

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - II**

M.A NO. 3872/2019
IN
TCP (IB) 615/ (MB) 2017

Under section 54 of the I&B Code, 2016

Mr. Jitesh Gupta, (Liquidator) Applicant

In the matter of: -

National Commercial Corporation

...Petitioner/Operational Creditor

V/s

Apex Engineering Solution And
Services Private limited

...Respondent/ Corporate Debtor

Order delivered on: - 29.05.2020

Coram:

**Hon'ble Suchitra Kanuparthi, Member (Judicial)
Hon'ble Chandra Bhan Singh, Member (Technical)**

For Liquidator: Mr. PS Thakre (Company Secretary)

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. An Application is submitted by the liquidator dated 28.11.2019 seeking an Order u/s. 54 of the Insolvency Code for granting "**Dissolution of Corporate Debtor**".

BRIEF FACTS:

2. As a First step, on receiving Form No. 5 from an 'Operational Creditor' viz. M/s National Commercial Corporation against the Corporate Debtor Apex Engineering Solution & Services Private Limited, an order was passed on 19.07.2017 admitting the Petition u/s 9 of I&B Code by appointing an Interim Resolution Professional Mr. Jitesh Gupta. As a consequence, clauses of Sec. 14 of the Code i.e. pronouncement of 'Moratorium' were also directed to be applicable during the CIRP period.
3. Public announcement was carried out, the IRP received claims from financial creditor, Domviwali Nagarik Sahakari Bank for an amount of Rs. 13,08,01,117/-. The Meetings of the Committee of Creditors were conducted from time to time. In one of the Meeting of Committee of Creditors, held on 06.12.2017 the IRP was appointed as Resolution Professional.
4. In view of the fact that there was no resolution Applicant and that no resolution plan was forthcoming, in the Committee of creditors meeting of 12.03.2018 it was decided to initiate 'Liquidation' proceedings.
5. The resolution professional had appointed two valuers to submit valuation Reports and the liquidation value. As per the reports were Rs. 78,44,467/- and Rs. 48,45,900/- hence the average amount of Rs. 63,45,183/ was being considered.
6. MA 523 of 2018 was filed by the Resolution Professional on 31.05.2018 seeking an order for commencement of "Liquidation" process in respect of Corporate Debtor M/s Apex Engineering & services Pvt. Ltd.

7. In view of the factual position that no Resolution Plan was received, the order of liquidation was passed on 19.06.2018 as per the Chapter III of the code and it was further ordered that the Resolution Professional shall function as liquidator.
8. Pursuant to the Receipt of the aforesaid order, and in compliance to the provisions of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the applicant had made a Public announcement in "Form B within Five days from his appointment one in "Business Standard" English Language Newspaper and one in "Lokmanthan" regional language newspaper (Marathi) on 30.08.2018,
9. Further in compliance to the Regulation 31 (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, and in term of the Provisions of Regulation 12(3) the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, list of Stakeholder was published in "Financial Express" English Language News Paper and "Lokmanthan" Regional Language Newspaper on 10.12.2018.
10. The Applicant in compliance of regulation 13, 15, 34 & 36 of 1881 (Liquidation Process) Regulations' 2016, Liquidator has duly submitted its preliminary report, Progress report, sale report and Asset Memorandum to the Authority on 04.10.2018 and 08.01.2019, and 06.07.2019 respectively.
11. This Hon'ble Tribunal has vide order dated 11 .01.2019 approved the sale of assets of the corporate Debtor in liquidation on receipt of confirmation from the Secured Creditor i.e. Dombivili Nagari Sahakari Bank Limited for relinquishing their security interest in

Total Receipt	49,56,073
Total Liquidation Expenses	5,87,226
Amount Distributed to financial Creditor	37,66,740

Calculation of Liquidator's Fees

Liquidator Fee (i+ii+iii)		
On Realization		
(Within months 789603*5%):	39480	
(Within 12 months 4125000*3.75%:	<u>158969</u>	
	<u>198449</u>	
.....(i)		2,76,819
On Distribution (20,00,000*0.94%):	18800	
On Distribution (18,45,110*0.94%):	<u>17344</u>	
.....(ii)		
	<u>36144</u>	
GST 18% of 2,34,593 (198449+36238):	42,226	
.....(iii)		

17. The liquidator in compliance to the provisions of the Regulation 45 of the 1881 (Liquidation Process) Regulations 2016, submitted a "Final report prior to dissolution" comprising all the relevant information in respect to "details of Liquidation of corporate debtor's assets, along with "Compliance certificate under form H".

FINDING:

18. Upon perusal of the Final Liquidation Report and Form H, this Bench holds that the assets of the Corporate Debtor have been completely liquidated, and hence directs the dissolution of the Corporate Debtor in terms of power conferred to order Dissolution Sec 54 of I & B Code.

Section 54 of The Code reads as under: -

"54. (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 subsection (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.”

19. As a consequence, through this Order it is hereby declared that not only it is just and equitable for the purpose of 'Liquidation' as reported by Learned Liquidator, this is a fit case of a **Corporate Debtor to be dissolved as prescribed u/s.54 of The Insolvency Code**. Ordered accordingly, stood 'Dissolved' from the date of this Order.

20. Thus the Corporate Debtor Company stands Dissolved vide this order and no proceedings are now pending, therefore the Registry is directed that the case file be consigned to records.

21. Copy of this Order shall be forwarded within 7 (seven) days to the concerned authorities and the Registrar of Companies having jurisdiction, for further necessary action as prescribed under Law.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Sd/-
SUCHITRA KANUPARTHI
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, MUMBAI

(1) **MA 3872/2019** in T.C.P.(IB)-615(MB)/2017

CORAM: Present :

SH. CHANDRA BHAN SINGH,
MEMBER (T)

MS. SUCHITRA KANUPARTHI,
MEMBER (J)

ORDER SHEET OF THE HEARING OF SPECIAL BENCH, MUMBAI OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **29.05.2020**.

NAME OF THE PARTIES: National Commercial Corporation
V/s
Apex Engineering Solution & Services Pvt. Ltd.

SECTION OF THE COMPANIES ACT: Section 9 of Insolvency & Bankruptcy Code, 2016.

ORDER

1. **MA 3872/2019** in T.C.P.(IB)-615(MB)/2017 "**Allowed**".
2. The Bench pronounced the Order.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)
Date: 29.05.2020

Sd/-
SUCHITRA KANUPARTHI
Member (Judicial)