

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

IA(IBC)/471/KOB/2023

IN

CP(IBC)/34/KOB/2022

(Under Section 54 of the IBC, 2016)

In the matter of:

M/s. Simtel Trading Corporation Private Limited.

Memo of Parties:

Mr. Vikky Dang, Liquidator of Simtel Trading Corporation Private Limited, B-II, near Mangal Bazar Gurudwara, Vishnu Garden, New Delhi-110 018. **... Applicant.**

Order delivered on: 14.12.2023

Coram:

Hon'ble Member (Judicial) : TMT. Justice (Retd.) T. Krishna Valli.

Hon'ble Member (Technical): Shri. Shyam Babu Gautam.

Appearances:

For the Applicant : Mr. Akhil Suresh, Adv.

ORDER

Per: Coram

1. The present application is filed by the Applicant/Liquidator under Section 54 of the IBC, 2016 for the following reliefs: -

- i. To direct the dissolution of the Corporate Debtor, Simtel Trading Corporation Pvt. Ltd.
 - ii. To direct the Applicant to pursue the PUFEE transactions and to distribute the receipts as per Section 53 of the IBC, Code, 2016.
2. The Brief facts of the case are as follows: -
 3. The Corporate Debtor was brought into the Corporate Insolvency Resolution Process (CIRP) through an application filed under Section 7 of the Insolvency and Bankruptcy Code by the Financial Creditor, TATA Capital Financial Services Private Limited with effect from 01.12.2022 and the applicant was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor.
 4. The registered office of the Corporate Debtor was not operational and subsequently upon enquiry with the Suspended Management, stated that the corporate debtor is not carrying out its business from 2018 onwards and they have no substantial and relevant documents as sought by the IRP. The IRP, in compliance with the requirements of Rule 6(1) of IBBI (CIRP) Regulations 2016, regarding the publication of announcements in newspapers, IRP has published the same in daily News Papers Business Standard (English) and Chandrika (Malayalam) on 03.12.2022.
 5. The claims of the Operational Creditor were received after the constitution of CoC and accordingly the Resolution Professional had reconstituted the CoC as per the provisions envisaged in the code, 2016. The statement of claim was verified and determined

within 7 days of the receipt of the same in pursuance of Rule 13 (I) of IBBI (CIRP) Regulations 2016, and report certifying Constitution of Committee of Creditors Regulation 17 (1) of IBBI (Insolvency Resolution Process for Corporate Person) Regulations 2016 and list of creditors under Regulation 13 (2) (d) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has been filed before this Tribunal on 22.12.2022.

6. The Applicant convened the 1st CoC meeting held on 29.12.2022, the CoC members informed the Applicant that the Suspended management had alienated the properties of the Corporate Debtor after availing a loan. The assets of the Corporate Debtor were not present and therefore the CoC members suggested early dissolution of the Corporate Debtor.
7. It is stated that even though sending incessant reminders to the Suspended Management via telephone and e-mails to provide necessary information/documents/records, the erstwhile Directors have failed to furnish the same. The 2nd Meeting of CoC was held on 25.01.2023 and the said meeting CoC in furtherance to the decision taken in the 1st CoC Meeting, the Committee of Creditors decided for early dissolution/liquidation of the Corporate Debtor as there are no assets for the Corporate Debtor and it would be difficult for resolution and revival of the Corporate Debtor. Consequently, the members of the CoC decided not to publish Form G under Regulation 36A for inviting expression of

interest. Further, the CoC members were of the view to go for a transaction audit of the Corporate Debtor and subsequently, appointed the Transactional Auditor to ascertain the fraudulent transactions.

8. It is stated that the Information Memorandum was prepared on 23.02.2023. The Applicant stated that there were no tangible assets in the name of the Corporate Debtor as of the CIRP commencement date i.e. 01.12.2022. Thereafter, the Applicant appointed a valuer under Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for the valuation of Securities and Financial Assets. The Valuation reports have been received by the applicant. Accordingly, the Average Liquidation Value is Rs. 1,21,939/-.
9. The Applicant further stated that in the 3rd CoC meeting held on 26.04.2023, the CoC members had passed a resolution to proceed with liquidation of the Corporate Debtor. In the said meeting, the Resolution Professional informed the CoC that the Final draft of the Transaction Audit Report was submitted by the Transaction Auditor and placed the said report of the auditor before the CoC. Thereafter, the Resolution Professional explained to the CoC Members the contentions stated by the Transactional Auditor on the Fraudulent Transactions of the Corporate Debtor under the provisions of Sections 66 of the Insolvency and Bankruptcy Code, 2016 for the period under review. According to the receipt of the

final draft of the Transaction Audit, the RP has filed an avoidance application under section 66 of Insolvency and Bankruptcy Code, 2016, being IA No. 236/KOB/2023 in CP(IB)/34/KOB/2022. The said application is pending adjudication before this Tribunal.

10. The public announcement was made in Form B on 04.06.2023 in two newspapers namely Business Standard (English) and Chandrika (Malayalam) on 04.07.2023. The last date for receipt of the claim was 30.07.2023.
11. As per the mandatory provisions of the Companies Act, 2013 and the Code, 2016, the Liquidator had duly intimated the ROC about the order of this Tribunal regarding the liquidation of the Corporate Debtor by filing the mandatory Form INC 28. Thereafter the Applicant according to receipt of the claims from the creditors has collated the claims and constituted the Stakeholder's Consultation Committee. The list of Creditor is as follows: -

CONSTITUTION OF STAKEHOLDER'S CONSULTATION COMMITTEE IN THE MATTER OF SIMTEL TRADING CORPORATION PRIVATE LIMITED			
Sr. No.	Name of Creditor	Admitted Claim	Voting Share (in %)
UNSECURED FINANCIAL CREDITOR			
1.	Tata Capital Financial Services Limited	67,13,05,407	72.658%
2.	Incred Financial Services Ltd.	10,34,65,551	11.199%
GOVERNMENT AUTHORITIES			

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3.	Deputy Commissioner of Income Tax, Corporate Circle 2(1), Kochi.	14,90,98,760	16.138%
4.	Employee State Insurance Corporation.	4,891	0.001%
5.	Employee's Provident Fund Organisation.	45,418	0.005%
	TOTAL	92,39,20,027	100.00%

12. As per Regulation 13 of IBBI ((Liquidation Process) Regulations, 2016, Preliminary Report, Asset Memorandum and List of Stakeholder under Regulation 13, 34 and 31 respectively of IBBI (Liquidation Process) Regulations, 2016 along with the affidavit and verification has been filed on 12.09.2023 before this Tribunal and the same was taken on record on 09.07.2023. As per Regulation 15(1) of IBBI (Liquidation Process) Regulations, 2016, the First Progress Report along with the affidavit and verification has been filed before this Tribunal.

13. As per Regulation 8 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, consultation was made with stakeholders on several occasion as follow: -

- a. First SCC Meeting held on 10.07.2023
- b. Second SCC Meeting held on 25.09.2023

14. The SCC members decided that since the corporate debtor has no assets to liquidate, consequently, the members voted on the resolution for early dissolution of the Corporate Debtor. It is further stated that the SCC members authorized the liquidator to pursue the avoidance application filed under section 66 of the Insolvency and Bankruptcy Code, 2016 after the dissolution of the Corporate Debtor.
15. The Applicant stated that as per Regulation 15 (1) of IBBI (Liquidation Process) Regulations, 2016, the Final Report along with the compliance certificate, Form H is filed with the present application.
16. On 11.12.2023, the Applicant filed an affidavit before this Tribunal and submitted that the Liquidation Account of the Corporate Debtor bearing no. 5148027452 at Kotak Mahindra Bank Limited closed on 05.12.2023.

FINDINGS: -

17. We have heard the arguments of the learned counsel for the Applicant at length and perused the entire case records/documents. We have also gone through the evidence on record. The Applicant/Liquidator has submitted Annexure A14, Form H Compliance Certificate and, Final Report on liquidation along with this application. In light of the facts stated, it is noticed that the assets of the Corporate Debtor have been completely liquidated

under IBC, 2016 and no objection has been raised by any person to this application.

18. Now, for the purpose of Dissolution of a Corporate Debtor, Section 54 of The Insolvency and Bankruptcy Code, 2016 reads as under: -

“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 subsection (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.”

19. The instant application is filed by the Liquidator on the direction of the CoC. In the 2nd meeting of SCC, a Resolution was passed to dissolve the Corporate Debtor with an 83.86% voting share. The Resolution of the said meeting of SCC is reproduced hereunder: -

Consideration of the approval of dissolution of the Corporate Debtor under Section 54(1) read with Regulation 14 Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016:

“RESOLVED THAT Corporate Debtor be dissolved as per Section 54(1) read with Regulation 14 Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 of the Insolvency and Bankruptcy Code, 2016 as there are no assets of the Corporate Debtor.”

“RESOLVED FURTHER THAT that the Liquidator Vikky Dang, be and is hereby authorized to file necessary application with the NCLT about the decision of the Stakeholder Consultation Committee for dissolution of the Corporate Debtor”.

20. As a consequence, in view of above, it is hereby declared that not only it is just and equitable but because of the fact that no asset is available for the purpose of ‘Liquidation’ as reported by Learned Liquidator, this is a fit case of a Corporate Debtor to be dissolved as prescribed under Section 54 of The Insolvency and Bankruptcy Code, 2016. Ordered accordingly. The Corporate Debtor **stands ‘Dissolved’** from the date of this Order.

21. In order to arrive at a decision in the matter, it is profitable to quote the voting item no.3 of the SCC meeting as under: -

Discussion about pursuing the avoidance application after dissolution of the Corporate Debtor.

“RESOLVED THAT the liquidator, Mr. Vikky Dang, be and is hereby authorized to take all necessary action and shall be responsible to pursue the avoidance application and finally to distribute the

proceeds, if any, received or reversed from the avoidance application as per Section 53 of the IBC Code”.

22. In view of the detailed discussion above, we direct the Applicant to pursue the PUFÉ transactions and distribute the receipts as per Section 53 of the IBC, 2016.
23. With the aforesaid observation, **IA(IBC)/471/KOB/2023 is allowed** and disposed of.
24. 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.
25. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.
26. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
27. File be consigned to records.

SHYAM BABU GAUTAM
Digitally signed by SHYAM BABU GAUTAM
Date: 2023.12.14 15:35:08
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SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

T.KRISHNAVALLI
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Date: 2023.12.14 15:34:47
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T KRISHNA VALLI
(MEMBER JUDICIAL)

Signed on this the 14th day of December, 2023.

Rajasree R. Nair/LRA