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

IA(IBC)/1452(KB)2023
in
CP(IB)/454(KB)2019

Under sections 54 of the Insolvency & Bankruptcy Code, 2016
and regulation 14 of the IBBI (Liquidation Process) Regulations, 2016

In the matter of:

DNK Lorry Services

….***Operational Creditor***

Versus

Accutime Logistic Private Limited (CIN: U63090WB2007PTC114917)

…. ***Corporate Debtor***

And

In the matter of:

Seikh Abdul Salam,
Liquidator of Accutime Logistic Private Limited

… ***Applicant***

Order reserved on: 17/10/2023

Order pronounced on: 14/12/2023

Coram:

Smt. Bidisha Banerjee	**:**	**Member (Judicial)**
Shri Arvind Devanathan	**:**	**Member (Technical)**

Appearances (through video conferencing):

For Liquidator	:	Mr. Udit Agarwal, Adv.
For LIC Housing Finance	:	Mr. Abhimanyu Shandilya, Adv. Ms. M. Chakrkaborty, Adv.
For Financial Creditor	:	Mr. Avishek Guha, Adv. Ms. Arunika Dutta, Adv.

O R D E R

Per: Arvind Devanathan, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.

2. **IA(IBC)/1452(KB)2023** is an application filed u/s. 54 of the Insolvency and Bankruptcy Code, 2016 **("IBC 2016")** and regulation 14 of the IBBI (Liquidation Process) Regulations, 2016 by the Liquidator of **Accutime Logistic Private Limited**, the Corporate Debtor, seeking early dissolution of the Corporate Debtor. This application is supported by an affidavit[1] duly affirmed by the Liquidator.

3. Brief facts of the Case are as follows: -

   (a) This Adjudicating authority *vide* its order[2] dated 14/01/2022 in CP(IB)/454(KB)2019, had ordered initiation of CIRP against the Corporate Debtor appointing Seikh Abdul Salam as the Interim Resolution Professional ("**IRP**"). Liquidation order[3] was passed on 10/08/2023 appointing the applicant as the Liquidator.

   (b) In terms of regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 **("Liquidation Process Regulations")** public announcement[4] in **Form B** was made on 24/02/2023 in "*Business Standard*" (English) (*All Editions*), "*Aajkal*" (Bengali) and "*Tarun Bharat*" (Marathi) calling upon the stakeholders to submit their claims stipulating last date of submission of claims on 22/03/2023. In response, the applicant received two claims from Financial Creditors and nine claims from Operational Creditors.

   (c) Since LIC Housing Finance Limited **("LIC HFL"),** one of the secured financial creditor/stakeholders has decided not to relinquish their security interest/charge over the assets mortgaged by the Corporate Debtor, Stakeholders' Consultation Committee **("SCC")** was constituted comprising

[1] At pages 23 and 25 of the application
[2] Annexure 'A' at pages 26 to 33 of the application
[3] Annexure 'B' at pages 36 to 42 of the application
[4] Annexure 'D' at pages 43 to 53 of the application

of Bandhan Bank, Employee State Insurance Corporation **("ESIC")** and DNK Lorry Service. The applicant has filed List of Stakeholders along with Asset Memorandum and Preliminary Report with the Adjudicating Authority on 05/05/2023. A copy of List of Stakeholders forms **Annexure 'E'**[5].

(d) 1st SCC meeting was held on 03/03/2023, wherein the applicant apprised the CoC members that two Valuers were appointed on 28/02/2023 for valuation of land and building, which is the only asset Corporate Debtor possessed jointly with its sister concern, being a three storied building situated at New Alipore, Kolkata 700053, wherein only 2% of the property having been officially mutated in the name of the Corporate Debtor and the same was mortgaged with LIC HFL. Save and except the above assets jointly owned with sister concern, no other assets were found that could be included in the liquidation estate. The inspection report submitted by Mr. Seikh Tariq Anowar during his preliminary inspection of the property forms **Annexure 'F'**[6]**.**

(e) At the 4th SCC meeting held on 29/04/2023, the Liquidator has recommended for early dissolution of the Corporate Debtor since there are no assets that could form part of the liquidation estate. The Bandhan Bank having 82.74% voting share in the SCC, agreed to the above proposition taking into consideration of the fact that there are no additional assets that could be liquidated by the Liquidator, early dissolution is the only option to minimise the liquidation expenses.

(f) The Liquidator has shared the total outstanding liquidation cost[7] with both the secured financial creditors, Bandhan Bank and LIC HFL. Out of the total costs of Rs.4,40,306/-, the share of Bandhan Bank is Rs.3,69,020/- and that of LIC HFL is Rs.71,286/-. However, LIC HFL has paid its full share but Bandhan Bank has made a part payment of its share and an amount of

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5 Annexure 'E' at pages 54 to 56 of the application
6 Annexure 'F' at pages 58 to 60 of the application
7 Annexure 'G' at pages 61 to 80 of the application

Rs.92,539/- is still due and payable. However, Ld. Counsel appearing on behalf of the Bandhan Bank on 17/10/2023 submitted before this Adjudicating Authority that the amount of Rs.92,539/- is to be paid to the Liquidator 'during the course of this week and the same was duly recorded in the order dated 17/10/2023, while reserving the IA(IBC)/1452(KB)2023 for orders.

(g) At the 7th SCC meeting held on 07/07/2023 after due deliberations, it was resolved to withdraw IA(IBC)/214(KB)2022 filed u/s. 19(2) of the IBC 2016 to minimize the burden on the SCC members. Similarly, other pending application being IA(IBC)/907(KB)2022 for exclusion of 131 days from CIRP period has become infructuous. Accordingly, this Adjudicating Authority *vide* its order dated 17/10/2023 dismissed both the above two applications. However, *vide* the said order dated 17/10/2023 in Cont.A.(IBC)/3(KB)2022, this Adjudicating Authority disposed of the contempt application with direction upon the Operational Creditor to make payment of Rs.3 Lakhs as was ordered *vide* 'order of admission' dated 14/01/2022 within four weeks of receipt of the said order dated 17/10/2023. However, in the event of non-payment of Rs. 3 Lakhs by the Operational Creditor, liberty was granted to the RP to revive the Contempt Proceedings being Cont.A.(IBC)/3(KB)2022 against the Corporate Debtor.

(h) In the above conspectus, Ld. Counsel for the Liquidator submitted that the instant application be admitted and early dissolution of the Corporate Debtor be allowed.

4. As per regulation 41 of the Liquidation Process Regulations, the Liquidator opened a bank account no.078663700000 1661 in the name of **"Accutime Logistics Private Limited – In Liquidation"** with Yes Bank, Kolkata, on 29/04/2023. It is stated that the RP could not close the Liquidation Account due to pendency of payment of balance amount of Rs.92,539/- by the Bandhan Bank. For the aforesaid reasons, the Liquidator could not audited the liquidation account since the balance professional fees is yet to be received from Bandhan

Bank. However, the Liquidator has annexed with the application unaudited statements of receipts and payments of liquidation account, which forms Annexure 'K'[8]. Copy of Bank Statements forms Annexure 'L[9].

5. In the event the Liquidator received the payment of Rs.3 Lakhs from the Operational Creditor, the same shall be apportioned amongst the Financial Creditor who has contributed towards the CIRP and Liquidation costs.

6. Under regulation 45(3) of the Liquidation Process Regulations, the Liquidator has filed **Compliance Certificate** in **Form H**[10] giving the details of the Liquidation therein.

7. Under regulation 45 of the Liquidation Process Regulations, the Liquidator had annexed the **Final Report**[11] with the application giving details of the liquidation process.

8. 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.*
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> **Regulation 14 of IBBI (Liquidation Process) Regulations** provides as under:
>
> **14. Early dissolution.**

[8] At page 121 of the application
[9] At page 123 of the application
[10] Annexure 'N' at pages 125 to 130 of the application
[11] Annexure 'D' at pages 42 to 410 of the application

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.

9. 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.

10. Upon hearing the Ld. Counsel appearing for the Liquidator and perusing the documents annexed to the application, it appears that the since the Corporate Debtor has no assets, the Financial Creditors has to contribute towards the CIRP and Liquidation costs. Thus, the affairs of the Corporate Debtor deemed to have been completely wound up and its assets have been completely liquidated. In view of the above facts and circumstances stated above, there is no impediment to the Corporate Debtor being dissolved, and it is ordered accordingly.

11. In the event of the Liquidator received the payment of Rs.3 Lakhs from the Operational Creditor, the same shall be apportioned amongst the Financial Creditors, who have contributed towards the CIRP and Liquidation costs. Further, the Liquidator shall file an affidavit with this Adjudicating Authority after closure of the said Liquidation Account with YES Bank for records without fail.

12. The Liquidator is further 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.

13. The Liquidator shall stand discharged from his responsibilities, subject to all procedural compliances and directions as above.

14. ***IA(IBC)/1452(KB)2023*** is allowed with the above directions and both the

IA(IBC)/1452(KB)2023 and ***CP(IB)/454(KB)2019*** are hereby disposed of accordingly.

15. 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.

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

17. File be consigned to records.

Arvind Devanathan
Member (Technical)

Bidisha Banerjee
Member (Judicial)

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

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