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

IA(IBC)/1098(KB)2023
in
CP(IB)/245(KB)2021

Under section 33 read with section 54 of the Insolvency & Bankruptcy Code, 2016
And Rule 11 of the National Company Law Tribunal Rules, 2016

In the matter of:

Express Dairy Company Limited

…. Operational Creditor

Versus

Njoy Blues LLP
(**Identification No. AAO-3175)**

.... Corporate Debtor

And

In the matter of:

Mr. Arun Poddar,
Resolution Professional of Njoy Blues LLP

… Applicant

Order pronounced on: 24/11/2023

Coram:

Shri Rohit Kapoor	:	**Member (Judicial)**
Shri Balraj Joshi	:	**Member (Technical)**

Appearances (through video conferencing):

For RP	:	Ms. Swapna Choubey, Adv. Mr. Udit Agarwal, Adv. Mr. Arun Poddar, RP in person
For R3 in IA/265/2023	:	Mr. Siddhanth Makkar, Adv.
For OC	:	Ms. Ankita Agrahari, Adv.

O R D E R

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.

2. **IA(IBC)/1098(KB)2023** is an application filed by the Resolution Professional **("RP")** of **Njoy Blues LLP**, the Corporate Debtor, praying for following relief :

   (a) To allow the instant application;
   (b) To pass necessary order of liquidation under Section 33 of the Code, 2016;
   (c) To pass necessary order of dissolution under section 54 of the Code, 2016 read with section 60(5) and Rule 11 of NCLT Rules;
   (d) Such other order/orders as this Hon'ble Tribunal may deem fit and proper.

   This application is supported by an affidavit[1] duly affirmed by Mr. Arun Poddar, the RP.

3. This Adjudicating Authority *vide* order[2] dated 29/11/2022 in CP(IB)/245(KB)2021, had ordered initiation of CIRP against the Corporate Debtor. Mr. Arun Poddar 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 (**CIRP Regulations 2016**), Public Announcements in **Form A** was published on 02/12/2022 in "*Financial Express*" (English) and "*Ekdin*" (Bengali) inviting claim from the creditors.[3]

5. Committee of Creditors **("CoC")** was duly constituted on 19/12/2022 with the sole member being the petitioning Operational Creditor and the 1st CoC meeting was held on 27/12/2022. At the said 1st meeting of the CoC, appointment of IRP

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[1] At pages 18 and 20 of the application
[2] Annexure 'A' at pages 21 to 30 of the application
[3] Annexure 'B' at pages 31 and 32 & Averments in para 3 at page 8 of the application

as Resolution Professional (**"RP")** was approved with 100% voting share**.**[4] A copy of the minutes of the 1st CoC meeting forms Annexure 'C'[5].

6. Due to non-cooperation by the suspended members of Board of Directors of the Corporate Debtor, an application u/s. 19(2) of the Code being IA(IBC)/265(KB)2023 has been filed with this Adjudicating Authority. In view of the applicant having filed the application being IA(IBC)1098(KB)2023 seeking liquidation and dissolution of the Corporate Debtor, the applicant sought to withdraw IA(IBC)/265(KB)2023 as the same has been rendered infructuous. Accordingly, this Adjudicating Authority vide its order dated 08/08/2023 dismissed the IA(IBC)/265(KB)2023 as infructuous.

7. The applicant came to know that Mr. Nilanjan Dasgupta, one of the suspended members of the Board of Directors of the Corporate Debtor was arrested on 16/02/2023 by the Gariahat Police Station in PS Case No. 48 dated 24/03/2022 u/s. 419, 420, 406 and 1208 of the IPC and was under Police custody until 27/02/2023 by virtue of the order passed by the Ld. CJM, Alipore.[6]

8. As per the records available with the Ministry of Corporate Affairs, it was found that the Corporate Debtor has filed the financial statement for the Financial Year 2018-19 only and no other documents has been received from the suspended members. A copy of the said financial statement for the Financial Year 2018-19 forms **Annexure 'D'**[7].

9. It is stated that after due discussions and deliberations at the 2nd CoC meeting held on 24/01/2023, two Valuers have been appointed for valuation of securities and financial assets of the Corporate Debtor. However, due to non-availability of any information, the applicant could not able to share the same with the Valuers. Publication of Form G inviting Expression of Interest ("**EoI"**) from prospective resolution applicants **("PRAs")** was also discussed at the said 2nd CoC meeting.

[4] Averments in Para 6 at page 8 of the application
[5] At pages 33 and 59 of the application
[6] Averments in Para 9 at pages 9 and 10 of the application
[7] At pages 60 and 61 of the application

After initial discussions, the agenda for the same was deferred for the next meeting. During the said 2nd CoC meeting, the CoC has also requested the applicant to put before the CoC agenda for liquidation and dissolution of the Corporate Debtor based on the unaudited financial statement for the Financial Year 2018-19 filed by the Corporate Debtor, which reveals that the Corporate Debtor had no assets, movable or immovable except cash balance, rental deposit and other current assets with a total amount of Rs.1,09,113/- and that the Corporate Debtor has not filed any financial accounts with the Registrar of Companies, Kolkata, after financial year 2018-19, due to which no information on assets as well as the operations of the Corporate Debtor is available to ascertain financial health of the Corporate Debtor. A copy of the Minutes of the meeting of the 2nd CoC meeting forms **Annexure "E"[8].**

10. The applicant states that as there were no business conducted by the Corporate Debtor in last two years and since there has been no revenue generated by the Corporate Debtor which reveals from the Bank Statements received from the ICICI Bank, Goalpark and Ujjivan Small Finance Bank Ltd., K. N. Sen Road, Bosepukur, Kasba that funds in both accounts of the Corporate Debtor is 'Nil'/'Zero'. Copies of Bank Statements of ICICI Bank, Goalpark and Ujjivan Small Finance Bank Ltd., K. N. Sen Road, Bosepukur, Kasba forms **Annexure 'F'[9].**

11. At the 3rd meeting of the CoC held on 06/02/2023, the members of the CoC after detailed discussions and deliberation on the aspect of continuing with the CIRP process knowing fully that there are no assets and no resolution plan will come if Form G published, has decided not to put on vote on agenda for publication of Form G inviting EoI since the Corporate Debtor does not have any assets and not doing any business and that further decided to liquidate and dissolve the Corporate Debtor. A copy of the minutes of the 3rd CoC meeting forms **Annexure**

[8] At pages 62 to 75 of the application
[9] At pages 76 to 83 of the application

'G'[10] to the application. Since the Corporate Debtor has no assets no purpose will be served to go for liquidation first and then dissolution, which will only increase the CIRP and liquidation costs.

12. Accordingly, the applicant has filed an application being IA(IBC)498(KB)2023 seeking early dissolution of the Corporate Debtor. This Adjudicating Authority *vide* order[11] dated 04/05/2023 has passed the following orders and dismissed the application: -

> *"IA(IBC)/498(KB)2022 – In IA(IBC)/365(KB)2023 the respondents are directed to furnish the detailed information and the documents as sought by the RP. This application is, therefore, dismissed at this stage*."

13. It is stated in the application that the applicant has sent several e-mails to the suspended members of the Board of Directors of the Corporate Debtor for cooperation as well as for providing all documents and information. However, not a single document and/or information has been provided. Copies of all e-mails form **Annexure 'I'**[12]**.**

14. At the 6th meeting of the CoC held on 25/05/2023, the members of the CoC having 100% voting share after due deliberations has passed a resolution as follows: -

> ***"RESOLVED THAT*** *pursuant to sub-section (2) of Section 33 of the Insolvency and Bankruptcy Code, 2016, and other applicable provisions of Insolvency and Bankruptcy Code, 2016 and rules and regulations made thereunder, the approval of the Committee of Creditors of Njoy Blues LLP be and is hereby accorded for the liquidation of the Corporate Debtor.*

A copy of the minutes of the 6th CoC meeting forms **Annexure 'J'**[13]**.**

15. It is stated in the application that the CoC has also discussed regarding early dissolution of the Corporate Debtor in view of the fact that the Corporate Debtor has no assets, no business being carried out since last two years and overall the

[10] At pages 84 to 99 of the application
[11] Annexure 'H' at pages 100 and 101 of the application
[12] At pages 102 to 108 of the application
[13] At pages 109 to 126 of the application

financial position, which reveals from the Bank Statements issued by ICICI Bank Ltd. and Ujjivan Small Finance Bank Ltd. showing 'zero' balance in the accounts.

16. The applicant has proposed his name to be appointed as Liquidator and submitted his consent also, a copy whereof forms **Annexure 'K'**[14] to the application.

17. It is to be noted here that 180 days CIRP period had expired on 27/05/2023 and no extension was sought.

18. 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

[14] At page 127 of the application

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 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 (moveable or immovable) with the Corporate Debtor and that no business being carried out since last two years as stated by the RP and that there are insufficient funds to meet the full CIRP cost as well as Liquidation cost, and that the Bank Statements issued by ICICI Bank Ltd. and Ujjivan Small Finance Ltd. showing "**zero**" balance, 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.[15]

[15] (1) Order dated 19/09/2022 in IA No.1058 of 2022 in CP No.4016 of 2018 [M/s. Godrej and Boyce Manufacturing Co. Ltd. –vs- Technic Projects Constructions Pvt. Ltd.] of the NCLT, Mumbai Bench, Court-III.
(2) Order dated 16/11/2020 in IA No.435/2020 in CP(IB)No.96/BB/2020 [M/s. Synew Steel Private Limited] of the NCLT, Bengaluru Bench.

19. 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., ***Njoy Blues LLP*** from the date of this Order, and the Corporate Debtor stands dissolved. Consequently, RP stands relieved subject to procedural compliances.

20. 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.

21. ***IA(IBC)/1098(KB)2023*** in ***CP(IB)/245(KB)2021*** is allowed with the above directions and the ***IA(IBC)/1098(KB)2023*** and ***CP(IB)/245(KB)2021*** are hereby **disposed of** accordingly**.**

22. 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.

23. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

24. File be consigned to records.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 24th day of November, 2023.

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