

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- COURT I
KOLKATA**

I.A. (IB) No. 121/KB/2023

in

C.P (IB) No. 371/KB/2019

Under section 54 of the Insolvency and Bankruptcy Code, 2016 read with regulation 44(1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

In the matter of

RAA International Limited

(In Liquidation)

... *Corporate Debtor*

~And~

In the matter of

Partha Kamal Sen, Liquidator of RAA International Limited

... *Applicant*

Order pronounced on: 29.02.2024

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (through hybrid mode):

For the Applicant

: Mr. Siddhant Makkar, Advocate

ORDER

Per Balraj Joshi, Member (Technical)

1. This court convened *via* hybrid mode.
2. This is an application filed under section 54 of the Insolvency and Bankruptcy Code, 2016 (“Code”) read with regulation 44(1) of the Insolvency and Bankruptcy Board of

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India (Liquidation Process) Regulations, 2016 (“Liquidation Process Regulations”) by the Liquidator of Axiom Estates Advisory Services Private Limited (CIN: U72900WB2000PLC091121) (“Corporate “Debtor”) praying for dissolution of the Corporate Debtor.

3. The Original Application CP (IB) No. 371/KB/2019 was filed by Union Bank of India under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. On 08/11/2019, this Hon'ble Tribunal ordered the commencement of CIRP, appointing Mr. Sachin Gopal Jathar as the Interim Resolution Professional (IRP).
4. Facing challenges due to non-cooperation from the erstwhile management, the IRP encountered difficulties. Proceedings under section 19(2) of the code were initiated and were pending adjudication before this Hon'ble Bench. Subsequently, the Committee of Creditors (CoC) decided to move the company into liquidation. On 06.08.2021, this Adjudicating Authority issued a liquidation order under section 33(1) of the Code, appointing the applicant as the Liquidator.
5. In compliance with Regulation 12 of IBBI (Liquidation Process) Regulation, 2016, the Liquidator published a public announcement in Form B, inviting claims from stakeholders. This announcement, published in ‘*Financial Express*’ (English) and ‘*Ekdin*’ (Bengali) on 09/08/2021, requested stakeholders to submit their proof of claims. The copy of the public announcement is attached as **Annexure 1 of the Final Report** submitted with this application (**Annexure-C**).
6. The Liquidator, adhering to Regulation 31(2) of IBBI (Liquidation Process) Regulations, 2016, has submitted a report to the Hon'ble NCLT, Kolkata. This report includes the list of stakeholders based on the proof of claims submitted and accepted by the Liquidator. A copy of the list of stakeholders submitted to the Hon'ble NCLT, Kolkata, is attached herewith as **Annexure 2 of the Final Report**, being submitted with this application as **Annexure C**.
7. The Liquidator, in adherence to the Insolvency and Bankruptcy Code (IBC) and related Regulations, submitted the Preliminary Report to the Adjudicating Authority, encompassing an asset memorandum and proposed plan of actions. Stakeholders' Consultation Committee (SCC) Meetings were conducted to brief members on the

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progress, and quarterly Progress Reports were filed with the Hon'ble NCLT in accordance with IBC and Regulations.

8. Additionally, Form INC 28 was filed with ROC Kolkata to update the corporate debtor's status undergoing liquidation, with the undersigned appointed as the Liquidator.
9. Despite efforts to obtain books of accounts and financial statements from suspended directors, no responses were received. Correspondences with the suspended board members were either returned undelivered or yielded no responses. Consequently, the Liquidator's work was confined to publicly available documents in the Ministry of Corporate Affairs and information shared by the Resolution Professional replaced under the liquidation order on August 6, 2021.
10. One immovable property, exclusively held by the secured creditor Union Bank of India, was not subjected to relinquishment of security interest. Although Union Bank, as one of the Stakeholders' Consultation Committee (SCC) members, granted written consent to the Liquidator to take possession of the property, given that it was recorded as the Registered Office of the Corporate Debtor - in liquidation on the MCA portal, and the books of accounts might be located there.
11. With the cooperation of the local Jadavpur Police Station, the Liquidator entered the flat after breaking open the locks. Union Bank officials were present during this process. However, no books of accounts or inventories were found inside the flat, suggesting it served as a residential unit. A comprehensive list of items discovered inside the flat was compiled in the presence of local police personnel.
12. As for the other immovable property, a manufacturing unit on lease from the Falta Special Economic Zone, the lease term has concluded. Consequently, this property does not fall within the scope of the Liquidation Estate under Section 36 of the IBC 2016. However, the potential existence of fixed assets and other inventories within the premises remains a possibility.
13. In compliance with Sections 35(1)(b) and (c) of the Insolvency and Bankruptcy Code, 2016, the Liquidator is mandated to take possession of the assets of the Corporate Debtor in Liquidation. As the manufacturing unit is situated in the Falta Special Economic Zone (Falta SEZ), a protected area, the Liquidator sought approval from the

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necessary authority to access the premises and assess the assets. Permission was granted on 26/10/2021.

14. During the 1st Stakeholder's Consultation Committee (1st SCC) Meeting held on 22/10/2021, the SCC acknowledged the status of custody of the Corporate Debtor's assets. The Liquidator requested permission from Falta SEZ Authority representatives to enter the protected SEZ area and inspect the premises at the Ground Floor of SDF Building. Minutes of the 1st SCC are attached as **Annexure 12 of the Final Report**.
15. Although the Liquidator visited locations where the assets are located, no access was granted as the assets were secured by lock and key. The Liquidator identified a non-operational bank account of the Corporate Debtor from information received from the GST department, with a zero balance for the past couple of years. This information was shared with stakeholders and reported in the progress reports submitted to the Adjudicating Authority.
16. Upon visiting the Falta SEZ premises at the ground floor of SDF Building, it was observed that the premises had been abandoned, with shutters down, grill gates and windows closed, and under lock and key by the Corporate Debtor in liquidation.
17. The Liquidator conducted the 2nd Stakeholders Consultation Committee (2nd SCC) meeting on 15/10/2021, where he updated members on the progress and expressed intentions to request necessary permission from Falta SEZ Authority to break open premises for inspection. Minutes of the 2nd SCC meeting are attached as **Annexure 12 of the Final Report**.
18. On 28/12/2021, the Liquidator emailed the Development Commissioner, Falta SEZ, seeking permission to break open the lock and access the Corporate Debtor's unit. After discussions and filing an application (I.A.588/2020) with the Adjudicating Authority for necessary direction, the Liquidator obtained permission to inspect the premises.
19. Union Bank of India proposed realizing its security interest in a flat independently for recovery. Permitted under Section 52 of the IBC, the bank issued a sale notice under Rule 8 of the Security Interest (Enforcement) Rules, 2002, leading to the successful auction sale of the flat for Rs.29,90,000/-, confirmed by the bank in an email on 16/09/2022. The entire sale consideration was realized by the bank from the buyer. A copy of the email is attached as **Annexure 9 of the final report**.

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20. Following the sale of the flat and receipt of the consideration by the bank, the Liquidator, via email on 18/09/2022, requested the bank to pay his fees. As per Regulation 4(b) of IBBI (Liquidation Process) Regulation, 2016, the Liquidator's fees, calculated at Rs. 82,288/-, was conveyed to the bank.
21. However, the bank's email on 25/10/2022 refused to pay the Liquidator's fees from the sale proceeds of the flat, arguing that no fees from SARFAESI Act sales were payable to the Liquidator. In response, the Liquidator filed I.A. 1417/2022 against the bank, seeking payment of his fee.
22. According to Regulation 21A(2) of IBBI (Liquidation Process) Regulations, 2016, when a secured creditor like the bank realizes its security, it must contribute towards the liquidation cost as if it had relinquished its security interest. Under Rule 2(ea) of IBBI (Liquidation Process) Regulation, 2016, the fees payable to the Liquidator is part of the liquidation cost, which the bank is obligated to pay under Rule 21A(2).
23. The Liquidator's efforts enabled the Bank to secure its security interest, acknowledged by the Bank in their email dated 31/10/2022 (**Annexure 10 of the Final Report**). There was no dispute regarding the Liquidator's conduct and diligence. Subsequently, a mutual settlement was reached between the bank and the Liquidator, resulting in a payment of Rs 60,000/- as his fee.
24. In compliance with regulation 36(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, an Information Memorandum ("IM") was prepared based on limited information available in the public domain. The suspended members of the Board of Directors never provided books of accounts or other documents/records, as they are untraceable. Due to this lack of substantial information, valuations were stalled since the Corporate Insolvency Resolution Process (CIRP). This fact is also recorded in the Hon'ble Adjudicating Authority's order dated 06/08/2021 (**Annexure 5 of the Final Report**), and as a result, valuations and Transaction Audit were not conducted in this matter.
25. In compliance of regulation 15 of the Liquidation Process Regulations, the Liquidator has filed five Progress Reports from time to time before the Adjudicating Authority (**Annexure- C**), and the final report disclosing all the material facts and information with respect to the liquidation process of the Corporate Debtor. As per mandatory

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requirement under regulation 45(3) of the Liquidation Process Regulations, the Liquidator has prepared a compliance certificate under prescribed 'Form H' (**Annexure- D**).

26. Upon hearing the Ld. Counsel appearing for the Liquidator and perusing the documents annexed to the application, it appears that despite necessary efforts made by the liquidator, information relating to all the assets of the CD could not be received by the liquidator. Whatever information could be obtained has been acted upon by the liquidator and in all practicality the affairs of the Corporate Debtor have been completely wound up. The Liquidator's fees have also been paid.
27. As per Form H there are no avoidance transactions that needs to be addressed.
28. As recorded in the daily order dated 11th February, 2020 it is understood that the IRP filed an application under section 19(2) for seeking directions to the suspended board for cooperation. Accordingly vide order dated 11th February, 2020 passed in IA(IB) No.191/KB/2020, this Adjudicating Authority directed the suspended board of directors to co-operate with the RP and provide the requisite information.
29. In accordance with the Supplementary Affidavit filed and admitted on the 9th of February, 2023, referencing the proceedings of the 5th Stakeholders Consultation committee (SCC) meeting convened on the 9th of January, 2023, wherein all members concurred that the absence of liquid assets belonging to the Corporate Debtor (CD) warrants justification for the submission of a dissolution petition before this Adjudicating Authority.
30. 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
31. In view of the above facts and circumstances, and noting that there are no assets of the corporate debtor that need to be disposed of, as such the requirements of section 54 have been fulfilled and there is no impediment to the Corporate Debtor being dissolved, and it is ordered accordingly.
32. 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

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receipt of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.

33. **IA (IB) No. 121/KB/2023 in CP (IB) No. 371/KB/2019** thus stands disposed of in accordance with the above directions.
34. 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.
35. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
36. File be consigned to the record.

**[Balraj Joshi]
Member [Technical]**

**[Rohit Kapoor]
Member [Judicial]**

Order signed on the 29th day of February 2024.

AJS[LRA]