30/09/2020



An Asset Sale Report was also submitted along with the 3rd Progress report (Revised) to this Tribunal on 07.11.2020 by the Liquidator.

8. During the liquidation period, few more claims were also received which were collated and verified by the Liquidator and a revised List of Stakeholders was filed by the Liquidator vide Diary No. 0902109/00232/2020 on 15.10.2020.

9. It is submitted that the Liquidator had considered the average of the estimates of the values arrived under Regulation 35 of Regulations, 2016 for the purposes of valuations of the assets of the Corporate Debtor. As per the valuation report, the total liquidation value of the Plant & Machinery of the Corporate Debtor was Rs.14,67,890/- which includes the security interest of the Financial Creditors and liquidation value of the Financial Assets of the Corporate Debtor was of Rs.34,402/-. The valuation done by both the valuers is summarised below-

(A) Valuation of Plant & Machinery			
Sr.	Name of Valuer	Fair Value	Liquidation value
1.	Suresh Kumar Santhalia	24,73,706	14,84,223.00
2.	Sanjay Chopra	20,73,654.00	14,51,558.00
	Total	45,47,360.00	29,35,781.00
	Net fair value and Liquidation Value (A)	22,73,680.00	14,67,890.50

(B) Valuation of Financial Assets			
1.	Vishnu Upadhyay	35,51,181.00	32,352.00

2.	Sumit Dhadda	33,03,252.00	35,852.00
	Total	68,54,433.00	68,204.00
	Net fair value and Liquidation value (B)	34,27,216.50	34,402.00
	Total (A+B)	57,00,896.50	15,01,992.50

10. However, the sole Financial Creditor of the Corporate Debtor did not relinquish his right over secured assets (Stock & Book Debts) in terms of Section 52 of the Insolvency and Bankruptcy Code, 2016. The liquidation value of the said assets was Rs.13,20,066/-. The sole Financial Creditor also informed the Liquidator that they received an offer to buy secured assets of the Corporate Debtor for Rs.5,00,000/- which is less than the liquidation value. They also asked the Liquidator to suggest names of buyers who can offer a better price which the Liquidator did. Keeping in view the condition of the assets and deteriorate in value, all secured assets were sold out for Rs.7,50,000/- less than its liquidation value.

11. Thereafter, the Liquidator made an advertisement in Newspaper for E-auction to sell all the remaining assets in the manner specified in Schedule 1 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
12. It is submitted that all moveable assets of the Corporate Debtor which came to the knowledge of the Liquidator were sold out through e-auction at more than its liquidation value and sale proceeds were deposited in the liquidation account maintained with Bank of India, Bhangel Branch, Noida. The summarisation of the liquidation value and realisation value of the assets sold through e-auction is as mentioned below:

Particulars	Liquidation value	Sale Price (in Rs.)
Furniture & Fixture, office equipments, Computer systems, Plant and Machinery and other Misc. inventory of small items	1,81,926/-	2,40,000/-
Total	1,81,926/-	2,40,000/-

13. It is submitted that on CIRP of the Corporate Debtor, Rs.16,41,971/- was incurred as Insolvency Resolution Process Cost and Rs.16,60,846.58 as

liquidation cost by the Resolution Professional/Liquidator. Out of both the expenses, the sole secured financial creditor reimbursed only Rs.7,50,000/- . However, no amount has been distributed to any stakeholders because sale proceed received from sale of moveable assets is insufficient to meet out the CIRP costs and the liquidation costs.

14. During the course of hearing of the application, an affidavit has also been filed by the Liquidator on 21.08.2024 which has been reproduced as under:

1. *That I was appointed as Liquidator of Komorebi Exports Private Limited by this Hon'ble National Company Law Tribunal, Allahabad Bench vide order dated February 5th, 2020.*
2. *That this additional affidavit is to place additional documents, on record in addition to the interlocutory application no. 170 of 2021 filed by Liquidator under section 54 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 45 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 for seeking dissolution of Komorebi Exports Private Limited (Corporate Debtor).*
3. *That a liquidation account of the corporate debtor was opened on 18th February, 2020 in the name and style of "Komorebi Exports Private Limited in Liquidation" with Bank of India, Bhangel SME Branch, Kumar Palace, Near Police Chowki, Main Noida Dadri Road, Bhangel, Noida-201304 is now closed. Copy of the liquidation account closure confirmation is annexed herewith and marked as Annexure-1.*



4. That the amount lying in the liquidation account was used for payment of pending liquidation cost. Nothing is available for distribution to any Stakeholder. Liquidator has not charged any fees after 30th November, 2020.
 5. A statement of the cumulative amount of Receipts and Payments since the liquidation commencement date to 12/08/2024 duly audited by a qualified Chartered Accountant is annexed herewith and marked as Annexure-2.
 6. That the deponent further declares that no one would be prejudiced if the aforesaid documents is allowed to be placed on records cords by this Hon'ble Adjudicating Authority.
15. During the CIRP, the Resolution Professional filed an application u/s 66 of the Code before this Tribunal vide diary no. 1710 on 12.09.2019 which is pending for adjudication. During the course of hearing of this Application, the Operational Creditor i.e. Sundar Kumar filed an IA 296/2024 making following prayers:



PRAYER

In view of the aforesaid peculiar facts and circumstances of the case, it is most humbly and respectfully prayed that this Hon'ble Adjudicating Authority may graciously be please to:

- a) Allow the applicant to pursue Interlocutory Application No. 271 of 2019 filed under section 66 of the Insolvency and bankruptcy Code, 2016;

b) Pass such further or other order which this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case.

16. The above IA has been supported by the Liquidator in the hearing held on 19.11.2024 and in support of his contention, a short affidavit has been filed by him. The same has been reproduced as under:

- “1. That I was appointed as Liquidator of Komorebi Exports Private Limited by the Hon'ble National Company Law Tribunal, Allahabad Bench vide order dated February 5, 2020.
2. That the present affidavit is being filed in compliance with the order dated 19th November 2024, passed by the Hon'ble Adjudicating Authority. Wherein, the Hon'ble Adjudicating Authority granted one week time to file a short affidavit. A copy of the order passed by the Hon'ble Adjudicating Authority is attached and marked as ANNEXURE-L.
3. That IA No. 271/2019 was initiated by the Liquidator upon identification of transactions that appeared to be fraudulent as per the findings in the forensic audit and other relevant records of the Corporate Debtor. The said application was further listed for hearing on 1 May, 2024, wherein the Hon'ble Adjudicating Authority granted liberty to find out, if this application filed U/s 66 of the Code could be pursued either by the Operational Creditor or by the Liquidator itself.
4. That in pursuant to the order dated 1 May, 2024, applicant approached the liquidator and shown his interest to pursue the PUFEE application. Accordingly, the Operational Creditor has



filed an Interlocutory Application (IA No. 296/2024) to allow him to pursue the PUFÉ application filed by the Liquidator under Section 66 of the Code. The applicant in his application also stated that the sole financial creditor (Bank of India) advanced the loan in the CGTMSE Scheme wherein, the financial creditor is entitled to recover 75% of the loan amount from the government, therefore, the bank is not actively participating in the matter hence the delay in disposing off the application.

5. *That the IA No. 296/2024 was listed for hearing before the Hon'ble Adjudicating Authority on June 12, 2024 during which a notice was issued to the Liquidator to respond to IA no 296/2024.*
6. *That in compliance with the order dated June 12, 2024 Liquidator shared the copy of the above-mentioned application along-with order with all the stakeholders of the Corporate Debtor via email and letters dated June 15, 2024, but no response was received from any of the stakeholders. Copy of the email and letters dated June 15, 2024, are annexed herewith and marked as ANNEXURE-IL*
7. *That it appears that, apart from the applicant in IA No. 296/2024, no other stakeholder has expressed any interest or involvement in the current matter. Moreover, the sole financial creditor namely Bank of India had not relinquished its security interest and realized its security interest as per section 52(1)(b) of the Insolvency and Bankruptcy Code, 2016.*
8. *That Liquidator has no objection to prayers sought in IA No. 296/2024 by the Operational Creditor, as the operational creditor is willing to pursue the IA No. 271/2019 under the framework of the Insolvency and Bankruptcy Code, 2016.*



9. *That the statements made above are true and correct to the best of my knowledge, belief, and understanding.*”
17. After considering the above submission of the Liquidator, following order has been passed by the Tribunal on 19.03.2025:

- “1. *Ld. Counsel representing the Liquidator submits that this application has been filed by the erstwhile Operational Creditor who has initiated the CIRP where a tacit consent that another application i.e. CA No.271/2019 filed by the Liquidator u/s 66 of the Code shall be followed by the Operational Creditor post dissolution of the company.*
2. *Ld. Counsel representing the Liquidator also submits that a separate IA No.170/2021 has been filed u/s 54 of the Code for seeking dissolution of the company in view of the facts stated therein.*
3. *The prayer made in the IA No.296/2024 is reproduced as below:*

PRAYER

In view of the aforesaid peculiar facts and circumstances of the case, it is most humbly and respectfully prayed that this Hon'ble Adjudicating Authority may graciously be please to:

- a) *Allow the applicant to pursue Interlocutory Application No. 271 of 2019 filed under section 66 of the Insolvency and bankruptcy Code, 2016;*
- b) *Pass such further or other order which this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case.*



4. *Ld. Counsel representing the Liquidator also takes us to Para No.8 of the present application i.e. IA No.296/2024 to the effect that the outcome of the IA No.271/2019 filed u/s 66 of the Code will be distributed by the Applicant amongst the stakeholders as per waterfall mechanism provided u/s 53 of the Code and the Regulations made thereunder.*
- 5 *Ld. Counsel representing the Liquidator also submits that except for CA No.271/2019 filed u/s 66 of the Code which is now been taken care of in terms of an IA No.296/2024, no other application or any proceedings as against the same very Corporate Debtor are pending, particularly in view of the fact that all proceeds have since then been distributed in accordance with law.*
6. *In view of the averments made in the application which is supported by affidavit the IA No.296/2024 is allowed as prayed for.*
7. *In view of the above order of this Tribunal, the application filed under Section 66 vide CA No.271/2019 shall be followed by the Operational Creditor post dissolution of the company Accordingly, IA No.296/2024 stands disposed off."*

18. Further, the Liquidator also filed an application under section 60(5) of the Code read with Regulation 21A (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 before this Tribunal vide Order no. 0902109/00360/2020 on 30.11.2020 seeking order/directions against Bank of India, sole member of the CoC to release the CIRP cost and Liquidation Cost wherein the respondent bank was directed vide order dated

22.02.2022 of this Tribunal to pay the outstanding amount of ₹13,95,431.90 towards the CIRP and liquidation costs.

19. It is submitted that the Liquidator has filed the Final Report prior to dissolution in pursuance of Regulation 45 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 making an account of the liquidation and showing how it has been conducted and how the Corporate Debtor's assets have been liquidated. Also, the Compliance Certificate in FORM-H, as per Regulation 45(3) of the Liquidation Process Regulations, 2016, has been enclosed as ANNEXURE A-III to the application.

20. The sole Financial Creditor informed to the Liquidator vide its mail dated 21.09.2020 and 5.11.2020 that since nothing has been realized from the debtors the Liquidator must proceed accordingly.

21. In view of the facts and circumstances, since the Applicant submitted that all the assets of Corporate Debtor have been completely wound up and assets have been fully liquidated in compliance with the provisions of the Code read with IBBI Regulations, there is nothing left to be further liquidated. However, an amount of Rs.16,69,431.90 is submitted to be pending for payment by the sole secured Financial Creditor as the Insolvency Resolution Process Costs and Liquidation costs for which



necessary discretions have been issued to Financial Creditor vide order dated 22.02.2022 of this Tribunal.

22. We have gone through the present Application filed by the Liquidator praying for dissolution of the Corporate Debtor i.e. Komorebi Exports Pvt. Ltd. in terms of Section 54 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 45 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
23. The Applicant has filed the Final Report and the Compliance Certificate in Form-H as required by Regulation 45(3) of IBBI (Liquidation Process) Regulations, 2016.
24. It is worthwhile referring to Section 54 of IBC, 2016 and Regulation 45 IBBI (Liquidation Process) Regulations, 2016:

“Section 54 IBC-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.*

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(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.”

“IBBI (Liquidation Process) Regulations, 2016

45. 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) for the dissolution of the corporate debtor, in cases not covered under clause (a).”

From the conjunct reading of the above provisions, this Adjudicating Authority is required to see that whether the assets of the Corporate Debtor are completely liquidated or not. In the instant case the Liquidator has furnished his Final Report and Form-H. Since in the instant case as discussed above, all



the assets of the Corporate Debtor have been liquidated and all the requirements of Regulation 45 of Regulations, 2016 have been fulfilled, therefore, we are inclined to allow the present Application under Section 54(2) of the Code.

25. During the proceedings Ld. Counsel representing the Liquidator submitted that except for CA No.271/2019 filed u/s 66 of the Code, no other application or any proceedings as against the same very Corporate Debtor are pending, particularly in view of the fact that all proceeds have since then been distributed in accordance with law.
26. Accordingly, there being no other impediment, the present Application namely, I.A. No.170 of 2021 is allowed and the Corporate Debtor is ordered to be dissolved with immediate effect.
27. The IA no. 271/2019 filed u/s 66 of IBC and pending for disposal in this Tribunal shall be pursued by the Operational Creditor as submitted by the liquidator during hearing. Recovery, if any, made on passing of order u/s 66 of IBC against above IA, the same shall be distributed to creditors as per the provision of Section 53 after deducting the expenses incurred by the Operational Creditor in pursuing the above IA.



28. As a result, in exercise of the powers conferred on the Adjudicating Authority, under Section 54 of the Code, the instant Application bearing I.A. No.170 of 2021 is hereby disposed of with the following directions:

- a. The Corporate Debtor, namely, Komorebi Exports Pvt. Ltd. is dissolved, with immediate effect allowing prayer (a)
- b. Prayer (b) is allowed as discussed in para 27
- c. Liquidator Sarvesh Kashyap is discharged and prayer (c) is allowed.

29. The Registry is directed to forward a copy of this Order to the Registrar of Companies Kanpur, within a period of two weeks from the date of receipt of this order, for further necessary action as prescribed under Law;

30. The Ld. Liquidator is directed to forward copies of this Order to all other statutory Authorities connected with the affairs of the Company, for further necessary action as prescribed under law.

31. With this, the instant I.A. No. 170 of 2021 stands disposed of accordingly.



*Completed by Me
Mahesh Sabou -sd-
08/05/2025*
(Ashish Verma)

Member (Technical)

FREE OF COST

Date: 02.05.2025

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(Praveen Gupta)

Member (Judicial)

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

*B. K. Asthana
08.05.2025*
V. K. Asthana
Deputy Registrar
National Company Law Tribunal
Allahabad Bench, Prayagraj (U.P.)