

IN NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – II

IA(IB)-3490(MB)2023
IN
C.P. (IB)-4313(MB)2018

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

S. Gopalkrishnan

Resolution Professional of
United Fortune International Pvt.
Ltd.

Having his address at;

203, The Ghatkopar Neelkanth
CHS Ltd., Jethabhai Lane,
Ghatkopar (East), Mumbai – 400
077.

... Resolution Professional/
Applicant

In the matter of:

Manish M. Shah & Ors.

Having address at 404, Commerce
House, 140, N.M. Road, Fort,

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Mumbai 400023.

... Financial Creditors

Versus

**United Fortune International
Private Limited**

Having its registered office at:

G/F and 1/F, Trade Centre,
Bandra Kurla Complex, Bandra
(East),

Mumbai 400051.

... Corporate Debtor

Order delivered on: **22.12.2023**

Coram:

**Anil Raj Chellan
Member (Technical)**

**Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Applicant

: Mr. Akshay Petkar a/w
Mr. Aniket Malu

ORDER

Per : Coram

1. The present Application is filed by Mr. S. Gopalkrishnan, Resolution Professional of United Fortune International Pvt. Ltd. (hereinafter

referred to as “**Corporate Debtor**”) under Rule 11 of NCLT Rules 2016 read with Section 54 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “**IBC**”) seeking dissolution of the Corporate Debtor.

2. The brief gist of Application is as follows:

- (i) It is submitted by the counsel appearing for the Applicant that the Financial Creditors had filed an Application under Section 7 of IBC against the Corporate Debtor bearing C.P. (IB)-4313(MB)2018. The Adjudicating Authority admitted the said Application vide order dated 17.03.2023 by initiating Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”) and appointed the Applicant as Interim Resolution Professional (hereinafter referred to as “**IRP**”), who was confirmed as Resolution Professional (hereinafter referred to as “**RP**”) in the 1st meeting of Committee of Creditors (hereinafter referred to as “**COC**”) held on 24.04.2023.
- (ii) In pursuance of CIRP order, the IRP effected public announcement in newspaper dated 22.03.2023 intimating commencement of CIRP of the Corporate Debtor. In response, the IRP received the following claims.

Secured Financial Creditors		
1.	State Bank of India	30,14,59,673
2.	Bank of Baroda	37,17,18,328

Unsecured Financial Creditors		
1.	Manish M. Shah	4,20,38,959
2.	Vipul Shah	67,99,662
3.	Nimisha R. Shah	37,57,166
Operational Creditors		
1.	Income Tax Officer – TDS	4,49,690

- (iii) In the 1st meeting of COC held on 20.04.2023, the IRP apprised the COC that when his team visited the registered office of the Corporate Debtor to take control and custody of the assets of the Corporate Debtor, it was found that Bank of Baroda had already auctioned the said premises under SARFAESI for financial facility offered to Pinnacle Nexus Ltd. and the same is now owned by a Hotel Owner who is using the said premises.
- (iv) It was submitted that out of the 3 Directors of the Corporate Debtor, Mr. Sohail Munshi who was incharge and managing the affairs of the Corporate Debtor passed away in a road accident in the year 2021 and another Director Mrs. Zaibunnisa Ismail Munshi also expired in the year 2021. The sole surviving suspended Director is not aware that he being the director of the Corporate Debtor and was not aware of any business or records of the Corporate Debtor.
- (v) The 2nd meeting of COC was held on 08.05.2023. The RP also invited Mr. Ahtesha Munshi, former Director and 72%

shareholder of the Corporate Debtor to the 2nd meeting of COC to assist and provide all available information, documents of the Corporate Debtor. Mr. Ahtesha Munshi informed that all the premises and offices owned by the Corporate Debtor were sold by the banks for realisation of their dues and he is not aware of where the books of accounts or inventory were maintained by the Corporate Debtor.

- (vi) The RP time and again requested the suspended Director of the Corporate Debtor to provide all the details and information available with them. However, no information or record of the Corporate Debtor is received from the former and suspended director.
- (vii) In view of same in the 3rd meeting of COC, held on 29.05.2023, the COC resolved to file an Application under Section 19 sub-section (2) of IBC against the suspended management. Accordingly, the RP preferred an Application under Section 19(2) of the IBC against the suspended directors. It was further resolved to publish Form-G inviting expression of interest for the Corporate Debtor.
- (viii) Based on the information available with the website of Ministry of Corporate Affairs, the RP issued expression of interest of Corporate Debtor in Form-G dated 31.05.2023 and prepared information memorandum of the Corporate Debtor. No expression of interest was received by the Applicant.

- (ix) The 4th meeting of COC was held on 16.06.2023, wherein 2 valuers were appointed for valuation of securities and financial assets of the Corporate Debtor. The RP apprised the COC that the Corporate Debtor is not functional since last 4 years and the last available balance sheet of the Corporate Debtor on the website of Ministry of Corporate Affairs is for the year 2019-20. Therefore, the assets and liabilities of the Corporate Debtor could not be estimated. There are no tangible or intangible assets available in the Corporate Debtor. The registered office of the Corporate Debtor is sold, and no record of books of account or inventory are available. The COC was of the opinion that in event of liquidation of the Corporate Debtor, no value will be realized and will only result in additional cost to be borne by Financial Creditors. In view of the same, the COC with 100% voting passed resolution to dissolve the Corporate Debtor.
- (x) Further, on account of non-availability of record or information, the valuers have showed their incapability to value the securities and financial assets of the Corporate Debtor.
- (xi) It was submitted that the RP is incapable to perform any further duties since there are no assets or funds available with the Corporate Debtor. The appointment of RP, Liquidator, legal professionals, inviting resolution applications are the stipulated events of CIRP which are impossible to be carried out in the present case.

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- (xii) It was submitted that the total CIRP cost till date is amounting to Rs. 13,13,753/- (Rupees Thirteen Lakh Thirteen Thousand Seven Hundred Fifty-Three Only). The details of same are as under:

Sr. No.	Particulars	CIRP Cost in Rs.
1.	IRP/ RP Fees	10,77,733
2.	Out of Pocket Expenses	16,830
3.	Newspaper Publication Expenses (Form A and Form G)	34,655
4.	Legal Expenses	1,39,200
5.	E-Voting Charges	23,600
6.	Website Creation Charges	19,470
7.	Compliance Expenses	2,265
Total		13,13,753

- (xiii) In such circumstances, the RP sought dissolution of the Corporate Debtor and in support placed the following decisions of NCLT, wherein the Company was dissolved without undergoing Liquidation process.

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Sr. No.	Particulars
1.	NCLT Bengaluru Bench order dated 16.11.2020 in the matter of Synew Steel C.P. (IB) No.96/BB/2020 & I.A No. 435/2020.
2.	NCLT Division Bench- II Chennai order dated 11.03.2022 in the matter of Aesys Technologies India Private Limited. IA(IBC)/978(CHE)/2021 in IBA/20/2020.
3.	NCLT Kochi Bench order dated 27.10.2022 in the matter of M/s. Ambani Vitrified Private Limited & Another v. M/s. Nassco Trading India Private Limited. IA(IBC)/134/KOB/2021 in IBA/22/KOB/2020 & IBA/23/KOB/2020.
4.	NCLT Cuttack Bench order dated 10.01.2023 in the matter of Nisharani Mahapatra v. Lumex Resources Pvt. Ltd. IA.(IB)No.280/CB/2022 in CP(IB)No.180/CB/2020.
5.	NCLT Hyderabad Bench order dated 13.04.2023 in the matter of M/s. Platina Properties and Projects Limited v. M/s. Ogene Systems India Limited. I.A.No.520/2023 in C.P.(IB)No.114/7/HDB/2022.

FINDINGS

3. We have heard the Counsel appearing for the Applicant / RP and perused the Application.
4. Before considering the merits of case, it is necessary to refer relevant provisions and rules, as available under the IBC and the Rules made thereunder.

“Section 33(2) of IBC reads

"Where the Resolution Professional, at any time during the Corporate Insolvency Resolution Process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the COC approved by not less than sixty-six percent of the voting share to liquidate the Corporate Debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)".

Section 54 of the IBC reads

“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".

Rule 14 of IBBI (Liquidation Process) Regulations, 2016 reads

“14. Early dissolution. Any time after the preparation of the Preliminary Report, if it appears to the liquidator that (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”.

Rule 11 of NCLT Rules, 2016 confers inherent powers on NCLT, which reads as "Rule, 11- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal".

5. The ultimate objective of the IBC is either to resolve by way of a Resolution Plan or to liquidate the Corporate Debtor, as expeditiously as possible. The facts and circumstances of the present case justifies that no purpose shall be served to keep the Corporate Debtor under CIRP and/or Liquidation proceedings. The Adjudicating Authority is vested with inherent powers under Rule 11 of NCLT Rules, 2016 conferred under the Act, to pass appropriate order(s) in the interests of speedy justice.

6. In the above facts and circumstances of the case, we are of the considered view that no useful purpose would be served by placing the Corporate Debtor under Liquidation Process which will increase the cost without any fruitful result. The secured Financial Creditor has already proceeded against the Corporate Debtor by taking possession and selling all the premises and offices owned by the Corporate Debtor. The Liquidation process under the provisions of the IBC can be considered to have been carried forward and thus it would be just and proper to dissolve the Corporate Debtor, as proposed by the Resolution Professional, when the members of the COC in its commercial wisdom has passed resolution seeking dissolution of the Corporate Debtor. The instant application is filed by the Resolution Professional on the directions of the COC. In 4th meeting of the COC held on 16.06.2023, Resolution No. 8 was passed to dissolve the Corporate Debtor with 100% voting share. The extract of the discussion from the minutes of the said meeting of COC is reproduced hereunder:-

“The RP informed the members of the COC that the corporate Debtor has been closed since last 4 years. No audited financial statements has been filed with MCA after FY 2020. He could not gather information due to non-availability of the requisite data and no cooperation and support from Director in record and promoter. RP further informed that he has visited the registered office of the corporate debtor and also contacted all the directors on record but failed to get the tally back up data or supporting papers in respect of the balance sheet filed with MCA. In view of non-availability of basic data of prior period financials, the assets and liabilities position of the CD could not be established. No immovable/ movable properties found in the name of

the CD. Based on the information available, the RP has published Form G on 31st May, 2023 for inviting expression of Interest, but no response was received. In view of the information and assets available, RP advised that there is no assets identified for liquidation, the COC enquired with RP whether they can directly file for dissolution of the CD.

The COC discussed that the scope of resolution of the Corporate Debtor appears to be an impossibility. It was deliberated by the COC that since no useful purpose would be served by initiating the liquidation process of the Corporate Debtor in absence of any assets, it would be appropriate to dissolve the corporate debtor without any delay.

The COC members have assessed that even in the event of liquidation of the corporate debtor no value will be realized and will only result in addition of liquidation cost without any resolution or recovery.

The Resolution Professional examined the various sections and rules of the IBC, 2016 and accordingly stated that as per Section 33 (2) of the IBC, 2016, which is reproduced as follows:

“Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent. of the voting share) to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

***Explanation.** For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.”*

Accordingly, after liquidation of the Corporate Debtor, as per section 54 of the IBC, 2016, an application for dissolution is to be filed with Adjudicating authority. Further, the RP apprised that as per the Regulation 14 of the IBBI (Liquidation Regulation), 2016, which is reproduced as follows:-

Any time after the preparation of the Preliminary Report, if it appears to the Liquidator that-

(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.

However, in this situation wherein the assets are not available for sale, the RP sought the guidance of CoC and the CoC suggested to go for dissolution directly as the only option. The CoC further stated that as per the Rule 11 of the NCLT, Rules, 2016, which is as follows: -

Inherent Powers. *Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.*

The NCLT has inherent powers for justice and accordingly the dissolution application can be filed.

The RP also apprised the COC w.r.t 2 scenarios wherein the NCLT, Bengaluru and NCLT, Kochi have passed similar orders of dissolution without liquidation. RP, placed following order before the COC.

- a. Order dated 16.11.2020 passed by NCLT Bengaluru Bench in Synew Steel Private Limited.*
- b. Order dated 27.09.2022 passed by NCLT, Kochi Bench in Amabani Vitrified Private Limited & Anr v Nassco Trading India Private Limited.*

Accordingly the RP placed the following resolution for consideration and voting:-

“RESOLVED THAT *the members of the CoC hereby approve the dissolution of the Corporate Debtor as per the provisions of the IBC, 2016 and any other applicable provisions.*

RESOLVED FURTHER THAT *the members of the Committee of Creditors hereby authorized to apply and intimate to Hon'ble Adjudicating Authority decision of the Committee of Creditors to dissolve the Corporate Debtor and obtain the order of dissolution.*

RESOLVED FURTHER THAT the Resolution Professional is hereby authorized to take such steps as shall be necessary, in relation to the above, to the extent required and to settle all matters arising out of and incidental thereto sign and execute all applications, documents and writings that shall be required and generally to do all acts, deeds and things that shall be necessary, proper, expedient or incidental for the purpose of giving effects to the aforesaid resolution.”

7. In the above circumstances we are satisfied that this is a fit case for dissolving the Corporate Debtor without undergoing the liquidation process.
8. **IA(IB)-3490(MB)2023** is allowed with the following orders:
 - i. The Corporate Debtor, United Fortune International Private Limited is ordered to be dissolved with immediate effect.
 - ii. The Registry is directed to forward a copy of this order to the Registrar of Companies, Mumbai within seven days from the date of this order.
 - iii. The Resolution Professional is also directed to forward copies of this Order to all the Statutory Authorities including IBBI, connected with the affairs of the Corporate Debtor.

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- iv. Personal Liability/Guarantee of any Director/Promoter of the Corporate Debtor, if any, would not absolve them from their liability by virtue of this order.
- v. Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

Sd/-

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)