

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-IV

I.A./5034/ND/2022
IN
IB/438/ND/2020

(Under Section 54 of the Insolvency and Bankruptcy Code, 2016 read with regulation 45(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.)

IN THE MATTER OF:

Arun K. Agarwal & Associates

**... Petitioner/ Operational Creditor
Versus**

M/s. Allbest Offshore Marine (India) Private Limited

... Respondent / Corporate Debtor

AND IN THE MATTER OF

Mr. Man Mohan Vij

... Liquidator of Respondent

Coram:

DR. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

SH. AVINASH KUMAR SRIVASTAVA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 02.11.2022

ORDER

PER: SH. AVINASH KUMAR SRIVASTAVA, MEMBER (TECHNICAL)

The instant application is filed under Section 54 of the Insolvency and Bankruptcy Code, 2016 ("Code") read with regulation 45(3) of the Insolvency and Bankruptcy Board of India [Liquidation Process] Regulations, 2016 ("Liquidation Process Regulations") by Mr. Man Mohan Vij ("Liquidator"/Applicant) of M/s. Allbest Offshore Marine (India) Private Limited (CIN: U74999DL2010PTC210645) ("Corporate "Debtor") praying for dissolution of the Corporate Debtor under Section 54 of the Code, 2016.

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2. The facts giving rise to filing of the instant application are narrated hereunder:-

- a) The applicant submits that M/s. Arun K, Agarwal & Associates ('Operational Creditor') had filed petition i.e., IB/438/ND/2020 under Section 9 of the Code, 2016 for initiating Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and the petition was admitted by this Tribunal vide order dated 12.01.2021, consequently CIRP was initiated against the Corporate Debtor.
- b) The Committee of Creditors ('COC') in its fourth COC meeting held on 15.06.2021 after deliberating the fact that the corporate debtor has not earned any revenue for the last two years and the corporate debtor does not have any tangible or intangible assets base, business model, employees etc. as on date, has resolved with 100% voting in favour for initiating the liquidation of the corporate debtor. The applicant further submits that an application bearing I.A No. 3182/2021 was filed before this Adjudicating Authority for passing an order of liquidation of the corporate debtor under Section 33 of the Code, 2016. This Adjudicating Authority vide order dated 11.11.2021 ordered for initiation of the liquidation proceedings of the corporate debtor and the applicant was appointed as liquidator of the Corporate Debtor.
- c) The applicant made public announcement in Form-B in Financial Express ('English') and Jansatta ('Hindi') newspapers on 15.11.2021 and the same was also uploaded on the website of the Insolvency and Bankruptcy Board of India. The applicant further submits that the claims received were duly verified and after crystallising of the claims on 11.01.2022, the applicant had filed the list of the stakeholders and report constituting the stakeholders consultation committee before the Adjudicating Authority on 24.01.2022. The applicant adds that the details of the Asset Memorandum and various reports filed before this Adjudicating Authority are as below:-

S.No.	Report	I.A. No.	Date of taking on Record
1.	List of Stakeholders	441/2022	28.01.2022
2.	Asset Memorandum	446/2022	28.01.2022

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3.	Preliminary Report	440/2022	28.01.2022
4.	1 st Progress Report	272/2022	19.01.2022
5.	2 nd Progress Report	1792/2022	20.04.2022
6.	3 rd Progress Report	3265/2022	15.07.2022
7.	Final Report	5058/2022	19.10.2022

- d) A Bank Account was opened by the applicant in the name of the Corporate Debtor in Liquidation on 25.02.2022 with the Punjab National Bank, Sushant Lok-I, Gurgaon.
- e) The applicant submits that he made inquiries about the whereabouts of the Corporate Debtor and found out that as on the Liquidation Commencement Date i.e., 11.11.2021, the Corporate Debtor had no fixed assets and had only cash and cash equivalent amounting to Rs.3,52,175/- only.
- f) The applicant submits that the Corporate Debtor had filed a claim of Rs.4,68,78,759/- in the CIRP and Liquidation Process of M/s. Sembmarine Kakinada Limited for receivables of the Corporate Debtor. The applicant further submits that from the information available in public domain, it is observed that there exist claims of Financial Creditors of more than Rs.1,038 crores in respect of M/s. Sembmarine Kakinada Limited. The applicant adds that the amount of Rs.4,69,78,759/- was written off in the financial statements of the corporate debtor for the financial year 2019-2020.
- g) The applicant realised a total amount of Rs.1,28,170/- from the Indian Overseas Bank and Rs.2,33,999/- from the State Bank of India, which was lying in the shape of the balance in the current account and fixed deposits. The applicant further submits that the banks had released the said amount only after the directions of this Adjudicating Authority vide order dated 25.05.2022.
- h) The applicant submits that he had distributed the entire proceeds in accordance with section 53 of the Code. The distribution of liquidation proceeds is presented overleaf:

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Stakeholders* under section 53 (1)	Amount Claimed	Amount Admitted	Amount Distributed	Amount Distributed to the Amount Claimed (%)	Remarks
(2)	(3)	(4)	(5)	(6)	(7)
(a): Outstanding CIRP Costs	3,50,000	3,50,000	*NIL	0%	Borne by sole member of CoC.
(a): Liquidation Costs	3,76,632	3,76,632	3,62,169	100%	
(b)(i): Workmen Dues for 24 months	NIL	NIL	NIL	0%	
(b)(ii): Secured Creditor who has relinquished security	NIL	NIL	NIL	0%	
(c) Wages and unpaid dues to employees for period of 12 months	NIL	NIL	NIL	0%	
(d) Financial Creditor	0	0	NIL	0%	
(e)(i) Employee State Insurance Corporation	17,34,499	17,32,462	NIL	0%	
(ii) Deputy Commissioner CGST	17,25,799	17,14,539	NIL	0%	
(e) (ii) Secured Creditor for any amount unpaid following the enforcement of security interest	NIL	NIL	NIL	0%	
(f) Operational Creditor	2,10,500	2,10,000	NIL	0%	
(g) Preference shareholder	NIL	NIL	NIL	NIL	
(h) Equity shareholders & partners	NIL	NIL	NIL	NIL	
Total					

* CIRP cost was contributed by sole member of committee of creditors but the realization of the assets of the corporate debtor was much less than the CIRP Cost approved by the CoC, and therefore it could not be reimbursed to the sole member of CoC.

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3. We have heard the Ld. Counsel appearing on behalf of the Liquidator and have carefully gone through the contents of the present petition. We have duly considered the merits thereof ,in the light of the statutory provision of Section 54 of IBC, 2016 and Regulation 45 IBBI (Liquidation Process) Regulations, 2016. For the sake of convenience, the relevant provisions of Section 54 of IBC, 2016 and Regulation 45 IBBI (Liquidation Process) Regulations, 2016, are being reproduced herein below:-

“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. Upon the perusal of the averments made in the application along with the perusal of the final report and the compliance certificate filed in Form-H of the petition, we observe that all the reports required to be filed under

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Regulation 5 of the Liquidation Regulations, 2016 has been filed and the liquidator had sent the intimation to the statutory authorities on 04.12.2021.

5. Further, it appears that affairs of the Corporate Debtor have been completely wound up and its assets have been completely liquidated. The bank statements as on 05.09.2022 reflects that there is no balance in the bank account. The applicant has placed on record the Audited Receipt and Payment Account of the Liquidator from the Liquidation Commencement date (11.11.2021) till 05.09.2022.
6. It transpires that the corporate debtor had filed claim as operational creditor amounting to Rs.4,68,78,759/- in the Liquidation Proceedings of M/s. Sembmarine Kakinada Limited, however, the same was written off in the financial statements of the corporate debtor for the financial year 2019-2020. Considering the objective of the Code, namely, maximization of the value and the fact that the committee of stakeholders in their commercial wisdom have not objected to the accounting treatment whereby this claim has been written off, we direct the liquidator of M/s. Sembmarine Kakinada Limited to deposit the proceeds belonging to the corporate debtor as per Section 53 of the Code, 2016 in the Corporate Liquidation Account as maintained by the IBBI in compliance of Liquidation Regulations, 2016.
7. In view of the above facts and circumstances, there is no legal impediment to the Corporate Debtor being dissolved. Accordingly, **I.A. (IB) No./5034/ND/2022 in C.P. IB/438/ND/2020 stands allowed** subject to the observations made *and* the Corporate Debtor i.e., M/s. Allbest Offshore Marine (India) Private Limited (CIN: U74999DL2010PTC210645) **is ordered to be dissolved with the immediate effect.**
8. The Liquidator is directed to serve a copy of this order upon the Registrar of Companies, NCT of Delhi & Haryana and the Insolvency and Bankruptcy Board of India, immediately and, in any case, within fourteen days of receipt

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of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.

9. The Liquidator shall stand discharged from his responsibilities, subject to completion of procedural compliances, if any.
10. The Registry is directed to send e-mail copies of the order forthwith to all the parties for information and for taking necessary steps.

File be consigned to the record.

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(AVINASH KUMAR SRIVASTAVA)
MEMBER (T)

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(P.S.N PRASAD)
MEMBER (J)

Pronounced today under Rule 151 of NCLT Rules, 2016 as the Hon'ble Member (Technical) Shri. Avinash Kumar Srivastava is not holding the Court today.

Vistral Rana
02-11-2022
Court Officer