

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA No. 2292/2023

Under Section 60(5) r/w Sections
33 & 54 of Insolvency &
Bankruptcy Code, 2016

Mrs. Manisha Agarwal

Resolution Professional/
...Applicant

In the matter of

CP (IB) No.986/MB/C-IV/2020

Punjab National Bank

...Financial Creditor
Vs.

**Mak Glit Chem (India) Private
Limited**

[CIN: 24412MH1994PTC081486]

...Corporate Debtor

Order Pronounced on: **05.03.2024**

Coram:

Ms. Madhu Sinha
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant/RP : Mr. Devul Dighe, Advocate.

ORDER

1. This is an Application filed on 05.06.2023 by Mrs. Manisha Sanjay Agarwal, Interim Resolution professional (hereinafter referred to as the "Applicant") of the Corporate Debtor i.e. **Mak Glit Chem (India) Private Limited** (hereinafter referred to as the "Corporate Debtor"), praying for Dissolution without undergoing Liquidation of the Corporate Debtor under Section 60(5) r/w Sections 33 & 54 of IBC read with Rule 11 of NCLT Rules, 2016.

2. **The brief facts of the application are as follows:**

- 2.1. The Applicant mentions that this Tribunal vide its order dated 05.01.2023 in Company Petition No. 986/IBC/MB/2020 admitted the petition under Section 7 of the Code, filed by ***Punjab National Bank*** (hereinafter referred to as the “Financial Creditor”) and Corporate Insolvency Resolution Process (hereinafter referred to as the “CIRP”) was initiated against the Corporate Debtor. Mr. Udaykumar Bhat, was appointed as the Interim Resolution Professional of the Corporate Debtor by this Tribunal. However, his AFA was expired on 24.12.2022 and the same was not renewed by the IBBI. Therefore, vide Order dated 27.01.2023 had appointed Ms. Manisha Sanjay Agarwal as Interim Resolution Professional of the Corporate Debtor.
- 2.2. Pursuant to the admission order of the Corporate Debtor, Public Announcements in Form A was published on 01/03/2023 for inviting claims for all the Creditors and Stakeholders and the last date of submission of claims was 12.03.2023, the Applicant has received claim from One Financial Creditor viz. Punjab National Bank.
- 2.3. The Applicant stated that the information about the financial position and consequentially list of assets of the Corporate Debtor from publicly available domain for information including MCA portal. The Applicant became aware that last of the such Financial Statements were filed by the Corporate Debtor for the Financial Year 2014-15 as well as the last Annual General Meeting (“AGM”) of the Corporate Debtor was held on 30th September 2015.

- 2.4. The Applicant stated that both the existing Directors of the Corporate Debtor being Mr. Abhay S. Chopda and Mr. Anup Jaishi Prasad-Prasad Chaturvedi were not traceable. Further, the Applicant addressed an email dated 9.05.2023 to the official Email ID of the Corporate Debtor as per MCA master data, however, the said email also bounced.
- 2.5. The Applicant submits that the 1st COC meeting was held on 24/03/2023 where it was informed by the Sole Financial Creditor Punjab National Bank that the Land and Building as well as Plant and Machinery over which security interest was created by Corporate Debtor is already enforced by them and sold in accordance with provisions of the **SARFAESI Act, 2002** and therefore, the valuation of land & building situated at GAT No. 125, 126, 127 Plot No. 1, Pirungut, Paud Road, Taluka Mulshi, District - Pune ad measuring 8300 Sq. Ft. i.e. 771.38 Sq. Mtrs. and admeasuring 480.50 sq. mtrs out of the larger piece of land admeasuring 1 Hectar and 71.6 Acres which is more particularly described in mortgage deed dated 10th February 2016 as well as Plant & Machinery which was earlier owned by the Corporate Debtor is not required as the same is sold on 23rd November 2022 and accordingly sale certificate has also been issued in favour of successful bidder dated 8th December 2022.
- 2.6. The Applicant further stated that in the 2nd COC meeting which was held on 28/04/2023 wherein inter alia it was resolved by CoC with 100% voting rights that Corporate Debtor shall be dissolved without need for liquidation as there are no available assets of the Corporate Debtor and

Secured Assets over which Security Interest was created by Corporate Debtor in favour of Punjab National Bank has been realized by them. The CoC authorized the Applicant to file present Application for dissolution without need for liquidation of the Corporate Debtor as resolution as well as liquidation would be futile exercise in view of the fact that Corporate Debtor does not own any valuable asset.

- 2.7. The applicant states that the COC has also ratified and undertaken to pay the CIRP cost till the date of filling of present application in its 2nd COC meeting. Further, the Applicant stated that in the event any amount is lying to the credit of HDFC Bank Account of the Corporate Debtor, the same shall be distributed in the payment waterfall mechanism provided in Section 53 of the Code.
- 2.8. The Applicant submitted that there are no valuable tangible or intangible assets of the Corporate Debtor. Further, the Applicant stated that the CoC observed that since realizable value of the assets of the Corporate Debtor is “Nil” and, hence there would be no resolution of the Corporate Debtor and liquidation would only be cost entailing exercise, there was no point in proceeding with liquidation and then apply for dissolution of the Corporate Debtor. Hence, the CoC further observed that it was prudent to recommend dissolution without liquidation. Accordingly, the CoC passed the following resolution with 100% voting share.

“RESOLVED THAT as per the provisions of section 54(1) of the Insolvency and Bankruptcy Code, 2016, and other relevant Regulations and Rules, an

application be made to the Adjudicating Authority to dissolve MAK GLIT CHEM (INDIA) PRIVATE LIMITED without proceeding to liquidation”

- 2.9. In such circumstances, the RP sought dissolution of the Corporate Debtor and in support placed the following decision of NCLT, Hyderabad Bench vide Order dated 03/09/2022 in the matter of “**Swapna Infracon Private Limited Vs Dalmia Cements (Bharat) Limited**” wherein the Company was dissolved without undergoing Liquidation process.

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 subsection (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 Applicant, 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 Applicant on the directions of the COC. In 2nd meeting of the COC held on 28.04.2023 the Resolution was passed to dissolve the Corporate Debtor with 100% voting share.
7. In view of aforesaid circumstances, we are satisfied that this is a fit case for dissolving the Corporate Debtor without undergoing the liquidation process.
8. The present Application i.e. IA-2292(MB)2023 is **allowed** with the following orders:
 - a. The Corporate Debtor, United Fortune International Private Limited is ordered to be dissolved with immediate effect.
 - b. 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.

- c. 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.
- d. 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.
- e. Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

Sd/-
Madhu Sinha
Member (Technical)
/Dubey/

Sd/-
Kishore Vemulapalli
Member (Judicial)