

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court -I)
KOLKATA**

**IA(IBC)/1026(KB)2023
in
CP(IB)/191(KB)2022**

*Under section 54(1) of the Insolvency & Bankruptcy Code, 2016
Read with Rule 11 of the National Company Law Tribunal Rules, 2016*

In the matter of:

Unicon Vanijya Private Limited

.... Financial Creditor

Versus

**Nouvelle Advisory Services Private Limited
(CIN: U93000WB2010PTC141445)**

.... Corporate Debtor

And

In the matter of:

Mr. Rajiv Kumar Agarwal,
Resolution Professional of Nouvelle Advisory Services Private Limited

... Applicant

Order reserved on: 04/08/2023

Order pronounced on: 21/08/2023

Coram:

Shri Rohit Kapoor

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (through video conferencing):

For RP

: Mr. Shaunak Mitra, Adv.
Ms. Sutapa Mitra, Adv.

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.

2. **IA(IBC)/1026(KB)2023** is an application filed by the Resolution Professional (“**RP**”) of **Nouvelle Advisory Services Private Limited**, the Corporate Debtor, praying for dissolution of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by Mr. Rajiv Kumar Agarwal, the RP.
3. This Adjudicating authority *vide* order dated 11/01/2023 in CP(IB)/191(KB)2022, had ordered initiation of CIRP against the Corporate Debtor. Mr. Rajiv Kumar Agarwal was appointed as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry, NCLT.
4. In terms of regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, **Regulations 2016**), Public Announcements in **Form A** was published on 14/01/2023 in “*Financial Express*” (English) and “*Aajkal*” (Bengali) inviting claim from the creditors.²
5. Committee of Creditors (“**CoC**”) was duly constituted on 02/02/2023 with the sole member being the petitioning Financial Creditor and the 1st CoC meeting was held on 09/02/2023. At the said 1st meeting of the CoC appointment of IRP as Resolution Professional (“**RP**”) was approved with 100% voting share.³
6. Pursuant to the 2nd CoC meeting held on 30/03/2023, in terms of regulation 36A(1) of the Regulations 2016, Form G inviting Expression of Interest (“**EoI**”) from prospective resolution applicants (“**PRA**”) was published on 31/03/2023. However, in response to the said paper advertisements no EoI was received from any PRA⁴.
7. In the 3rd meeting of the CoC held on 18/05/2023, the sole member of the CoC after considering the Valuers’ reports and status update from the RP was of view that since the Corporate Debtor does not have any realizable assets and has no business and therefore the chances of resolution and/or any recovery were “Nil”.

¹ At pages 28 and 29 of the application

² Averments in para 5(c) at page 7 of the application

³ Averments in Paras 5(d) and (e) at page 8 of the application

⁴ Averments in para 5(f) at page 8 of the application

It was further discussed that the Cash and Bank balance would just suffice to take care of the CIRP expenses and furthermore if the Corporate Debtor is taken to liquidation additional money would be required to be paid by the CoC members through there will be no recovery. Hence, the CoC had recommended direct dissolution of the Corporate Debtor without liquidation subject to a legal opinion on the subject.⁵

8. The applicant thereafter convened 4th meeting of the CoC on 27/05/2023 wherein option of dissolution without liquidation was discussed in the light of legal opinion. The CoC observed that since realizable value of the assets of the Corporate Debtor is “Nil” and there are no funds to meet the full CIRP Cost as well as Liquidation Cost, there was no point in proceeding with liquidation and then apply for dissolution of the Corporate Debtor. The CoC further observed that it was prudent to recommend dissolution without liquidation.⁶ 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 Nouvelle Advisory Services Private Limited without proceeding to liquidation”

A copy of the minutes of the 4th meeting of the CoC forms **Annexure ‘A’**⁷.

9. In support of this application, Ld. Counsel for the RP has produced following two judgments of the Coordinate Benches one dated 11/03/2022 passed by the NCLT, Division Bench II, Chennai and other dated 16/11/2020 passed by the NCLT, Bengaluru Bench:

(a) IA(IBC)/978(CHE)/2021 in IBA/20/2020 (Aesys Technologies India Private Limited).

(b) IA No. 435/2020 in CP(IB)No.96/BB/2020 (M/s. Synew Steel

⁵ Averments in para 5(g) at page 8 of the application

⁶ Averments in para 5(h) at page 8 of the application

⁷ At pages 10 to 27 of the application

Private Limited)

10. It is to be noted here that 180 days CIRP period had expired on 09/01/2023 and no extension was sought.
11. We have heard the Ld. Counsel for the RP, perused the application and the documents attached therewith.
12. Various provisions of the Code dealing with the dissolution of the Corporate Debtor are 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.

Regulation 14 of IBBI (Liquidation Process) Regulations provides as under:

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.

A conjoint reading of these provisions leads to the requirement of completion of the liquidation of the assets of the corporate debtor and subsequent application to the Adjudicating Authority by the liquidator for dissolution. The intent is that the assets of the corporate debtor should be completely liquidated and also the

distribution be a made in terms of various provisions of the code and the associated regulations, which would then culminate the entire process and thus no purpose would be served by keeping the identity of the corporate debtor as a corporate person and as such the same is required to be dissolved. In many cases, the present one included, when there are no assets to be liquidated, a question arises as to how to comply with the regulation 14 which stipulates early dissolution, which requires the appointment of a liquidator who shall then make an estimate and say whether there are any assets worth liquidating and upon such a certification only an early dissolution application is to be filed. This leads to a dichotomy, as one hand we have assets of the corporate Debtor which can barely cover the CIRP costs and on the other hand we appoint another professional for liquidation, thus incurring additional cost. To get out of this predicament, it would be necessary and sufficient for the RP to certify and submit that there are no assets with the Corporate Debtor, which would satisfy the requirements of Section 54(a), in which case following a route of regulation 14 would be just academic.

In the instant case, since there are no assets with the Corporate Debtor as stated by the RP and also by the CoC that there are insufficient funds to meet the full CIRP cost as well as Liquidation cost, therefore provisions of section 54 of the Code and also that of Regulation 14 of the IBBI (Liquidation Process) Regulations, 2016 would be deemed to have been complied with.

13. In view of the above facts and circumstances, this Adjudicating Authority in exercise of the powers conferred under sub-section (2) of section 54 of the Code hereby orders the dissolution of the Corporate Debtor, viz., ***Nouvelle Advisory Services Private Limited*** from the date of this Order, and the Corporate Debtor stands dissolved. Consequently, RP stands relieved subject to procedural compliances.
14. The Resolution Professional and the Registry are directed to serve a copy of this order upon the Registrar of Companies, West Bengal, immediately and, in any

case, within fourteen days of receipt of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.

15. ***IA(IBC)/1026(KB)2023*** in ***CP(IB)/191(KB)2022*** is allowed with the above directions and the ***IA(IBC)/1026(KB)2023*** and ***CP(IB)/191(KB)2022*** are hereby **disposed of** accordingly.
16. 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.
17. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
18. File be consigned to records.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 21st day of August, 2023.

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