



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-VI**

CP (IB)-69/ND/2022

IN THE MATTER OF:

M/s. Iskon Infra Engineering Private Limited.

REGD. OFFICE: 401, MAHAVEER JI COMPLEX,
LSC, RISHABH VIHAR, DELHI -110092

Petitioner Company

AND

Mr. Rajesh Kumar Parakh

RESIDENCE OF 5/51,
2ND FLOOR, W.E.A. KAROL BAGH, NEW
DELHI, 110005

ORDER UNDER SECTION: 59(7) of IBC, 2016

CORAM:

**SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

PRESENT

For the Liquidator: Mr. S.S. Bhati, Mr. Shobhan Mahanti, Advs.
and Mr. Y. Kaushik, PCS and Mr. Praveen Kumar, CS



ORDER

**PER: SHRI P.S.N PRASAD, MEMBER (JUDICIAL) &
SHRI RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

Date: 21.11.2023

1. This application is filed by the Liquidator under section 59 of the Insolvency and Bankruptcy Code, 2016 (“Code”) read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 seeking dissolution of M/s Iskon Infra Engineering Private Limited (hereinafter referred to as the (“Company”).

2. That the aforesaid Company was incorporated on 26.10.2009 under the Companies Act, 1956. The Registered office of the Applicant is situated at Plot No. 3, Mahaveerji Complex LSC, Rishabh Vihar, Delhi-110092, India, which lies within the territorial jurisdiction of this Bench.

3. That the following averments have been made in the petition:

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i. The Corporate Person was incorporated with the following main objects: -

a. to develop, buy, sell, import, export and deal in all kinds of software hardware, computers, computer peripherals, parts, accessories, commodities, substances and other related activities.



- b. To organize religious, educational, sight-seeing and business tours trekking expeditions, conferences and for that purpose to charter ships trains, aeroplanes, omnibuses, motor buses and carriages of every description, to book and reserve accommodation and room in hotels, metals, restaurants, boarding and lodging houses and to take on lease and hire houses furnished or unfurnished.
- c. To carry on the business as Travel Agents, Tour Operators, Clearing and Forwarding Agents and the business of booking and reserving accommodation, seats, compartments and berths on railways, ships, boats, aeroplanes, omnibuses, motorcars, motor buses and to issue tickets for the same and to hire or own taxes, motorcars, and all kinds of public transport/vehicles launches and boats.
- d. To act as IATA Agents, General Selling Agents, Sub-Agents, brokers, stockiest and agents for Airline companies, tour wholesale companies, rail and sea transport company cargo and custom clearing agents, charter party contractor, warehouse man, storekeeper, loading and unloading agents and to act as consultants and advisors for any Airlines, shipping companies and such other organisations, related thereto in India and abroad.
- e. To act as advisors and consultants in the field of travel, visa service and such other field thereof.



- ii. The details of the directors of the Applicant Company are as follows:

S. No.	Name	DIN	Designation
1.	Mr. Rajkumar Yadav	03084908	Director
2.	Mr. Radhey Shyam	07058492	Director

- iii. It is submitted that due to unforeseen circumstances arising out of Covid-19 worldwide, scenario was not good for the overall business and particularly the software and computer industry as people were not willing to operate and buy the same due to fear factor.

- iv. That Board of Director at Board meeting dated 20.06.2021 decided to liquidate the Company voluntarily under section 59 of the IBC, 2016. As required under sub-section 3 of Section 59 of IBC Code, the Board has made full inquiry into affairs of the corporate person and formed an opinion that it has no existing debt or that it will be able to pay its debts in full, from the proceeds of assets to be sold in the voluntary liquidation and accordingly, directors have made the declaration of solvency.



- v. That as proposed by the Board, the members of the corporate person in the Extra Ordinary General meeting held on 12.07.2021 passed special resolution in terms of section 59 (3) of IBC code to liquidate the corporate person voluntarily and appointed Mr. Rajesh Kumar Parakh, Insolvency Professional to act as the liquidator of the Corporate Person.
- vi. It is submitted that since, the corporate person does not have any secured and unsecured creditors, therefore, there is no requirement of getting No objection certificate as per proviso to sub-section 3 of Section 59 of the Insolvency and Bankruptcy Code, 2016.
- vii. That the Corporate Person has notified to the Registrar of companies, NCT of Delhi in e-form MGT 14 filed on 15.07.2021 about passing special resolution and same was approved by Ministry of Corporate Affairs (MCA).
- viii. That the liquidator has made the public announcement in terms of Regulation 14 of the Insolvency and Bankruptcy Board of India (voluntary Liquidation process) Regulations, 2017 on 17.07.2021 regarding commencement of liquidation of corporate person in two newspapers one in English language Financial Express and another in regional language Jansatta.



- ix. That the declaration of solvency, intimation regarding public announcement and appointment of liquidator of the corporate person, was filed with ROC in e-Form GNL-2 vide SRN T31495815.
- x. That the liquidator had opened a Bank account in the name and style of "Iskcon Infra Engineering Private Limited-In Voluntary Liquidation" in Axis Bank (Eros Ground Floor Corporation Towers, New Delhi-110019) for realization of assets and distributing payments to stakeholders.
- xi. That the liquidator had intimated the commencement of liquidation and appointment of liquidator of the corporate person to Income Tax Department on 07.07.2021 for inviting their claims, if any, as on the liquidation commencement date
- xii. That, in terms of Regulations 31 and 32 of The Insolvency & Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, the liquidator is required to sell and realize the assets of the corporate person. That as per the Statement of Assets and Liabilities as on dated 08.07.2021, the Corporate Person has the following assets as on 08.07.2021.



Current assets	
Cash on hand	Rs. 1,223/-
Balance with banks	Rs. 17,157.06/-

Investment in FDR	Rs. 1,96,428.49/-
Balances with Government authorities	Rs. 31.010/-
Non-current assets	
Non-current investments	Rs. 1,64,39,020/-
Other Long Term Loans and Advances	Rs. 8,000/-

- xiii. The liquidator was able to realise Rs. 1,93,897/- from the current assets of the Company. However, despite best efforts put in by the liquidator, realisation of other current and non-current assets could not be done. Further, no claim towards outstanding liabilities was received by the liquidator. Therefore, the Corporate Person did not owe any debt to any person on the liquidation commencement date.
- xiv. The Liquidator has further stated that he has not received any claim of operational creditor under the Public Announcement and the list of stakeholders consist of two operational creditors and the Equity shareholders of the corporate person.
- xv. That the distribution is completed and post payments towards all statutory and liquidation cost and operational creditor, therefore, there is no remaining money for the distribution to the shareholders of the corporate person.



xvi. That subsequent to making all payments, the liquidator has submitted a request with Axis Bank Limited for closure of the liquidation bank account of the corporate person.

xvii. That on completion of liquidation process and upon closure of Bank account, the liquidator has filed copy of final report along with audited accounts of the liquidation showing receipt and payment from liquidation commencement date and till the date of closure of Bank account. Copy of Final Report was also submitted with ROC in e-Form GNL-2 vide SRN T71250419 dated 10.01.2022.

xviii. That since the affairs of the Corporate Person have been completely wound up, and its assets completely liquidated the Liquidator has presented this Petition to this Tribunal for dissolution of the Corporate Person in terms of section 59(7) of the Insolvency & Bankruptcy Code, 2016

4. We have gone through the application filed by the applicant/ Liquidator seeking dissolution in terms of Section 59(7) of the Code.

5. This Tribunal directed the Petitioner to issue a notice to the RoC and also to Punjab National Bank and Oriental Bank of Commerce (now merged with PNB) since the Corporate Person has given Corporate Guarantee to them. Pursuant to the notice issued by this Tribunal, the RoC, PNB and Central Bank of India participated in the proceedings. The RoC has filed its report



dated 02.03.2022 and made some observations which are stated as under: -

- i. *As per MCA-21 record, it has seen that total 23 charges are still showing against the Company towards Corporate guarantee of more than Rs. 1257 Crores approx. beginning from year 2010 onwards and open as on date. As per MCA-21 records, no satisfaction of charges has been filed till date by the Company / liquidator. Therefore, before dissolution of the Company, the liquidator must take steps for satisfaction of such charges.*
- ii. *Further as per last balance sheet filed by the company before MCA21 portal, Company has shown long-term borrowing under Non-current Liabilities head worth Rs 11,62,26,000/- (which include Term loan of Rs 4,22,76,000/- and Compulsory convertible debentures (CCD) of Rs 7,39,50,000/-). The amount of CCD has been carried on accounts as on the date of commencement of liquidation i.e as on 08.07.2021 as submitted by liquidator in its petition.*
- iii. *The Company has non-current investment of Rs 1,96,82,470 approx. in forms of unquoted shares in different co. and Investment in CCD in terms of Last balance sheet available on MCA-21 portal for the F.Y ended 31.03.2020 However, liquidator vide his report intimated that despite his efforts nothing has been realized.*



iv. *As per MCA-21 records, company failed to file Balance Sheet and Annual Return for the financial year 2020-21, therefore the company has violated provisions of sections 137(1) & 92(4) of Companies Act, 2013*

6. The Central Bank of India has filed its reply dated 08.07.2022.

The objections of the Bank are as under: -

- i. That M/s Abhinav Steels and Power Limited, was granted a term loan and working capital facilities by consortium of banks namely Oriental Bank of Commerce, Punjab National Bank and Central Bank of India.
- ii. The Petitioner Company was one of the Corporate Guarantors of the above credit facility.
- iii. That M/s Abhinav Steels and Power Limited filed an application for demerger which was allowed by this Tribunal on 27.11.2017 and the Company was demerged into 3 companies i.e.,
 1. M/s Abhinav Steels and Power Limited
 2. RS Ingots and Billet Private Limited (Resulting Company 1)
 3. Siddarth Rolling and Energy Private Limited (Resulting Company 2)
- iv. That pursuant to the scheme of arrangement duly approved by the Tribunal, it was decided between the Banks that they will bifurcate the existing capital between the 3 companies as stated above.
- v. That the Petitioner Company has executed a deed of corporate guarantee dated 28.12.2018 with all the 3 banks.



- vi. That out of the 3 companies, two of them are under CIRP.
- vii. That the Petitioner failed to point out the existing corporate guarantee for the credit facility.
- viii. That the petitioner company is liable to be penalised under Section 195(1)(b) and 340 of Code of Criminal Procedure, 1973 and under Section 65 of the IBC, 2016.

7. The Liquidator has made the following submissions: -

- i. That the Central Bank of India cannot claim the same amount of debt from both Principal Borrower and Corporate Guarantor at the same time when either of them is undergoing Corporate Insolvency Resolution Process. Further, the Hon'ble National Company Law Appellate Tribunal, New Delhi in its judgement dated 08.01.2019 in the matter of Dr. Vishnu Kumar Aggarwal versus Piramal Enterprises Limited held that:

"Once for same set of claim an application under Section 7 of the Insolvency & Bankruptcy Code filed by the Financial creditor is admitted against one of the Corporate Debtor ('Principal Borrower' or 'Corporate Guarantor(s)'), second application by the same 'Financial Creditor for same set of claim and default cannot be admitted against the other 'Corporate Debtor' (the 'Corporate Guarantor(s) or the 'Principal Borrower'

- ii. In the present matter, it is important to mention that Abhinav Steels and Power Limited and R S Ingot and Billet Private Limited (the Principal Borrowers after approval of scheme of arrangement for Demerger) are undergoing Corporate Insolvency Resolution Process since 31st July 2019 due to default in making the repayment of borrowed amount



iii. That Corporate Guarantee given by the Corporate Person is a contingent liability of the Company as mentioned in the Financial Statements of the Corporate Person. It is pertinent to mention that the Central Bank of India has still not filed any claim with the Corporate Person claiming the amount from them for which guarantee was given.

8. We have gone through the observations made by the RoC, Central Bank of India and the Reply filed by the petitioner company.

9. The Liquidator has relied on the judgment of the Hon'ble NCLAT in the matter of Dr. Vishnu Kumar Aggarwal versus Piramal Enterprises. In this case, it was held that CIRP cannot be initiated for the same amount of debt against both the principal borrower and the corporate guarantor. Nowhere in the judgment is it stated that the liability of the Corporate Guarantor is absolved once CIRP is initiated against the principal borrower.

10. In the matter of *TUF Metallurgical Pvt. Ltd. vs. Wadhwa Glass Processors Pvt. Ltd. (21.07.2022 - NCLAT) : MANU/NL/0464/2022* an appeal was filed against the decision of NCLT, wherein the NCLT, New Delhi, Principal Bench dismissed the petition filed under section 7 of the Code on the ground that it has been filed against the Principal Borrower as well as Corporate Guarantor on the analogy that the CIRP proceeding has already been initiated. The Hon'ble NCLAT set aside the decision of NCLT and held as under: -

*8. While opposing this appeal, Counsel for the Respondent has vehemently argued that the **decision in the case of Dr. Vishnu Kumar Agarwal (Supra)***



has not yet attained finality as the same is under consideration before the Hon'ble Supreme Court in an appeal, but he could not deny the fact that there has been an amendment in the year 2018 in Section 60(2) on the basis of which the NCLT has been conferred the jurisdiction to try the application filed not only against the Principal Borrower but also the Corporate Guarantor simultaneously.

9. Since the issue which is to be answered is no more res-integra in view of the decisions in the case of State Bank of India (Supra) and Lalit Kr. Jain (Supra) much less the amendment in Section 60(2) of the Code, we are of the considered opinion that the decision rendered by the Adjudicating Authority is patently illegal and deserves to be set aside.

10. In view of the aforesaid discussion, the present appeal is hereby allowed and the impugned order is set aside. The matter is remanded back to the Adjudicating Authority to take a decision on the application bearing CP (IB) 356/PB/2019 filed by the Appellant under Section 7 of the Code against the Corporate Guarantor in accordance with law.

11. We are of the considered view that Guarantor's liability is co-extensive with that of the principal debtor and it cannot be absolved just because CIRP is initiated against the principal borrower. Accordingly, the present petition stands **dismissed**.

Let a copy of this order be served to the parties concerned.

SD/-

**(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)**

SD/-

**(P.S.N PRASAD)
MEMBER (JUDICIAL)**