

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A. No.523 of 2020
U/s. 54 R/w Section 60(5) of Code, 2016 and
Reg. 14 of IBBI (Liquidation Process) Regulations, 2016

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I.A. No.524 of 2020
U/s 53 R/w Section 60(5) of Code, 2016 and
Rule 11 of NCLT Rules, 2016

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I.A. No.328 of 2020
U/s 33(2) of Code, 2016

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C.P. (IB) No.266/BB/2019
U/s. 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

Between:

Ms. Shirley Mathew,
Resolution Professional of Ayurwin Pharma Pvt. Ltd.

- Applicant / Liquidator

In the matter of:

Dentsu Aegis Network Communications India Pvt. Ltd.

- Operational Creditor

Versus

Ayurwin Pharma Private Limited

- Corporate Debtor

Date of Order: 04th 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):

For the Applicant : Shri Arjun Rao, Advocate



ORDER

Per: Ashutosh Chandra, Member (Technical)

1. I.A. No.523 of 2020 in C.P. (IB) No.266/BB/2019 is filed by Ms. Shirley Mathew, ('Applicant') Resolution Professional of Ayurwin Pharma Private Limited ('the Corporate Debtor') under Section 54 read with Section 60(5) of the I&B Code, 2016 and Regulation 14 of IBBI (Liquidation Process) Regulations, 2016, by *inter alia* seeking that the Corporate Debtor, Ayurwin Pharma Private Limited (In liquidation) may kindly be ordered to be dissolved under Section 54 of I & B Code, 2016.
2. I.A No.524 of 2020 in C.P. (IB) No.266/BB/2019 is filed by Ms. Shirley Mathew, ('Applicant') Resolution Professional of under Section 53 read with Section 60(5) of the I&B Code, 2016 read with Rule 11 of NCLT Rules, 2016 seeking an order permitting the Applicant to sell the assets of the Corporate Debtor and distribute the proceeds therefrom in accordance with law.
3. Brief facts of the case, as mentioned in the Applications, which are relevant to the issue in question, are as follows:
 - (1) It is submitted that the petition seeking CIRP against the Corporate Debtor was admitted vide order dated 05.02.2020 under section 9 of the Insolvency and Bankruptcy Code, 2016 and the Applicant, RP was appointed as the Interim Resolution Professional for the Corporate Debtor.
 - (2) The Applicant states that she made a public announcement of the commencement of CIRP of the Corporate Debtor in accordance with the provisions of Regulation 6 of the Insolvency and Bankruptcy Code, 2016 and the last date of submission of claims was 26.02.2020. Corporation Bank claimed a financial debt due of Rs.10,10,68,829/- which was admitted. Since no other Financial creditor filed proof of claim as on 26.02.2020, the Committee of Creditors consisted of only Corporation Bank holding 100% voting rights. In the first meeting of CoC on



11.03.2020, a resolution was passed approving appointment of 2 Registered Valuers each for conducting the valuation of the Land and Building, Plant and Machinery and Securities and Fixed Assets of the Corporate Debtor, as per Regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (3) The CoC was reconstituted on 11.05.2020 on account of proof of claim received from IndusInd Bank for a financial debt due of Rs.51,09,984/- which was admitted. The voting rights of IndusInd Bank being 5%. The Applicant also received 2 other proof of claims amounting Rs.74,10,260/- and Rs.42,10,341/- after a period of 92 days from the date of appointment of Resolution Professional and were rejected due to the delay.
- (4) In respect of operational creditors, 67 claims amounting to Rs.89,38,78,744/- were received as on 15.12.2020 and out of these only 26 claims were filed within the claim period and sum of Rs.76,42,27,841/- has been provisionally admitted subject to verification with the Books of Account of the Corporate Debtor.
- (5) The last available audited financial statements of the Corporate Debtor are for the financial year 2014-15. The business of the Corporate Debtor has come to a standstill and the Corporate Debtor does not have any plans or means to carry on business in the future. There are no future earning prospects to revive the business operations of the Corporate Debtor. There is no scope to revive the business of the Corporate Debtor. In the given circumstances Corporate Insolvency Resolution Process of the Corporate Debtor is not feasible.
- (6) The Corporate Debtor does not own any immovable property. Therefore the value of land and building held by the Corporate Debtor is nil. Further, since, the Corporate Debtor has ceased operations since March 2017, the receivables, and loans and advances of the Corporate Debtor, if any would be barred by limitation.



- (7) The only fixed assets owned by the Corporate Debtor are the machinery and furniture and fixtures installed within the factory building of the Corporate Debtor. The liquidation value and fair market value of machinery of Corporate Debtor and the liquidation value and fair market value of the furniture and fixtures of the Corporate Debtor as per the reports received from the Registered Valuers, Mr. Dharam Pal Bhatia and H.S Arun Kumar are listed below:

Valuation of Machinery of the Corporate Debtor				
Particulars	Mr. Dharam Pal Bhatia	Mr. H.S Arun Kumar	Average	
Liquidation Value	Rs.23,94,000/-	Rs.22,18,000/-	Rs.23,06,000/-	
Fair Market Value	Rs.35,18,000/-	Rs.36,96,100/-	Rs.36,07,050/-	

Valuation of Furniture and Fixtures of the Corporate Debtor				
Particulars	Mr. Dharam Pal Bhatia	Mr. H.S Arun Kumar	Average	
Liquidation Value	Rs.1,05,420/-	Rs.1,39,900/-	Rs.1,22,660/-	
Fair Market Value	Rs.1,75,700/-	Rs.2,25,700/-	Rs.2,00,700/-	

- (8) I.A No.328/2020 was filed by the Applicant under section 33(2) of the Code, seeking an order of liquidation of the Corporate Debtor. The I.A was heard by this Tribunal on 10.12.2020 wherein this bench, after ascertaining that there were no significant realizable assets of the Corporate Debtor, directed the Applicant to file an interlocutory application for early dissolution of the Corporate Debtor along with another interlocutory application seeking permission to sell the assets of the Corporate Debtor and distribute the proceeds therefrom.
- (9) The Applicant submits that on 16.12.2020, 5th meeting of CoC was convened wherein it was unanimously resolved to sell the assets of the Corporate Debtor and distribute the proceeds therefrom in accordance



with the order of priority specified in Section 53 of the Code, and dissolve the Corporate Debtor as specified in Section 54 of the Code. It was resolved to file interlocutory applications before this Bench seeking permission for the same.

(10) It is submitted that the value of claims of financial and operational creditors of the Corporate Debtor far exceed the value of the realizable assets of the Corporate debtor. The admitted claims of the financial creditors and operational creditors of the Corporate Debtor totally amount to Rs.87,04,06,564/-. However, the average liquidation value of the available/ realizable assets of the Corporate Debtor, amounts to only Rs.24,28,600/-. The said amount is insufficient to settle the claims of the financial and operational creditors of the Corporate Debtor.

(11) Regulation 14 of the liquidation process regulations which provides for early dissolution states that,

“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.”

(12) The Applicant has placed reliance on order dated 16.11.2020 in C.P (IB) No.96/BB/2020, in the matter of *Synew Steel Private Limited*, referring to inter-alia the above provisions observed as extracted below:



“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. If the facts and circumstances of a case justify that no purpose would be served to keep the Corporate Debtor under regular CIRP proceedings, and thereafter under the Liquidation proceedings, under the provisions of the Code, the Adjudicating Authority, by exercising its inherent powers conferred under the Act, may pass appropriate order(s) in the interests of speedy justice”.

(13) It is submitted that the liquidation value of available assets of the Corporate Debtor is lower than even 1% of the total value of the admitted claims of the financial and operational creditors of the Corporate Debtor, no useful purpose would be served by placing the corporate debtor under a liquidation process and the CD be dissolved as per law.

4. Heard Mr. Arjun Rao, the Counsel for the Resolution Professional, **through Video Conference**. We have carefully considered the materials placed on record and the extant provisions of the Code and the rules made thereunder.
5. On a perusal of the list of claims received as on 15.12.2020 by the R.P annexed to the Application, it is seen that the total admitted claims is Rs.8,70,406,564/- out of which Rs.10,61,78,723/- are claims of the Financial Creditors, and Rs.76,42,27,841/- are claims of the Operational Creditors. Further, it is also seen that a few claims have been received after 90th day of the CIRP commencement date, However, what is relevant is that there are employee dues Rs.11,906,970/- and claims of Financial and operational creditors of Rs.13,34,12,924/-.
6. On a perusal of the 2 Valuation Reports it is clear that the average liquidation value of plant and machinery of the Corporate Debtor is Rs.23,06,000/- and the liquidation value of furniture and fixtures is Rs.1,22,660/- which is insufficient and miniscule amount as compared to the total admitted claims of Rs.87,04,06,564/.

It is clear that the realizable value of the properties of the Corporate Debtor are insufficient to cover the cost of liquidation and no further investigation into the affairs of the Corporate Debtor is required.

7. On a perusal of minutes of 3rd meeting of CoC dated 09.06.2020 annexed to I.A No.328/2020, it is seen that it was unanimously resolved by members of the CoC holding 95% voting right pursuant to section 33(2) of IBC, 2016 and accorded approval to the liquidation of the Corporate Debtor subject to approval of this Hon'ble Tribunal. We have also perused the minutes of 5th meeting of CoC on 16.12.2020 wherein it was unanimously resolved to dissolve the Corporate Debtor and file an application before this Tribunal seeking early dissolution of the Corporate Debtor.
8. In view of the above facts we are of the considered view that it would be just and proper for the Adjudicating Authority to exercise its discretionary powers to allow the RP to sell the assets of Corporate Debtor and distribute the proceeds. Further, the RP is directed dissolve the Company in the interest of justice.
9. As regards I.A No.328/2020 filed by the Resolution Professional under section 33(2) of IBC, 2016, we have heard the application on 10.12.2020. Since I.A No.523/2020 filed for early dissolution of Corporate Debtor and I.A No.524/2020 filed for sale of assets of the Corporate Debtor by the RP, being subsequent applications for early dissolution, are dealt with and disposed of in this order, **I.A No.328/2020 becomes infructuous, and is accordingly also disposed of.**
10. In the result, **I.A No.328/2020 is disposed of as infructuous, as mentioned above.** Further, by exercising powers conferred on the Adjudicating Authority, under Section 53 and Section 54(2) of the Insolvency and Bankruptcy Code, 2016 R/w Regulation 14 of the IBBI (Liquidation Process) Regulations, 2016, both **I.A. No.523 of 2020 and I.A. No.524 of 2020 in C.P. (IB) No.266/BB/2019, and C.P. (IB) No.266/BB/2019 are disposed of with the following directions:**

- (1) The Applicant is permitted to assign absolute rights over Unsold Intangible Assets - Intellectual Property available with the Corporate Debtor, immediately after receipt of a copy of this order and complete the remaining liquidation process;
- (2) Subject to the above distribution, the Corporate Debtor, namely M/s. Triumph India Software Services Private Limited is hereby dissolved with immediate effect;
- (3) The Registry is directed to forward a copy of this Order to the Registrar of Companies, Karnataka, Bangalore, within a period of two weeks from today;
- (4) The Resolution Professional is also directed to forward copies of this order to all Authorities connected with the affairs of the Company.
- (5) It is made clear that this order will not absolve personal legal liability of Directors of Corporate, if any.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

Aparna

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL