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IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH- IV

IA 769/ND/2021 & IA 4811/ND/2021

IN

IB No. 1175/ND/2019

IN THE MATTER OF:

M/s Janki Prasad & Company

... OPERATIONAL CREDITOR

VERSUS

M/s Sunder Agromills Pvt. Ltd.

... CORPORATE DEBTOR

And IN THE MATTER OF:

Anil Kumar Mittal

Resolution Professional of M/s Sunder Agromills Pvt. Ltd.

.....APPLICANT

VERSUS

Saurabh Bansal

Suspended Director of M/s Sunder Agromills Pvt. Ltd.

.....RESPONDENT

**Under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016.
&**


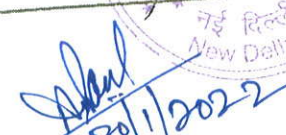
Under Section 54 of the Insolvency and Bankruptcy Code, 2016.

Order delivered on: 23.12.2021

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

SH. PRASANTA KUMAR MOHANTY, HON'BLE MEMBER (TECHNICAL)

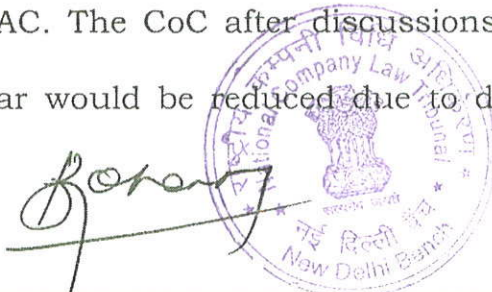


20/11/2022


23/12/2021

ORDER

Per: Sh. DHARMINDER SINGH, MEMBER (JUDICIAL)

1. The instant application IA 769/ND/2021 has been filed by the applicant resolution professional to initiate liquidation proceeding of corporate debtor namely, M/s Sunder Agromills Pvt. Ltd. in terms of Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "The Code"). Whereas, another IA 4811/ND/2021 has also been filed by the resolution professional for dissolution of the same corporate debtor in terms of Section 54 of the Code read with Regulation 14 of the IBBI (Liquidation Process) Regulations, 2016 (hereinafter referred as "Regulation"). These applications are related, accordingly, the same are being disposed of together by this common order.
2. Brief facts of the present matter are that the main IB petition no. 1175/ND/2019 was filed by Operational Creditor for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor. The said application was allowed vide order dated 21.08.2019 and Mr. Pankaj Khetan was appointed as IRP for the corporate debtor. Thereafter, the applicant was appointed as the Resolution Professional of Corporate Debtor.
3. Apparently, the 3rd meeting of CoC, it was informed by applicant to CoC that the corporate debtor had only 3 assets, one Computer, one Car and One AC. The CoC after discussions resolved that the since the value of car would be reduced due to depreciation, accordingly,



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the car should be sold at the earliest. Hence, the car was sold for Rs. 4.42 lacs.

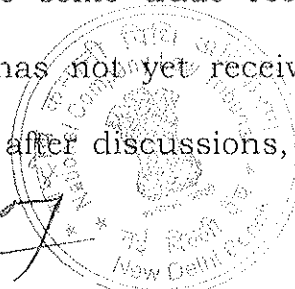

4. After publication of Form-G the following EoIs were received by applicant:

- Prudent ARC
- Durgesh Merchants
- One Group
- Galaxy Infra
- Cimco Projects

But none of the above has deposited the Earnest Deposit.



5. Meanwhile, after transaction audit and forensic audit of the books of accounts of corporate debtor, the applicant filed two interlocutory applications u/s 66 of the Code and u/s 43 of Code the said applications are pending before this Bench. Further since, the suspended directors have not provided complete data in respect of the corporate debtor, the applicant has also filed an application u/s 19(2) of the Code, in which non-bailable warrants have been issued against the suspended directors of the corporate debtor.

6. The applicant also states that after audit ,it is seen that the corporate debtor has assets such as Investment in Gold for Rs. 1.14 lacs and in Silver for Rs. 0.31 lacs and inventory of Rs. 5.15 lacs, but the suspended directors had not handed over these assets to the applicant. Further, there are some trade receivables of corporate debtor, however, the same has not yet received by the applicant. Further, it is submitted that after discussions, it is viewed that the


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liquidation costs would be higher than the asset value of the corporate debtor, the CoC has decided that matter be taken up directly for the dissolution of corporate debtor. However, in 5th meeting of CoC, the resolution for dissolution could not be passed.

7. Since, CIRP period expired on 17.02.2020 and no application for extension of period was filed by the applicant, because, the CoC never approved that resolution, the applicant in terms of the provisions of Section 33(1) filed application for the liquidation of the Corporate Debtor.
8. The applicant submits that since there is no substantial asset of corporate debtor, the applicant will not be able to deduct its fees from the proceeds of assets of corporate debtor and it will put unnecessary financial burden on the stakeholders for contribution in liquidation costs.
9. The applicant has already filed an application for contribution by CoC in CIRP costs and during hearing of liquidation application, and the other applications, it was directed by this Adjudicating Authority that since the CoC had not paid the CIRP costs and fees of IRP/RP the continuation of liquidation proceeding would put further burden upon them, thus the applicant should call upon a meeting of stakeholders and put a fresh resolution for dissolution of corporate debtor.
10. In response to that order, stakeholder's meeting was held on 21.08.2021 and resolution for dissolution of corporate debtor was approved with 68.74% voting share.


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11. We heard the Ld. Counsel for the applicant and perused the case records.


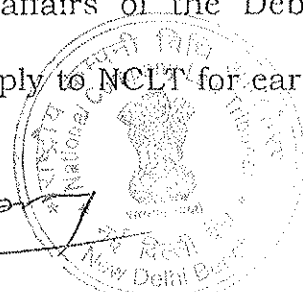

12. For the purpose of pronouncement of Dissolution of a Corporate Debtor Section 54 of The Code reads as under:

“54.(1) Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

(2) The Adjudicating Authority shall on application filed by the liquidator under subsection (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.”

13. In the light of the above section, it is noticed that the Corporate Debtor does not have assets to be liquidated hence an Application is moved for the “Dissolution of the Corporate Debtor”. This Section is to be read along with Regulation 14 of IBBI (Liquidation Process) Regulations 2016 which says that any time after the preparation of a Preliminary Report if it appears to the Liquidator that the realizable properties of the Corporate Debtor are insufficient to cover the cost of Liquidation process, and the affairs of the Debtor do not require further investigation he may apply to NCLT for early dissolution of the Corporate Debtor.

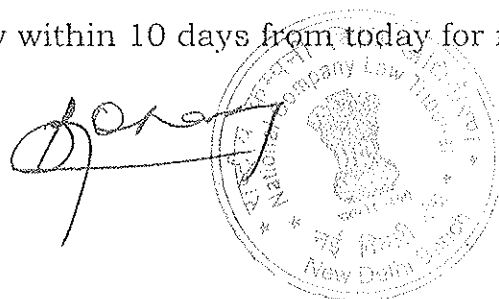




T the Adjudicating Authority of the Bengaluru Bench in the matter of *Synew Steel Private Limited*, in CP. IB No. 96/BB/2020 in similar circumstances ordered for dissolution of the corporate debtor since, there were no funds available for further CIRP and liquidation proceedings of Corporate Debtor.

14. In sequel of the above discussions, we are of the affirmed view that the company has/ will be left with no asset and even all the stakeholders unanimously resolved for dissolution of corporate debtor, therefore, it is just and equitable that instead of resorting to step of liquidation of the corporate debtor, it is a fit case that the corporate debtor be dissolved as laid down under Section 54 of the Code read with Regulation 14 of the Regulations from the date of this order. Accordingly, the corporate debtor stands 'Dissolved' from the date of this Order.

15. Consequently, IA 769/ND/2021 moved by resolution professional for initiation of liquidation of corporate debtor stands declined, whereas IA 4811/ND/2021, moved by resolution professional for dissolution of the Corporate Debtor stands accepted. Other IA(s) relating to this Company Petition, pending ,if any, stands dismissed.

16. The RP has to distribute the proceeds of the assets ,if any, as per the Section 53 of IBC and file a statement of account of the CD with the Registry within 10 days from today for record.



Handwritten signature and date '29/12'.

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Copy of this Order shall be forwarded within 15 days to the concerned authorities and the Registrar of Companies having jurisdiction, for further necessary action as prescribed under Law.

File , after due completion, be consigned to records.

-Sd-

(PRASANTA KUMAR MOHANTY)
MEMBER (T)

-Sd-

(DHARMINDER SINGH)
MEMBER (J)



Prasant
20/1/2022

DM 20.1.2022
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003