

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH**

I.A.No.2/2020  
U/s. 54 of the IBC, 2016  
R/w Rule 14 of the IBBI (Liquidation Process)  
Regulation, 2016  
**And**  
C.P.(IB)No.72/BB/2019  
U/s.9 of IBC, 2016  
R/w Rule 6 of I&B (AAA) Rules, 2016

**In the matter of:**

Gorur Narasimhamurthy Venkataraman  
*Liquidator of*  
*M/s. Bunt Solar India Pvt. Ltd.*  
No.8, First Floor,  
Behind Rameswara Temple,  
4<sup>th</sup> Main, Chamarajpet,  
Bengaluru – 560 018.

- Applicant

**Date of Order: 6<sup>th</sup> January, 2021**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present, through Video Conference:**


The Liquidator : Shri Gorur Narasimhamurthy Venkataraman  
For Karnataka Bank : Shri Y.P.Gokul

**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)



1. I.A.No.2/2020 in C.P. (IB)No.72/BB/2019 Gorur Narasimhamurthy Venkataraman, Liquidator of M/s. Bunt Solar India Pvt. Ltd. (Applicant), U/s.54 of IBC, 2016 R/w Rule 14 of IBBI (Liquidation Process) Regulation, 2016, by interalia seeking to direct the Financial Creditor namely Karnataka Bank Limited, Basaveshwaranagar Branch to (i) realize the third party guarantee at the earliest and (ii) to remit the CIRP Cost/ Liquidation Cost to the Liquidator; to direct M/s. Bharat Co-op Bank (Mumbai) Ltd., to foreclose the Fixed Deposits as per the Liquidator's Letter dated 20.12.2019 and remit the proceeds of fixed deposits to Liquidation Bank Account and to pass suitable Orders for early dissolution of the Corporate Debtor (M/s. Bunt Solar India Pvt. Ltd).
2. Brief facts of the case, which are relevant to the instant case, are as follows:
  - (1) Initially, the main Company Petition bearing C.P.(IB)No.72/BB/2019 filed by M/s. Rashmika Info Technologies Pvt. Ltd. (Petitioner) U/s.9 of IBC, 2016 in respect of M/s. Bunt Solar India Pvt. Ltd. (Respondent/Corporate Debtor), was admitted by the Adjudicating Authority, vide its Order dated 14.06.2019, by appointing the Applicant as IRP, imposing moratorium etc. During the first meeting of CoC the IRP was appointed as Resolution Professional. Subsequently, the Corporate Debtor was placed under Liquidation vide an Order dated 05.09.2019 passed in I.A No.408/2019. In pursuant to the said Order he made public announcement in Form-B dated 05.10.2019, one in Deccan Chronicle (English Newspaper) another in local language Vijayavani (Kannada Newspaper), stating that the Corporate Debtor is in Liquidation, in terms of Regulation 12 of the IBC (Liquidation Process) Regulations, calling upon stakeholders to submit their claims on or before 30.10.2019.



- (2) It is stated Liquidation Value being Nil as reported in Asset Memorandum and only the Financial Creditor has to realize the Security Interest of third party guarantee and there are no other assets for realisations. Even the amounts realised from Banks in the Form of Fixed Deposit are insufficient to cover the Liquidation Process cost.
- (3) In view of insufficient amounts and there are only two possible realisation ~~are~~ as follows:
- i From Financial Creditor: As per Section 52(8) of IBC, 2016, Financial Creditor has to contribute towards CIRP/ Liquidation Cost before realizing the Security Interest of third party guarantee. However, Financial Creditor is pleading that since they are realizing security interest through SARFAESI Act and need not contribute to CIRP cost/Liquidation Cost.
  - ii The 2<sup>nd</sup> possible realization is from M/s. Bharat Co-op Bank (Mumbai) Ltd., wherein Liquidator has located two fixed deposits, one FD amounting Rs.1,41,129/- and another one Rs.1,00,000/- and matures on 09.02.2020 and 06.02.2022 respectively. Liquidator has taken action to foreclose the above Fixed Deposits to meet the Liquidation process cost, but the Banker M/s.Bharat Co-op (Mumbai) Bank Ltd., through Advocates has taken a stand that these two Fixed Deposits are covered and pledged for Bank Guarantee as a Performance guarantee in respect of Corporate Debtor's customers where Corporate Debtor given as guarantee.
- (4) Accordingly, the Applicant has filed a Final Report of the Liquidation, by inter-alia stating as follows:



- a. Statement of Account maintained by the Liquidator of Bunt Solar India Private Limited (in Liquidation) for the period from 1<sup>st</sup> October, 2019 to 30<sup>th</sup> December, 2019

Payments	Amount in Rs.
<b>RECEIPTS</b>	
Opening Balance	
Cash	1,23,000.00
Vijaya Bank, Gandhi Bazar Branch – Bunt Solar India Private Limited in Liquidation	1,49,862.37
Vijaya Bank, Gandhi Bazar Branch - Bunt Solar India Private Limited in Liquidation FD-Account	Nil
<b>RECEIPTS:</b>	
Receipts from Book debts	Nil
Interest received on Fixed Deposit	Nil
Miscellaneous Receipts	Nil
Income Tax Refund	Nil
Sale of Assets	Nil
<b>TOTAL,</b>	<b>2,72,862.37</b>
<b>PAYMENTS</b>	
Bank Charges	29.50
Consultancy Services (Professionals)	13500.00
Public Announcement	62,055.00
Legal Fee	64,800.00
Valuation Fee	5,900.00
CIRP Expenses	81,780.00
Liquidation Expenses	36,220.00
<b>Closing Balance</b>	<b>2,64,284.50</b>
Cash	Nil
<b>Bank</b>	
Vijaya Bank, Gandhi Bazaar Branch	8,577.87
Vijaya Bank, Gandhi Bazaar Branch – FD Account	Nil
<b>TOTAL</b>	<b>2,72,862.37</b>

3. The Karnataka Bank Ltd., (Financial Creditor), has filed Statement of Objections dated 25.02.2020, by inter alia contending as follows:
- (1) The instant Application is wholly misconceived, untenable and is liable to be rejected. The instant Application does not contain the



amount which is said to be CIRP Cost/Liquidation Cost and for payment of which a direction is sought.

- (2) The Liquidator by his letter dated 02.01.2020 claimed a sum of Rs.7,83,200/- towards Resolution Professional expenses and a sum of Rs.11,16,179/- by way of Liquidation expenses. So far as the Resolution Professional expenses is concerned, the Adjudicating Authority. by order dated 05.09.2019 clearly directed the Financial Creditor to review the expenditure incurred by Resolution Professional and also to verify the same through perusal of relevant documents. In spite of this, the Liquidator has not furnished any of the relevant documents such as Bills, Vouchers etc..
- (3) The Liquidator has also claimed a sum of Rs.11,16,179/- by way of Liquidation expenses. The question of payment of this amount also does not arise, as the Financial Creditor has initiated proceedings for enforcing the Security given by a 3<sup>rd</sup> Party Guarantor, under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – vide Regulation 37 (7) of the IBBI (Liquidation Process) Regulations, 2016. The Liquidator is appointed by this Adjudicating Authority to liquidate only the assets of the Corporate Debtor and not of the Co-obligant/Guarantor. The Liquidator has no hold on the property of the Co-obligant/ Guarantor. His work is limited to the assets of the Corporate Debtor only in this Liquidation proceeding.
- (4) Since the security of the property given is by a 3<sup>rd</sup> party and not by the Corporate Debtor, question of payment of any amount to the Liquidator from out of realisation of such Security, does not arise. Further, the Financial Creditor has also not realised the 3<sup>rd</sup>



party Security so far and the same is subject to litigation before the Civil Court.

- (5) In the present Application the Liquidator has entered into an Agreement with Operational Creditor for payment of the expenses relating to IRP/RP/Liquidator's fee. Thus when the IRP/RP/Liquidator has entered into such an Agreement, he is estopped from making any claim against the Financial Creditor. The IRP/RP/Liquidator has to enforce such an agreement. The claim for Rs.11,16,179/- is made as inclusive of 1/5<sup>th</sup> of the estimated value of the Secured assets. The expenses and the fees claimed by the Liquidator are contrary to Regulation 6 of the IBBI (Liquidation Process) Regulation, 2016. As admitted by the Liquidator, there are no assets of whatever nature of the Corporate Debtor for realization, however, the Applicant claimed huge amount of Rs.18,99,379/- The realisation of the secured asset given by a 3<sup>rd</sup> party Guarantor may not be sufficient even to meet the huge dues exceeding Rs.7.43 Crores payable to it. Hence, the Application may be rejected.

4. Heard Shri G.N.Venkataraman, Liquidator, **through Video Conference.** We have carefully perused the pleadings of both the along with extant provisions of the Code, and the Rules made there under.

5. Before considering the merits of case, it is necessary to refer relevant provisions and rules, as available under the Code and the Rules made thereunder.

**Section 54 of the Code reads as** (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”.*

**Rule 14 of IBBI (Liquidation Process) Regulations, 2016 reads as**  
**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”.*

6. In terms of Section 60 of Code, the Adjudicating Authority shall be NCLT having territorial jurisdiction over the place, where the registered office of corporate persons is located. By conjointly reading the above provisions, the ultimate objective of Code is either to resolve the issue by way of Resolution Plan or to dissolve the Corporate Debtor, as expeditiously as possible. <sup>90</sup> If the facts and circumstances of <sup>the</sup> a case, justify there would not serve any purpose to keep the Corporate Debtor under regular CIRP proceedings, and thereafter under Liquidation proceedings, under the provisions of Code, the Adjudicating Authority, by exercising its inherent powers conferred under the Act, can pass appropriate order(s) in the interest of speedy justice.
7. The main point for consideration in the instant Application is whether the Corporate Debtor can still be continued so as to strictly comply with all extant provisions of Code and rules made hereunder, in the absence of any realisable assets.

8. The facts as mentioned above justify dissolution of the Company rather than to continue Corporate Debtor under Liquidation process, under the extant provisions of Code and the Rules there under. Since nothing remains to be realised, the liquidation process under the provisions of Code is deemed to have been completed under Chapter III of Part II of Code. Therefore, it would be just and proper for the Adjudicating Authority to dissolve the Company, as prayed for by the Liquidator.
9. So far as the claims of the Applicant are concerned, it is to be stated that the Applicant without impleading necessary parties, he cannot seek any directions against them and thus the Application is to be rejected on this ground alone. In addition to this, as rightly stated by Karnataka Bank Ltd., (Financial Creditor), as mentioned supra, the Applicant is not entitled for any additional fee as claimed. We are satisfied that the Applicant got adequate fee in comparison to the work he has done.
10. In the result, by exercising powers conferred on the Adjudicating Authority, especially under Section 54 and other connected Provisions of Code, and the Rules made there under, **C.P.(IB)No.72/BB/2019 and I.A.No.2/2020**, are hereby disposed of with the following directions:
- (1) It is hereby dissolved the Corporate Debtor namely, M/s. Bunt Solar India Pvt. Ltd., with immediate effect;
  - (2) The Registry is directed to forward a copy of this Order to the Registrar of Companies, Karnataka, Bangalore;
  - (3) The Liquidator is also directed to forward copies of this Order to all other Statutory Authorities including IBBI, connected with the affairs of the Company.



- (4) Personal liability/Guarantee of any Director/Promoter of the Corporate Company, if any, would not absolve them by virtue of this order. Aggrieved party/Parties are liberty to continue or to take appropriate legal course of action against them.



**(ASHUTOSH CHANDRA)**  
**MEMBER, TECHNICAL**



**(RAJESWARA RAO VITTANALA)**  
**MEMBER, JUDICIAL**

Shruthi