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

IA(IBC)100(KB)2023
In
CP(IB)/230(KB)2019

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

In the matter of:

Rythem Overseas Trade Limited,

(**CIN: U51109WB1981PLC034241**)*;*

Represented by its Liquidator –

Mr. Abhijeet Jain, ... ***Applicant/Liquidator***

Date of Hearing: 26/09/2023

Date of Pronouncement: 17/10/2023

Coram:

Smt. Bidisha Banerjee : Member (Judicial)

Shri Arvind Devanathan : Member (Technical)

Appearances through hybrid mode:

For Applicant	:	Mr. Shaunak Mitra, Adv. Mr. Saurav Jain, Adv. Mr. Abhijeet Jain, Liquidator in person
For RP of Dynametic Overseas Pvt. Ltd.	:	Mr. Rahul Auddy, Adv. Mr. Aditya Gooptu, Adv.
For members of suspended Board of Directors of Corporate Debtor	:	Mr. Ratnesh Kr. Rai, Adv. Mr. Ankan Rai, Adv.

For members of suspended Board of Directors of Corporate Debtor : Ms. Jayati Chowdhury, Adv.

O R D E R

Per: Arvind Devanathan, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.

2. **IA(IBC)/100(KB)2023** is an application filed under section 54(2) of the Insolvency and Bankruptcy Code, 2016 **(*"the Code")*** read with regulation 45(3) of the IBBI (Liquidation Process) Regulations, 2016 (*"**Liquidation Process Regulations**"*) by the Liquidator of **Rythem Overseas Trade Limited,** (**CIN:U51109WB1981PLC034241**) (***"Corporate Debtor"***) praying for dissolution of the Corporate Debtor. This application is duly supported by an affidavit[1] affirmed by Mr. Abhijeet Jain, Applicant/Liquidator.

3. This Adjudicating Authority *vide its* order dated 11/11/2019 on a petition filed by State Bank of India. (*Financial Creditor*) under section 7 of the Code read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 directed initiation of the Corporate Insolvency Resolution Process (**"CIRP"**) against **Rythem Overseas Trade Limited** (*Corporate Debtor*) appointing Mr. Yogesh Gupta, an Insolvency Professional as Interim Resolution Professional (*hereinafter called the* **"IRP"**). Vide order dated 19/12/2019 this Adjudicating Authority had appointed him as RP. Liquidation order was passed on 06/01/2021 appointing Mr. Abhijeet Jain, an Insolvency Professional as the Liquidator. The erstwhile RP has handed over the charge on 03/02/2021.

4. As per regulation 41 of the IBBI (Liquidation Process) Regulations, 2016 ("**Liquidation Process Regulations**"), the Liquidator had duly opened a bank account being **A/c. No. 019081300003740** on 25/02/2021 in the name of **"Rythem**

[1] At pages 13 and 14of the application

Overseas Trade Limited - in Liquidation" with Yes Bank Limited, Stephen House Branch, Kolkata.

5. In compliance of regulation 12 of Liquidation Process Regulations Public announcement[2] of commencement of liquidation was made in **Form – B** in "*Financial Express*" (English) and "*Aajkal*" (Bengali) on 14/01/2021 calling upon stakeholders of the Corporate Debtor to submit their proof of claims.

6. The Liquidator in compliance of the Code and Regulations had duly filed "Form INC 28" with the Registrar of Companies, West Bengal informing that the Corporate Debtor is undergoing liquidation, for updating the status of the Corporate Debtor in the Master Data[3] accordingly.

7. In response to the public announcement made, the Liquidator had received 8 claims in total from stakeholders, including the subsequent modification, as follows: -

   (a) 2 claims from Secured Financial Creditors;
   (b) 3 claims from Unsecured Financial Creditors;
   (c) 1 claim from the Operational Creditor (other than workmen & employees);
   (d) 2 claims from the other stakeholders (other than Financial and Operational Creditors).

   In compliance of the Liquidation Process Regulations, the Liquidator had collated and verified the claims, prepared List of Stakeholders and formed Stakeholders Consultation Committee ("SCC") on 05/03/2021 and submitted the same to this Adjudicating Authority on 12/03/2021 which was subsequently modified with the approval of this Adjudicating Authority and filed the copy of the modified List of Stakeholders dated 18/07/2022 along with the orders dated 01/07/2022 and

[2] Annexure – "A" at pages 38 to 39 of the application
[3] Annexure – "B" at pages 40 to 41 of the application

12/08/2022 of this Adjudicating Authority, which form **Annexure "C"[4]** to Final Report.

8. In terms of regulations 13 and 34 of the Liquidation Process Regulations, the Liquidator has submitted Preliminary Report and Asset Memorandum and submitted to this Adjudicating Authority on 22/03/2021[5].

9. It is stated in paragraphs 'H' and 'I' of the Final Report that due to continuous non-cooperation on the side of the suspended members of the Board of Directors of the Corporate Debtor and in spite of directions to cooperate, the Valuers could not submit their report. Copies of orders dated 26/10/2021, 23/11/2021, 06/01/2022, 18/02/2022, 12/08/2022, 22/08/2022, 20/09/2022, 21/10/2022, 04/11/2022 and 13/12/2022 form **Annexure "D" (Colly.)**[6]

10. As per Master Data the Corporate Debtor had filed its Financial Statement only up to 31/03/2017. In order to complete the books of account, the Liquidator has carried forward the figures as stated in the balance sheet as on 17/11/2019 as provided by the suspended members of the Board of Directors of the Corporate Debtor, without any verification/authentication in the absence of any supporting documents available either to the erstwhile RP or to the Liquidator, and prepared the balance sheet as on 06/01/2021, i.e., the liquidation commencement date, which forms **Annexure "E"[7]** to Final Report

11. Initially the State Bank of India has not relinquished its security interest to the liquidation estate. However, after the expiry of prescribed time limit under regulation 21A of the Liquidation Process Regulations, the security interest of the State Bank of India has been deemed to be relinquished and became part of the Liquidation Estate. The Assets comprising the Liquidation Estate has been shown

[4] At pages 42 to 54 of the application
[5] Paragraph F at page 20 of the Final Report
[6] At pages 55 to 67 of the application
[7] At pages 68 to 75 of the application

through a separate chart prepared by the Liquidator based on the financial statements provided by the suspended members of Board of Directors of the Corporate Debtor, which forms **Annexure "F"[8].**

12. It is stated in paragraph 'O' of the Final Report that the only asset is Honda Motor Car bearing Regn. No. DL3C BA 4955 and the approximate realisable value is Rs.80,000/- (approx.). Members of the SCC were unanimously of the opinion that considering the potential expenses exceeding the realisable value will be commercially unviable and that they were not willing to provide funds for such futile exercise.

13. The Liquidator has annexed forensic audit report submitted by the Forensic Auditor, which forms **Annexure G[9] to Final Report.**

14. It is stated in the application that taking into consideration the extensions so far granted from time to time by this Adjudicating Authority, the liquidation period had ended on 05/01/2023.

15. The Liquidator has annexed copy of Bank Statement showing receipt and payment during liquidation period showing "zero" balance in the said liquidation account maintained with YES Bank along with a letter addressed to the Manager, YES Bank Limited requesting closure of the liquidation account, which forms **Annexure "I"[10]**

16. In compliance of regulation 15 of the Liquidation Process Regulations, the Liquidator had filed seven periodical progress reports from time to time before this Adjudicating Authority. In compliance of section 35(2) of the Code read with

[8] At pages 76 to 77 of the application
[9] At pages 78 to 167 of the application
[10] At pages 182 to 185 of the application

regulation 8 of the Liquidation Process Regulations, the Liquidator held seven SCC meetings, copies of the minutes of the said SCC meetings form **Annexure J**[11]**.**

17. It is stated in paragraph 'X.' of the Final Report that the Liquidator came to know of some litigation pending against the Corporate Debtor before the appropriate authorities, however the Liquidator was unable to take any steps without any proper information and documents.

18. It is stated in paragraph 'Y,' of the Final Report that the Liquidation cost, including Liquidator Fees, Professional Fees, Auditors Fees and Public Announcements and others were fully reimbursed by the members of the SCC proportionately. However, the members of SCC have undertaken to reimburse any cost with regard to dissolution process on presentation of the invoices. Copies of e-mail issued by State Bank of India and Bank of Baroda form **Annexure "K"**[12]**.**

19. Audited statement of Liquidation account showing receipt and payment forms **Annexure "L"**[13]**.**

20. In compliance of regulation 45 of the Liquidation Process Regulations, the Liquidator has filed the **Final Report** dated 04/01/2023 (with Annexure "A" to Annexure "M") along with audited receipts and payments and bank statement of the liquidation account, which forms **Annexure "A"**[14] to the application.

21. As per regulation 45(3) of the Liquidation Process Regulation, the Liquidator has submitted **Form H,** which forms **Annexure "B"**[15].

22. The Liquidator has filed a supplementary affirmed on 01/03/2023 with the leave of this Adjudicating Authority granted on 25/01/2023 to bring on records additional

[11] At pages 186 to 288 of the application

[12] At pages 229 to 230 of the application
[13] At pages 231 to 232 of the application
[14] At pages 15 to 235 of the application
[15] At pages 236 to 239 of the application

facts and documents, subsequent to filing IA(IBC)/100(KB)2023 since the entire assets forming part of the Liquidation Estate has been declared as Not Readily Realisable Assets (NRRA) under regulation 37A of the Liquidation Process Regulations and annexed the following documents: -

(a) Copy of notice along with minutes of meeting of 8th SCC meeting held on 01/02/2023, which forms Annexure "A" to the supplementary affidavit; and

(b) Copy of newspaper publication published in "*Financial Express*" (English) and "*Aajkal*" (Bengali) on 18/02/2023.

23. The Liquidator has also filed another supplementary affidavit affirmed on 08/06/2023, to bring on records the minutes of 9th SCC meeting held on 05/04/2023, a copy whereof has been annexed as **Annexure "A"** to this supplementary affidavit, since in terms of the resolution passed at the 8th SCC meeting held on 01/02/2023 declaring the assets as NRRA, the Liquidator took necessary steps for sale of those assets but could not sale or transfer the unsold assets as per regulation 38(1) of the Liquidation Process Regulations. Subsequently, an application being IA(IBC)/748(KB)2023 has been filed and this Adjudicating Authority, after hearing the submissions made by the Ld. Counsel for the Liquidator on 18/04/2023, permitted the distribution of unsold/unrealised assets amongst the stakeholders, and extended the time of the liquidation process for a period up to 15 days from the date of the order dated 18/04/2023. A copy of the said order dated 18/04/2023 forms **Annexure "B"** to the supplementary affidavit affirmed on 08/06/2023.

24. The applicant states that through the applicant was ready with the documents pertaining to the unsold/unrealised assets, but for want of certain information from the stakeholders, the same has been completed only on 10/05/2023. The Liquidator has handed over the entire list of assets and other relevant documents that remained unsold/unrealised to the financial creditors in compliance of the order dated

18/04/2023 and as per decision of the SCC. A copy of the acknowledgement evidencing delivery of unsold/unralised assets amongst the stakeholders forms **Annexure "C"** to the supplementary affidavit affirmed on 08/06/2023. A copy of the updated **"Form H"** forms **Annexure "D"** to the supplementary affidavit affirmed on 08/06/2023.

25. The affairs of the Corporate Debtor were completely liquidated and the Liquidation Account in terms of regulation 45(1) of the Liquidation Process Regulations and details thereof have been attached along with Bank Statement showing **"zero"** balance in the liquidation account.

26. Upon hearing the Ld. Counsel appearing for the Liquidator and perusing the documents annexed to the application, it appears that affairs of the Corporate Debtor have been completely wound up and its assets have been completely liquidated. The bank account has also been closed. In view of the facts and circumstances stated above, there is no impediment to the Corporate Debtor being dissolved, and it is ordered accordingly.

27. The Liquidator is further directed to serve a copy of this order upon the Registrar of Companies, West Bengal, immediately and, in any case, 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.

28. The Liquidator shall stand discharged from his responsibilities, subject to all procedural compliances.

29. **IA(IBC)100(KB)2023** is allowed with the above directions and both the **IA(IBC)100(KB)2023** and **CP(IB)/230(KB)2019** are accordingly **disposed of.**

30. 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.