



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
SPECIAL BENCH
COURT - 1

ITEM No.2
IA/333(AHM)2022
In
CP(IB) 295 of 2018

Proceedings under Section 54(1) r.w Reg 45(3) r.w Rule 11 of NCLT,2016

IN THE MATTER OF:

Pinakin Shah Liquidator of Usha Multipack Pvt Ltd

.....Applicant

Order delivered on: 19/05/2023

Coram:

Mr. Praveen Gupta, Hon'ble Member(J)

Mr. Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-SD-

**PRAVEEN GUPTA
MEMBER (JUDICIAL)**



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1**

**IA NO. 333/NCLT/AHM/2022 in
CP (IB) NO. 295/NCLT/AHM/2018**

IA NO. 333 of 2022

[An application filed under section 54 of the Insolvency and Bankruptcy Code, 2016 read with read with regulation 45(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and rule 11 of NCLT Rules, 2016]

Mr. Pinakin Shah

Liquidator of
M/s. Usha Multipack Private Limited
Having office at:
A-201, Siddhi Vinayak Towers,
Behind DCP office, S.G. Highway,
Makarba, Ahmedabad, 380051

.....Applicant/ Liquidator

In the matter of:

CP (IB) No. 295 of 2018

[An application under section 7 of Insolvency and Bankruptcy Code, 2016]

M/s. Siemens Financial Services Private Limited

Having registered office at:
Plot no. 2, sector 2, Kharghar Node,
Navi Mumbai, 410210

.....Financial Creditor



Versus

M/s. Usha Multipack Private Limited

Having registered office at:
Survey No. 164, plot no. 12,
S.I.D.C. road Veraval,
Tal. Kotda, Sangani Kotda Sangani,
Rajkot 360027

.....Corporate Debtor

Order reserved on 18.04.2023
Order pronounced on 19.05.2023

Coram: PRAVEEN GUPTA, MEMBER (J)
KAUSHALENDRA KUMAR SINGH, MEMBER (T)

Appearance:

Mr. Ishan Shah, Advocate, along with Mr. Pavan S. Godiawala, Advocate and Ms. Anshumi Maloo, Advocate for the Liquidator

ORDER

1. This application has been filed by Mr. Pinakin Shah, Liquidator of M/s. Usha Multipack Private Limited under section 54(1) of the Insolvency and Bankruptcy Code, 2016 (**IBC, 2016**) read with regulation 45(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and rule 11 of NCLT Rules, 2016 seeking dissolution of the Corporate Debtor i.e. Usha Multipack Private Limited.

2. The brief facts of the case are as under: -

i. The Financial Creditor Siemens Financial Services Private Limited had filed an application under section 7 of IBC, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) which was admitted vide order dated 06.02.2019 in CP(IB) 295 of 2018. Mr.



Pinakin Shah was appointed as Interim Resolution Professional (IRP) and later confirmed as Resolution Professional (RP).

ii. The order for liquidation was passed vide order dated 24.06.2020 in IA 795 of 2019 in CP(IB) 295 of 2018 and the Applicant i.e. Mr. Pinakin Shah was appointed as the Liquidator.

iii. It is submitted by the Applicant that the last date for completion of the liquidation process as per regulation 44(1) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 was 1 year from the liquidation commencement date i.e. 24.06.2020. This Adjudicating Authority had granted extension period of 6 months vide order dated 17.08.2021 in IA 452 of 2021 in CP (IB) 295 of 2018.

iv. The public announcement as provided under Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 was made by way of an advertisement on 02.07.2020 in "Jaihind" Gujarati newspaper and "Business Standard" English newspaper.

v. The Applicant prepared the list of stakeholders as per regulation 31 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The only claim had come from secured financial creditor namely Siemens Financial Services Private Limited for an amount of Rs 5,21,46,987/- but it had not relinquished its security interest in favour of the liquidator.

vi. The Stakeholder's Consultation Committee (SCC) consists of sole Financial Creditor Siemens Financial Services Private Limited.

vii. The Applicant prepared and submitted asset memorandum as per regulation 34 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, and progress report from quarter ended 30.09.2020 to 31.12.2021 as per regulation 15 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 before the Adjudicating Authority.



viii. The Applicant submitted final report dated 25.03.2022 as per regulation 45 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

ix. It is submitted that the liquidation estate of Corporate Debtor comprises of only plant and machineries (“machineries”) which was financed by the “Siemens Financial Private Limited” as secured financial creditor. However, these machineries were lying under possession of third party namely “Maruti Films Barriers” wherein relative of suspended board are one of the partners; and Saurashtra Gramin Bank had taken symbolic possession of factory premises by affixing notice in factory premises of “Maruti Films Barriers” under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002 (SARFAESI).

x. During the CIRP period RP had taken steps to seek police assistance, in accordance with direction of this Adjudicating Authority to take possession over those machineries. Later, after inspection and identification made by the representative of Siemens Financial Services Private Limited, the machineries were handed over by the Saurashtra Gramin Bank as stated in their confirmation letter dated 24.12.2021 to Siemens Financial Services Private Limited.

xi. It is also submitted that an IA 202 of 2021 was filed by the liquidator seeking direction of this Adjudicating Authority for distribution of the liquidation estate (i.e. machineries) to the Siemens Financial Services Private Limited as per regulation 38 of the (Liquidation Process) Regulation 2016 however, later the said application was allowed to be withdrawn vide this adjudicating authority order dated 21.03.2022.

xii. It is further submitted that the second financial creditor (Siemens Financial Services Private Limited) had disposed of those machineries to M/s. Balson Agro Polymer Pvt. Ltd. for an amount of Rs. 48,42,837.98/- on 22.12.2022.



xiii. A notice dated 25.03.2022 to convene meeting of stakeholders to discuss final report and distribution of funds as per section 53 of IBC, 2016 was made by way of speed post to the stakeholders. The advertisements were made in “Business Standard” English newspaper and “Jaihind Daily” Gujarati newspaper on 17.03.2022. However, no one remained present.

xiv. The Applicant has submitted that assets of the Corporate Debtor are completely liquidated and thereby its affairs have been completely wound up. The compliance certificate in Form H is attached along with the application.

3. We heard the Learned Counsel for the Applicant and perused the material available on record. The Liquidator has filed the final report and Form-H in compliance with Regulation 45 of the Liquidation Regulations which contains the details of the Liquidation Process. As stated, the liquidation estate consisted of certain plant and machineries such as Corona treating equipment, air compressor, air chillars, oil cooled ultra-Isolation transformer, five-layer co-extruders etc. and the same are sold by Siemens Financial Services Private Limited who had financed the purchase of those machinery and while putting its claim during the liquidation proceedings had not relinquished its security interest onto those machineries. Thus thereafter, no asset was left with for any further disposal. Since the assets of the Corporate Debtor are completely liquidated, there remains nothing. Hence, the Corporate Debtor is required to be dissolved under Section 54(2) of IB Code, 2016.

4. It is also noted that the extended period for Liquidation had expired on 23.12.2021. However, keeping in view the covid-19 pandemic, and the order dated 10.01.2022 of Hon’ble Supreme Court in *Suo Motu* Writ Petition (C) No. 3 of 2020, In Re: Cognizance for Extension of Limitation, and also the circumstance as explained by the Liquidator in the present application, we condone the delay in filing of the present application.



The Financial Creditor has completely appropriated the proceeds of the sale of machineries, as it had not relinquished its security interest over those machineries in favour of the liquidator. It is noted that the CIRP & liquidation cost is yet not paid. In view thereof, we find it appropriate to direct the Financial Creditor Siemens Financial Services Private Limited to pay the CIRP & liquidation cost within a month from the receipt of this order.

5. Further, invoking the above provision of the IBC, 2016 and finding that the assets of the Corporate Debtor have been fully and completely liquidated, we pass the order of dissolution of the Corporate Debtor as under:

- i. The Corporate Debtor, M/s. Usha Multipack Private Limited, having CIN No. U74950GJ2001PTC039785 stands dissolved from the date of this order as per section 54(2) of the Insolvency and Bankruptcy Code, 2016.
- ii. Consequently, the Liquidator Mr. Pinakin Shah is discharged from his duties and responsibilities as the Liquidator of the Corporate Debtor.
- iii. The Liquidator and the Registry are directed to send the copy of this order within 7 days from the date of this order to the ROC, Gujarat along with all the books and files of the Corporate Debtor i.e. M/s. Usha Multipack Private Limited.
- iv. A copy of this order shall also be forwarded to the IBBI, and concerned parties for their record.
- v. With the above directions IA 333 of 2022 in CP (IB) 295 of 2018 stands disposed of.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
PRAVEEN GUPTA
MEMBER (JUDICIAL)

Shweta Desai -LRA