/

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I

IA No. 1560 of 2021
in
C.P. (IB) No. 533/MB/2018

(An Application under Section 54 of the Insolvency and Bankruptcy Code, 2016)

Mukesh Kathuria
Liquidator for
Tork Fastners Pvt. Ltd., ... *Applicant*

In the matter of:
C.P. (IB) No. 533/MB/2018

CB Yashi & Co. ... Operational Creditor
V/s
Tork Fastners Private Limited ... Corporate Debtor

Date of Order: 11 .08.2021

CORAM:
Shri. Bhaskara Pantula Mohan, Hon'ble Acting President
Shri. Narender Kumar Bhola, Hon'ble Member (Technical)

Appearance:
For the Applicant: Mr. Agam H. Maloo, Advocate.

Per: Narender Kumar Bhola, Member (Technical)

ORDER

1. This is an Application by the Liquidator of Tork Fastners Private Limited (Corporate Debtor) under Section 54 of the

Sd/-

Insolvency and Bankruptcy Code, 2016 (the Code) r/w Regulation 45 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (the Regulations), seeking dissolution of the Corporate Debtor.

2. The facts leading to the present Application are as under:
   i. An Application for commencement of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor filed under Section 9 of the Code was admitted by this Tribunal *vide* order dated 22.07.2019 and Mr. Bharatiraju Vegiraju was appointed as the Interim Resolution Professional (IRP) who was then confirmed as the Resolution Professional (RP) of the Corporate Debtor.
   ii. Subsequently, the RP filed an Application under Section 33(2) of the Code seeking liquidation of the Corporate Debtor which was allowed by this Tribunal *vide* order dated 29.10.2020.
   iii. It would be profitable here to clarify an inadvertent typographical error appearing in the order dated 29.10.2020, wherein, Mr. Bharatiraju Vegiraju has been appointed as the Liquidator for the Corporate Debtor. However, an Application (IA No. 1614 of 2020) filed by the RP was allowed by this Bench on 29.10.2020 allowing amendment in the Liquidation Application (IA No. 3680 of 2019) for substitution of name of the proposed Liquidator to Mr. Mukesh Khathuria, being the Applicant herein. Thus, the present Applicant, Mr.

Sd/-

Mukesh Khathuria, was appointed and is the liquidator of the Corporate Debtor.

iv. The Applicant submits that he submitted the First Progress Report for the period from 24.11.2020 till 31.12.2020 on 08.01.2021 and the Second Progress Report for the period from 01.01.2021 to 31.03.2021 on 16.04.2021.

v. The Applicant further submits that an Asset Sale Report for the quarter 'January to March 2021' was submitted along with the Second Progress Report. The Applicant has also submitted an Audited Report of Receipt and Payment Account for FY 2020-21 (the period from 24.11.2020 to 31.03.2021).

vi. The Applicant has submitted the Final Report on 06.07.2021. The relevant extracts from the Final Report are reproduced hereinbelow:

"......

2. *Status of the Corporate Debtor*

At the time of commencement of liquidation process (or CIRP), there were no assets at factory site of the Corporate Debtor situated at MIDC, Ambad, Nashik. There were no plant & machinery, no inventory or anything. Only factory shed, along with Security Cabin and Iron Rod Main Gate is there.

There are no records of Books of Accounts of the Corporate Debtor. It is informed that the Factory has closed operations since last 2 years. There is no Plant & Machinery or any inventory at the factory site. Even the Furniture & fixtures were

Sd/-

found missing at the factory site. There are no employees in the company. Even the Directors have resigned from the Company and have not visited the factory site.

The Liquidator has tried to compile the information from MCA website. The last audited accounts of the Company are available on the MCA website till 31st March 2016.

There being no books of accounts available with the Company, the Liquidator expresses its inability to bring the books of accounts of the Company up-to date, as required in pursuance of Regulation 6(1) & 6(2).

......

4. Liquidation Process

The Liquidator made the Pubic Announcement regarding commencement of Liquidation process in accordance with Reg. 12 of the IBBI (Liquidation Process) Regulations, 2016 and also made intimation of the same to various authorities. The Liquidator has verified all the claims received by him and filed the List of Stakeholders with the Hon. NCLT Mumbai on 19th Feb 2021. The last modified List of Stakeholders has been file with Hon. NCLT on 16th April 2021. (online filing by mail).

The Liquidator has filed the following reports with Hon. NCLT Mumbai in compliance with relevant regulations of IBBI (Liquidation Process) Regulations, 2016:

(i) Preliminary Report (Regulation 13)
(ii) Asset Memorandum (Regulation 34)
(iii) List of Stakeholders (Regulation 31)

Sd/-

(iv) Quarterly Progress Report (Regulation 15)
(v) Asset Sale Report
(vi) Audited Receipts & Payments Account of the Liquidator

The Liquidation estate comprises of Land & Building at MIDC, Ambad & Nashik. There were no other assets of the Company.

......

6. *Realisation of Liquidation Proceeds and Distributions made to the Stakeholders*

The Liquidator has sold the property in an online auction and has realised Rs. 94,00,000 towards the sale proceeds. In addition, there is current account balance of Rs. 2590 transferred to Liquidation account from State Bank of India. Thus, the total realisations from Liquidation Estate of the Corporate Debtor is Rs. 94,02,590/-

The Liquidator has retained some amount (Rs.152915) towards future expenses for Liquidation and has made distribution of the balance proceeds to the Stakeholders in accordance with Sec. 53 of the Insolvency and Bankruptcy Code, 2016.

The details of distribution made to the Stakeholders is as under:

Sd/-

(Amount in Rs.)

Sl. No.	Stakeholders under Section 53(1)	Amount Claimed	Amount Admitted	Amount Distributed	Amount Distributed to the Amount Claimed (%)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	(a) CIRP Costs	9,23,111	9,23,111	9,23,111	100%	
2	(a) Liquidation Costs	7,36,899	7,36,899	7,36,899	100%	
3	(b) (i) workmen dues	2,53,374	2,43,374	47,337	19.45%	Pro-rata
4	(b) (ii) Secured Creditor (Corp. Bank)	3,88,73,000	3,87,75,586	75,41,842	19.45%	Pro-rata
5	(c) Employees Dues	-	-	-	-	
6	(d) Unsecured F.Cs.	-	-	-	-	
7	(e) (i) Govt. dues	59,48,954	56,28,754			
8	(e)(ii) Other FCs	-	-	-	-	
9	(f) Operational Creditors	73,18,957	-	-	-	
10	(g) Pref. S/Hs	-	-	-	-	
11	(h) Equity S/Hs	-	-	-	-	
	Total	5,40,54,295	4,63,07,724	92,49,189		

vii. Thus, the Applicant submits that he has complied with the procedure laid down into the provisions of the Code r/w the Regulations and this is a fit case to pass dissolution order under Section 54 of the Code. Hence this Application.

Sd/-

3. The relevant provision for the purpose of dissolution of a Corporate Debtor is Section 54 of the Code. It reads as under:

"***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."

4. The applicable Regulation under the Regulations, provides:

"***45. Final report prior to dissolution.***

(1) When the corporate debtor is liquidated, the liquidator shall make an account of the liquidation, showing how it has been conducted and how the corporate debtor's assets have been liquidated.

(2) If the liquidation cost exceeds the estimated liquidation cost provided in the Preliminary Report, the liquidator shall explain the reasons for the same.

(3) The liquidator shall submit an application along with the final report and the compliance certificate in form H to the Adjudicating Authority for – (a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or (b) for the dissolution of the corporate debtor, in cases not covered under clause (a)."

Sd/-

5. On examining the submissions made by the counsel appearing for the Applicant and the documents annexed to the Application, it appears that the affairs of the Corporate Debtor have been standstill since FY 2016-17. The liquidation proceeds have also been realised and distributed to the stakeholders. We are satisfied from the documents on record that the dissolution is not with intent to defraud any person. The liquidation process has been duly completed as per the provisions of the Code without success. From the facts narrated above and the law on the subject it would be just and equitable to dissolve the Corporate Debtor. No party is going to be adversely affected or prejudiced thereby. In view of the above the Corporate Debtor deserves to be dissolved. Hence ordered.

ORDER

The Application be and the same is allowed subject to the following.

i. Tork Fastners Private Limited, the Corporate Debtor, is hereby dissolved with immediate effect;

ii. The Registry is directed to forward a certified copy of this order to the Registrar of Companies, Mumbai within a period of seven days;

Sd/-

iii. The Liquidator is discharged. CP No. 533/MB/2018 stands closed.

Sd/-

Bhaskara Pantula Mohan
Acting President

Sd/-

Narender Kumar Bhola
Member (Technical)