IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT NO. V

IA 2083 of 2020
IN
CP 3834 of 2019

Under Section 54 of the I&B Code, 2016
And Under Rule 11 of NCLT Rules, 2016
r/w Section 60(5) of the I&B Code, 2016
And Regulation 14 of IBBI (Liquidation Process Regulations, 2017)

Mr. Dinesh Gopal Mundada …. Applicant/ Resolution Professional

In the matter of: -

Persistent Systems Ltd. …. Petitioner/ Operational Creditor

V/s

Klisma E- services Pvt. Ltd. … Respondent/ Corporate Debtor

Order delivered on: - 10.08.2021

Coram:
Hon'ble Suchitra Kanuparthi, Member (Judicial)
Hon'ble Chandra Bhan Singh, Member (Technical)

For the Applicant:

Ms. Pallavi Salunke, Ms. M Swati and Ms. Tanvi Soman i/b LegaLogic Consulting for Financial Creditor a/w Mr. Amit Atre, representative of Financial Creditor

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This is an application filed by the Resolution Professional under section 33 of the Code and thereafter filed amendment seeking direct dissolution of Corporate Debtor. The CIRP of the Corporate Debtor commenced vide an admission order dated 20.01.2020. However, the copy of the order was received by the **Resolution Professional** on 07.02.2020. The applicant thereafter made public announcement calling for the claims, the IRP received claims from Persistent Systems Limited who is the original petitioner in the Company Petition. The IRP was unable to constitute a Committee of Creditors with respect to the Corporate Debtor, as the Financial Creditor is a related party as defined under section 5(24)(j) of the code. The IRP filed the report in this regard to the Tribunal on 25.02.2020. Section 5(24)(j) of the Code is reproduced below;

   "Any person who controls more than twenty per cent of voting rights in the Corporate Debtor on account of ownership or a voting agreement."

2. The applicant further stated the Financial Creditor i.e. Persistent Systems Limited held 50% of shares in the Corporate Debtor and therefore is a related party of the Corporate Debtor and hence cannot have any right or representation or participation or voting in the meeting of CoC. Section 21 of the code states as follows;

   *"**21. Committee of creditors. -***

   (1) The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.

(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:

Provided that a ***1[****financial creditor or the authorised representative of the financial creditorreferred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a relatedparty of the corporate debtor,****]*** *shall not have any right of representation, participation or voting in a meeting of the committee of creditors:*

2[*Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account ofconversion or substitution of debt into equity shares or instruments convertible into equity shares* ***1[****or completion of such transactions as may be prescribed****]****, prior to the insolvency commencement date.]*

2[*Subject to sub-sections (6) and (6A), where****]*** *the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their voting share shall bedetermined on the basis of the financial debts owed to them.*

(4) *Where any person is a financial creditor as well as an operational creditor, -*

(a) such person shall be a financial creditor to the extent of the financial debt owedby the corporate debtor, and shall be included in the committee of creditors, with votingshare proportionate to the extent of financial debts owed to such creditor;

(b) such person shall be considered to be an operational creditor to the extent of theoperational debt owed by the corporate debtor to such creditor.

(5) Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operationalcreditor to the extent

of such assignment or legal transfer.

(6) Where the terms of the financial debt extended as part of a consortium arrangement or syndicated facility ***3[***]*** *provide for a single trustee or agent to act for all financial creditors, each financial creditor may-*

a. authorise the trustee or agent to act on his behalf in the committee of creditors to the extent of his voting share;

b. represent himself in the committee of creditors to the extent of his voting share;

c. appoint an insolvency professional (other than the resolution professional) at his own cost to represent himself in the committee of creditors to the extent of his votingshare; or

d. exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.

4[(6-A) *Where a financial debt—*

(a) is in the form of securities or deposits and the terms of the financial debtprovide for appointment of a trustee or agent to act as authorised representative forall the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

(b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

(c) is represented by a guardian, executor or administrator, such person shall act asauthorised representative on behalf of such financial creditors,

and such authorised representative under clause (a) or clause (b) or clause (c) *shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.*

(6-B) The remunerationpayable to the authorised representative-

(i) under clauses (a) and (c) of sub-section (6A), if any, shall be as per the terms of the financial debt or the relevant documentation; and

(ii) under clause (b) of sub-section (6A) shall be as specified which shall beform part of the insolvency resolution process costs.]

[1][(7) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (6) and (6A).

(8) Save as otherwise provided in this Code, all decisions of the committee of creditorsshall be taken by a vote of not less than fifty-one per cent. of voting share of the financialcreditors:

Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified.]

(9) The committee of creditors shall have the right to require the resolution professional to furnish any financial information in relation to the corporate debtor at any time during the corporate insolvency resolution process.

(10) The resolution professional shall make available any financial information so required by the committee of creditors under sub-section (9) within a period of seven days of such requisition."

Therefore, in terms of section 21, the Financial Creditor being the related party cannot be part of the CoC, and as such the Resolution Professional could not form CoC.

3. The applicant further mentioned that the Corporate Debtor is not Operational for the last 5 years, have no assets to be realized and the available assets are insufficient to discharge the liabilities of the Corporate

Debtor. The statement of profit and loss of the Corporate Debtor for the previous 5 years is as follows;

Statement of Profit and Loss for 5 years of the Corporate Debtor

(Amt in INR)

Particulars	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	Till Jan 2021
	Audited	Audited	Audited	Unaudited	Unaudited	Unaudited
Revenue	0	0	0	0	0	0
Add: Other Income	*0*	*0*	*0*	*0*	*0*	*0*
Total Revenue	0	0	0	0	0	0
Less : Expenses (Audit Fees)	-15,000	-15,000	-15,000	-15,000	0	0
Less : Depreciation	-1,53,396	-19,729	0	0	0	0
Less : Finance Cost	0	0	0	0	0	0
Net Profit	**-1,68,396**	**-34,729**	**-15,000**	**-15,000**	**0**	**0**

Balance Sheet for last 5 years of the Corporate Debtor

(Amt in INR)

Particulars	FY 2015-16 Audited	FY 2016-17 Audited	FY 2017-18 Audited	FY 2018-19 Unaudited	FY 2019-20 Unaudited	Till Jan 2021 Unaudited
Share Capital	1,00,000	1,00,000	1,00,000	1,00,000	1,00,000	1,00,000
Reserves and Surplus	-3,38,33,339	-3,38,68,068	-3,38,83,068	-3,38,98,068	-3,38,98,068	-3,38,98,068
Long Term Borrowings	2,92,87,462	2,92,87,462	2,92,60,462	2,92,60,462	2,92,60,462	2,92,60,462
Trade Payables	30,60,188	30,60,188	30,60,188	30,60,188	30,60,188	30,60,188
Short Term Provisions	15,92,119	16,07,119	16,22,119	16,37,119	16,37,119	16,37,119
TOTAL LIABILITIES	**2,06,431**	**1,86,702**	**1,59,702**	**1,59,702**	**1,59,701**	**1,59,701**
Fixed Assets	54,553	34,824	34,824	34,824	34,824	34,824
Long Term Investment	8,500	8,500	8,500	8,500	8,500	8,500
Inventories	17,850	17,850	17,850	17,850	17,850	17,850
Trade Receivables	22,000	22,000	22,000	22,000	22,000	22,000
Cash and Bank Balance	44,215	44,215	17,215	17,215	52,855	52,855
Other Current Assets	59,312	59,312	59,312	59,312	23,672	23,672
TOTAL ASSETS	**2,06,431**	**1,86,702**	**1,59,702**	**1,59,702**	**1,59,701**	**1,59,701**

4. The Corporate Debtor was in the business of e-commerce platform and there were no operations for the last 5 years. The Corporate Debtor had only one bank account with the balance of Rs. 38,913.89/-

5. The applicant has also filed the following I.A. as tabled below;

"ANNEXURE – 1"

Interlocutory Applications filed till date along with the orders

Sr. No	Interlocutory Application No. along with date of filing	Purpose of the Interlocutory Application filed by the IRP	Order passed by the Hon'ble National Company Law Tribunal, Mumbai Bench
1.	Interlocutory Application No. 872 of 2020 filed on 6th March 2020	Requesting NCLT to issue directions for further steps in the corporate insolvency resolution process of Klisma E-Services Private Limited.	Passed on 18th September 2020 directing the following: *"...it was agreed by the Bench that it would consider any application for withdrawal of the Petition provided it is filed under Section 12A of the IBC by the original Petitioner. Any such Application would be taken up by the Bench as and when it is filed by the Petitioner..."* And disposed off I.A 872 of 2020, I.A 1347 of 2020 and I.A 1238 of 2020 in CP 3834 of 2019
2	Interlocutory Application No. 1238 of 2020 filed on 23rd July 2020	Requesting NCLT to issue directions for further steps in the corporate insolvency resolution process of Klisma E-services Private Limited.	
3	Interlocutory Application No. 1347 of 2020 filed on 05th September 2020	Urgent hearing for seeking appropriate directions from this Hon'ble Tribunal to carry out the CIRP of the Corporate Debtor with non-constitution of CoC.	
4	Interlocutory Application No. 2083 of 2020 filed on 5th November 2020	Filed under Section 33 of the Code due to efflux of time	

Yours Faithfully

Dinesh Mundada FCA, IP
IP 10530

Applicant/ Interim Resolution Professional
Mr. Dinesh Gopal Mundada
IBPI/IPA-001/IP-P00286/2017-18/10530
Klisma E-Services Private Limited

Date: 10th Feb 2020
Place : Pune

CA. Dinesh Mundada FCA, IP
IP 10530

6. The applicant thus sought to amend the application filed for the liquidation and seek for direct dissolution of the Corporate Debtor in pursuance of the judgment passed by the Co-ordinate Bench at Bengaluru in C.P. 96 of 2020 and I.A. no. 435 of 2020 where in the dissolution of the Corporate Debtor was allowed, as there were no assets in the Corporate Debtor and the liquidator therefore could not be able to perform the duty of the liquidator to realize the assets of the Corporate Debtor. The operative portion of the order of Co-ordinate Bench at Bengaluru is as follows;

6. The above facts and circumstances of the Case justify that there would be no useful purpose served, by placing the Corporate Debtor under a Liquidation process, under the extant provisions of Code. Since the Assets of Company were realized, the liquidation process under the provisions of Code is deemed to have been completed under Chapter III of Part II of Code, and thus it would be just and proper for the Adjudicating Authority to dissolve the Company, as proposed by Resolution Professional. The instant Application is filed in accordance with law and the Resolution in question to dissolve the Corporate Debtor was approved by the Sole COC, as detailed supra. *We are satisfied that this is a fit case for dissolving the Applicant* Company and allowing the Petition filed by the RP praying for the same.

7. In the result, by exercising powers conferred on the Adjudicating Authority, under Section 54 and other relevant and connected Provisions of Code, and the Rules made thereunder, C.P. (IB)No.96/BB/2020 and I.A.No.435/2020, are hereby disposed of with the following directions:

(1) The Applicant Company, M/s. Synew Steel Private Limited is ordered to be dissolved with immediate effect.

(2) The Registry is directed to forward a copy of this Order to

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NCLT, BENGALURU BENCH

C.P. (IB)No.96/BB/2020 &
I.A.No.435/2020

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 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 Code 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** as **"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. "**Section 64 of Code** ordains the Adjudicating Authority to dispose of Applications/Petitions filed under the provisions of Code as expeditiously, within the prescribed under this Code".

7. It is pertinent to refer to section 54 of the Code wherein the code stipulates that the Adjudicating Authority is empowered to grant dissolution of the Corporate Debtor where the Corporate Debtor has been completely liquidate. Section 54 of the Code is as follows;

"*54. 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.

(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.

8. This Bench notes that in view of the extra ordinary circumstances, the Corporate Debtor wherein the post admission of the Corporate Debtor, the IRP did not receive any claims and has received a claim only from the Financial Creditor who is the related party and therefore, this Bench is of the considered view that under rule 11 of the NCLT rules, 2016 the Adjudicating Authority has inherent powers to order an early dissolution of the Corporate Debtor has contemplated under rule 14 of IBBI (Liquidation Process) 2016 the early dissolution as defined under rule 14 is as follows;

"14. 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".

9. In view of the facts and the circumstance of the present case in hand, it is just and proper for the Adjudicating Authority to dissolve the Corporate Debtor even without liquidating the Corporate Debtor under section 33 of the Code, as there are no assets which are realizable as the result of liquidation process and it is just and proper that the Corporate Debtor is dissolved under section 54 of the Code.

Conclusion

10. Upon the conjoint reading of section 33 r/w section 54 r/w rule 14 of IBBI r/w rule 11 o NCLT, this Adjudicating Authority orders dissolution of the Corporate Debtor.

11. The IA No. 2083 of 2020 is "**Allowed**" and the Corporate Debtor Company stands dissolved from the date of this Order.

12. Since the Debtor Company stood Dissolved vide this order and no proceedings are now pending, therefore the Registry is directed that the case file be consigned to records.

13. Copy of this Order shall be forwarded within 7 (seven) days to the concerned authorities and the Registrar of Companies having jurisdiction, for further necessary action as prescribed under Law.

Sd/-	Sd/-
Chandra Bhan Singh	Suchitra Kanuparthi
Member (Technical)	Member (Judicial)