



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

**I.A- 3598/2023
IN
CP(IB)-3105/ND/2019**

(Under Section 54 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

M/S PPG ASIAN PAINTS PVT. LTD

... OPERATIONAL CREDITOR

VS

M/S HARSH SPECIALITY COATING PVT LTD.

... CORPORATE DEBTOR

And in the matter of

MS. RESHMA MITTAL
LIQUIDATOR OF CORPORATE DEBTOR

... APPLICANT

Coram:

**Shri Rahul Bhatnagar (Member Technical)
Shri Bachu Venkat Balaram Das (Member Judicial)**

Appearance

For the Liquidator: Ms. Reshma Mittal, Liquidator



ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

date of pronouncement: 07.11.2023

1. This is an application for dissolution of Corporate Debtor M/s Harsh Speciality Coating Pvt Ltd that has been filed by the Liquidator under Section 54 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IBC, 2016).

The prayer made by the Liquidator in the Application is as follows: -

1. *This Hon'ble Adjudicating Authority may be pleased to order dissolution of Harsh Speciality Coatings Private Limited, the Corporate Debtor, in the interest of justice.*
2. *This Hon'ble Adjudicating Authority may be pleased to pass any other order which this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.*

2. To put it briefly, the facts of the case are as under: -

- That an application under Section 9 of the Code was filed by PPG Asian Paints Pvt. Ltd ("Operational Creditor") before this Tribunal to initiate Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against the Corporate Debtor being Company Petition no. (IB)-3105/(ND)/2019. This Tribunal vide order dated 12.02.2021 ("Admission Order") was pleased to admit the petition and appointed Mr. Romesh Chander Sawhney as the Interim Resolution Professional ("IRP") for the Corporate Debtor.
- The IRP issued the public announcement and invited claims from creditors of the Corporate Debtor and constituted Committee of Creditors.



- That on 13.03.2021, the 1st meeting of the Committee of Creditors was held wherein the agenda for appointment of Resolution Professional (RP) was listed in which IRP showed his unwillingness to be appointed as RP due to his personal reasons and requested the CoC to introduce any other professional as RP.
- That on 09.07.2021, the 2nd meeting of CoC members was conducted and the CoC members unanimously passed the Resolution to appoint Ms. Reshma Mittal as Resolution Professional having IBBI Reg no.: IBBI/IPA-001/IP-P00297/2017- 18/10541 on the basis her experience and the availability of infrastructure to carry out the smooth CIR process of the Corporate Debtor.
- That it was informed by IRP/Deemed RP that as per ex-directors of corporate debtor, value of Inventory/stock is NIL and it is expired stock and carries no sales value. The CoC in its commercial wisdom dissented the publication of Expression of Interest (EOI), Eligibility Criteria, and Evaluation Matrix and Request for Resolution Plan.
- That the Committee of Creditors in its 6th meeting held on 19th October 2021 proposed for the liquidation of the Corporate Debtor and also proposed the name of Ms. Reshma Mittal as Liquidator, which was also approved by CoC with 100% voting.
- The Applicant moved an I.A. No. 5050 of 2021 under section 33 of the Code in light of the aforementioned facts seeking for liquidation of the Corporate Debtor and considering the same this Adjudicating Authority was pleased to pass liquidation order dated 15.02.2022 in I.A. No. 5050/2021 in CP(IB)No.



3105(ND)/2019. Vide the said order, the Applicant was also appointed as Liquidator under section 34(1) of the Code.

- The Liquidator prepared list of stakeholders, category-wise, on the basis of proofs of claims submitted by stakeholders and filed the same with the Adjudicating Authority on 28.04.2022. The same is as under: -

Sr. No	Name of Creditor	Class of Creditor	No of Creditors	Amount Claimed in Rs	Amount Admitted	Security Interest
1.	Financial Creditor	Secured Financial Creditor Bank of Baroda	01	1,36,87,063	1,36,87,063	Hypothecation on stocks and book debts
2.	Government Dues	Operational Creditor	01	13,91,30,736	13,91,30,736	No security interest is created
3.	Other than Workmen, Employees and Government Dues	Operational Creditor	04	4,32,44,429	2,26,07,542	No security interest is created

- the Liquidator applied to Kotak Mahindra Bank on 12.07.2022 to open the liquidation account. Kotak Mahindra Bank opened the account on 29.07.2022.



- The Liquidator contacted several dealers and manufacturer to sell the stock of CD so that reserve price may be decided. Some of the prospective buyers visited and inspected the stock but they found that stocks are very old and may have dried and some manufacturer of such paints and polish are not in existence hence have not shown any interest except 1 buyer who give estimated scrap value of Rs. 1.50 lacs approx.
- The Liquidator prepared the Auction Document and publish the E Auction notice in newspapers on 20th June 2022. Reserve price was fixed at Rs. 2.0 lacs. Date of Auction was fixed for 28.06.2022. Liquidator received Bid of Rs. 2.05 lacs from 1 buyer only i.e., Vivek Coatings participated in the process.
- The Liquidator has again published the E Auction Notice in newspapers on 29.09.2022 and E-Auction was held on 22.10.2022. EMD amount was received from successful bidder. However, balance amount was not paid by him and hence EMD amount was forfeited and sale was cancelled on 18.11.2022.
- The Liquidator has filed an application on 20.12.2022 seeking permission to sell the old stock, old Furniture & Fixtures of CD in scrap through Private Sale. The Tribunal allowed the private sale vide order dated 26.04.2023.
- The Applicant submits that the affairs of the Corporate Debtor has been completely Liquidated after realising the assets and distributing the amount to the stakeholders duly complying with the provisions of section 53 of the code in order of priority as mandated under the code.
- The Applicant closed the bank Account bearing Account number 5946897271 with Kotak Mahindra Bank on 28.06.2023.



- An application filed under section 19(2) of the Code, bearing I.A. no. 1335/2021 is pending adjudication before the Adjudicating Authority.
- An application filed under section 43(1) & 66 of the Code, bearing I.A. no. 1155/2022 is pending adjudication before the Adjudicating Authority
- Regulation 44A of IBBI (Liquidation Process) Regulations 2016 on Treatment of avoidance transactions is reproduced as under :

“The liquidator shall, on the advice of the consultation committee, provide in the application along with the final report filed under regulation 45 for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the dissolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed.”

- Bank of Baroda is the sole Secured Financial Creditor. Third SCC meeting was conducted on 02.05.2023 in which it was resolved that Proceedings in respect of Avoidance Transactions will be pursued by Bank of Baroda, being sole secured financial creditor and proceeds, if any, received from the proceedings shall be distributed to them. Resolution passed in third SCC meeting is reproduced hereunder:

“Proceedings in respect of Avoidance Transactions will be pursued by Bank of Baroda and proceeds, if any, from such proceedings shall be distributed to Bank of Baroda only”.

- That in view of the above facts and circumstances, the applicant prayed to dissolve the Corporate Debtor.

3. We have heard the submissions made by the Applicant, perused the Application filed by the Liquidator and have gone through the documents on



record filed by the Liquidator. Here, it is worthwhile referring to Section 54 of IBC, 2016 and Regulation 45 IBBI (Liquidation Process) Regulations, 2016:

“Section 54 IBC-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.”

“IBBI (Liquidation Process) Regulations, 2016

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).”*

4. That from the conjunct reading of the above provisions, this Adjudicating Authority is required to see whether the assets of the Corporate Debtor are



completely liquidated or not. In the instant case, the assets of the CD was sold through private sale and the Liquidator has furnished his Final Report and Form-H.

5. The Liquidator has stated that he has distributed the entire amount. Since in the instant case, all the assets of the Corporate Debtor have been liquidated and all the requirements of Regulation 45 of IBBI (Liquidation Process) Regulations, 2016 have been fulfilled, therefore, we are inclined to allow the present Application to dissolve the Corporate Debtor.
6. As far as the Avoidance Application is concerned, the applicant submitted that proceedings in respect of Avoidance Application will be pursued by Bank of Baroda, being sole secured financial creditor and proceeds, if any, received from the proceedings shall be distributed to them. The same was also resolved in the 3rd meeting of SCC held on 02.05.2023. Hence, we allow Bank of Baroda to pursue the pending avoidance application after the dissolution of CD.
7. Accordingly, there being no other impediment, the present application is **allowed** and the Corporate Debtor is ordered to be dissolved with immediate effect
8. The Registry is directed to send a copy of this order passed under Section 54(2) to the ROC Delhi & Haryana, with which the Corporate Debtor is registered and the IBBI within seven days from the date of this order.

SD/-
(Rahul Bhatnagar)
Member (Technical)

SD/-
(Bachu Venkat Balaram Das)
Member (Judicial)