



**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III**

Item No.09

IA-2783/2023

In

IB – 65(ND)/2020

IN THE MATTER OF:

Mr. ASHUTOSH GUPTA

..... Operational Creditor

VERSUS

M/s. PRATHVI COAL PRIVATE LIMITED

..... Corporate Debtor

AND IN THE MATTER OF:

Mr. RANJAN CHAKRABORTI

..... Applicant/Resolution Professional

Order Pronounced On: 09.06.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Resolution Professional :

ORDER

Order pronounced in open court vide separate sheets. **IA-2783/2023**

stands **allowed** and **disposed of**. **IB-65/ND/2020** stands **disposed of**.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III**

Order under Section 54 of the Insolvency and Bankruptcy Code, 2016 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 read with Regulation 14 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016.

IA-2783/2023

In

IB – 65(ND)/2020

IN THE MATTER OF:

Mr. ASHUTOSH GUPTA

..... Operational Creditor

VERSUS

M/s. PRATHVI COAL PRIVATE LIMITED

..... Corporate Debtor

AND IN THE MATTER OF:

MR. RANJAN CHAKRABORTI

Resolution Professional of M/s. Prathvi Coal Private Limited

Registration No.: IBBI/IPA-002/IP-N00541/2017-18/11618

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..... Applicant/Resolution Professional

Order Pronounced On: 09.06.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

IA-2783/2023 In IB -65(ND)/2020

Date of Order : 09.06.2023



SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES

For the Resolution Professional :

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This Application has been filed by the Resolution Professional of M/s. Prathvi Coal Private Limited, the Applicant on 02.05.2023, before this Adjudicating Authority, under Section 54 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") r/w Section 60(5) of the Code r/w Rule 11 of the National Company Law Tribunal Rules, 2016 r/w Regulation 14 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016 ("Liquidation Process Regulations") seeking appropriate orders for dissolution of the Corporate Debtor, for seeking following reliefs:

- a. "Allow the present application for early/ direct dissolution of the Corporate Debtor under Section 54 of the Code Read with Regulation 14 of the Liquidation Process Regulations; and/or***
- b. Release the Applicant from any proceedings and compliances related to the Corporate Debtor; and/or***
- c. Exempt the Applicant from further statutory compliances like MCA filing for audit etc. except the filings before the IBBI; and /or***
- d. Pass any other order as this Hon'ble Tribunal may deem fit and proper under the Circumstances."***

2. The Corporate Debtor namely M/s. Prathvi Coal Private Limited was incorporated on 07.02.2006, as a Company Limited by Shares (Non- govt. Company) having CIN:U13100DL2006PTC145986, under the erstwhile Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana. The Authorised Share



Capital of the Corporate Debtor is Rs.10,00,000/- (Rupees Ten Lakh Only) and the Paid-up Share Capital of the Corporate Debtor is Rs.2,50,000/- (Rupees Two Lakh and Fifty Thousand Only). On the date of application, the main objects of the Corporate Debtor was to manufacture, buy, sell, import, export, trade and deal in all kind of plant apparatus tools, commodities, raw materials, inputs, substances, articles and things necessary or useful for carrying on the export of minerals and import, trading of coal, bauxite and components. The Registered Office Address of the Corporate Debtor is 102, 1st floor, Ajnara Tower LSC Savita Vihar, Delhi-110092. Therefore, this Bench has jurisdiction to deal with this application.

3. This Adjudicating Authority vide order dated 04.11.2022, admitted the Corporate Debtor under Corporate Insolvency Resolution Process (“CIRP”) appointing Mr. Ranjan Chakraborti (Registration No.: IBBI/IPA-002/IP-N00541/2017-18/11618) as Interim Resolution Professional. Subsequently, his appointment was confirmed as Resolution Professional.
4. Due to stiff competition from big players in coal and mineral trading and lack of funding by the company, mobilization of funds could not be done by the Corporate Debtor as compared to big business house and thus the Corporate Debtor was not able to pay its financial dues.
5. Pursuant to the order, in accordance with the Code and Regulations made thereunder, the Applicant made the public announcement on 05.11.2022 and claims were invited for the same, pursuant to which, the Applicant constituted the Committee of Creditors (“CoC”) in compliance of Section 21 of the Code read with Regulation 16 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulation”), which comprised of the Operational Creditor only. The Applicant also communicated to all the creditors of the Corporate Debtor, the Income Tax



Departments, the Company in which the Corporate Debtor had invested in the form of Compulsorily Convertible Debentures as per regulation 6A of the CIRP Regulations. However, till date, no claims except that of the Operational Creditor has been received and accepted by the Applicant. It is relevant to note that the Income Tax Department had filed their claim however the same was rejected as they had filed their claim in the wrong form and that to after a period of 90 days from the CIRP commencement date.

A copy of the Public Announcement dated 05.11.2022 made by the Applicant is filed along with the application.

A copy of the letters written to the creditors of the Corporate Debtor are filed along with the application.

A copy of the report certifying the constitution of the Committee of Creditors is filed along with the application.

A copy of the list of claims as on 15.04.2023 is filed along with the application.

6. Thereafter, during the 1st CoC meeting conducted on 03.12.2022, the Applicant was appointed as the Resolution Professional of Corporate Debtor by the member of the CoC, which was thereafter approved by this Tribunal vide its order dated 06.01.2023.

A copy of the minutes of the 1st CoC meeting dated 03.12.2022 is filed along with the application.

A copy of the order dated 06.01.2023 confirming IRP as RP as was passed by this Tribunal is filed along with the application.

7. An Application under Section 19(2) of the Code was also filed by IRP before this Tribunal bearing IA-105/2023 seeking directions against the suspended Board of Directors of the Corporate Debtor which was listed before this Tribunal on 20.02.2023. On the date of the hearing, the Counsel for the suspended board of directors stated before this Tribunal that necessary cooperation will be provided by them to the Applicant and said IA-105/2023 was disposed of by this Tribunal vide order dated 20.02.2023. The



suspended board of directors since then has cooperated with the applicant and provided all the information to the Applicant.

A copy of the order dated 20.02.2023 is filed along with the application.

8. In terms of Section 29 of the Code, the Applicant herein prepared an information memorandum and published an invitation of Expression of Interest for the Corporate Debtor in Form-G.

A copy of the information memorandum and Form-G are filed along with the application.

9. In the meanwhile, as the Applicant had, also appointed two valuers namely Ms. Rachna Jhunjhunwala (Registration No.: IBBI/RV/06/2020/13455) and Mr. Rajan Sahdev (Registration No.: IBBI/RV/02/2020/13217) for the valuation of the assets of the Corporate Debtor who had submitted valuation reports.

Copies of the valuation reports are filed along with the application.

10. At the 2nd CoC meeting held on 08.02.2023, the CoC noted that no Resolution Applicant had come to bid for the Corporate Debtor in response to the publication of the invitation of Expression of Interest for the Corporate Debtor (Form-G) and showed its concern towards the liquidity of the Corporate Debtor, and requested to end the process by liquidation. The RP had shown that valuers, Publication Expenses of EoI (Form-G) are yet to be made along with many other payments.

A copy of the Minutes of the 2nd CoC meeting dated 08.02.2023 has been filed along with the application.

11. It is submitted that in the 3rd CoC meeting held on 15.04.2023, the CoC again noted that no Resolution Applicant had come to bid for the Corporate Debtor in response to the publication of the invitation of Expression of Interest for the Corporate Debtor (Form-G). The CoC went through the valuation reports and other financials of the Corporate Debtor and opined that there is no source of revenue generation and there are no physical assets in the Corporate Debtor. The CoC also noted that neither there is any



possibility of revival nor any resolution plan received for the Corporate Debtor and it was not worthwhile to waste time on the resolution of the Corporate Debtor.

A copy of the bank statement of the Corporate Debtor is filed along with the application.

A copy of the financial statements of the Corporate Debtor are filed along with the application.

12. It was brought to the attention of the CoC that Regulation 39B of the CIRP Regulations provides that while deciding to liquidate a Corporate Debtor under Section 33(2) of the Code, the CoC shall make the best estimate of liquidation cost and liquid assets available to meet the liquidation costs and the CoC shall approve a plan for meeting the difference between the two. The CoC further deliberated that there are no assets available in the Corporate Debtor to realize any value, neither there are any business operations, Operational Creditor is the Sole CoC member who contributed towards the CIRP cost as ordered in the admission order dated 04.11.2022 and whose admitted claim can't be paid out of Nil assets of the Corporate Debtor and thus liquidation process will add liquidation cost on the members of the committee and there will be no purpose served in conducting the liquidation process which will itself consume time and further expenses and as there are no assets left to liquidate.
13. During the 3rd CoC meeting, the member of the CoC also took note of the fact that the Corporate Debtor has Compulsorily Convertible Debentures worth Rs. 15,09,94,000/- divided amongst 7 companies the value of which has become nil and the same has also been noted in the valuation reports. The Applicant has filed the claim on behalf of the Corporate Debtor with respect to the Compulsorily Convertible Debentures and also wrote various e-mails to the liquidator of the companies in which the Corporate Debtor is holding Compulsorily Convertible Debentures but till date, no reply has been received by the Applicant.



A copy of the e-mails written to the liquidator is filed along with the application.

14. In the light of the above peculiar facts of the case, the CoC recommended to directly proceed for dissolution as there are no physical assets to be liquidated. The Applicant/ RP also agreed with the CoC to proceed in accordance with Section 54 of the Code viz. Dissolution of the Corporate Debtor as the Applicant after the 2nd CoC meeting has paid for the valuers as per expenses ratified by the CoC in the 2nd CoC meeting and expenses of Publication of Form-G (EoI) could not be paid in full because of the paucity of funds in the Corporate Debtor as only ₹34,020/- (Indian Rupees Thirty Four Thousand And Twenty Only) was available as Cash and Bank Balance in the Corporate Debtor as on Insolvency Commencement Date which also shows the total assets of the company as per valuation report. All other expenses including all filings and out-of-pocket expenses are being borne by the RP out of his own and is also getting reminders for payments due for publication of Form-G(EoI).
15. The CoC approved the proposal/ recommendation of Applicant/RP to proceed in accordance with Section 54 with 100% voting right. Relevant Extract of the Minutes of the 3rd CoC meeting dated 15.04.2023 are reiterated below

“Resolution passed:-

Resolved that an application would be moved to the Adjudicating Authority for dissolution of the Company as any further process would entail cost and the Company has no assets and no “Expression of Interest” (EoI) was received for the company and also as the present costs are also remain unpaid and the Bank Balance also has become Nil”.

A Copy of the Minutes of the 3rd Meeting of the CoC is filed along with the application.

16. As per the valuation reports of the Corporate Debtor, the liquidation value of the Corporate Debtor was Rs. 34,020.06/- (as



only Cash and Bank Balances of the Corporate Debtor) as on 04.11.2022, as against the CIRP Cost of resolution period of Rs.4,96,782/- out of which only an amount of Rs. 38,061/- was ratified by the CoC and only an amount of Rs. 34,020/- was only paid out of the bank account of the Corporate Debtor and the rest of the amount was paid by the RP/Applicant out of his own pockets. Till date the fees of the RP/Applicant have not been ratified by the CoC and the RP/Applicant is bearing the expenses out of his own pockets as mentioned aforesaid including the amount of Rs. 708/- which has been paid by the RP/Applicant for closing the bank account of the Corporate Debtor from his own resources.

17. It is further submitted that the said CIRP cost as on 15.04.2023 and the said cost has been calculated after adjustment of the advance of Rs. 2,00,000/- received from the Operational Creditor vide this Tribunal's order dated 04.11.2022 which was earlier ratified by the CoC in 1st CoC meeting as expenses for IRP period.
18. The grim situation of the Corporate Debtor is also evident from the fact that the Corporate Debtor could not maintain its registered office and no staff or signboard of the Corporate Debtor was traced in the registered office of the Corporate Debtor which in fact had been pressed upon by the Applicant while filing application u/s 19(2) for non-co-operation by the suspended board of directors of the Corporate Debtor. Upon filing the said application u/s 19(2) of the Code, a person was deputed by the suspended board of directors to cooperate with the Applicant who provided information and data of the Corporate Debtor. This makes a fit case for liquidation of the Corporate Debtor under Regulation 40D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations and also for early dissolution under Regulation 14 of IBBI (Liquidation Process) Regulation, 2016 as the Corporate Debtor is non-operational for the last three years, there is an absence of any



assets which bring value as a going concern and also investments that are yet to be matured have no value.

19. It is also relevant to note that as on date the bank balance of the Corporate Debtor has come to nil and the bank accounts have been closed as per decisions taken by CoC in 3rd CoC meeting to avoid minimum balance Charges vide Tenth item of the Minutes of 3rd CoC meeting as mentioned in page five and the expenses of the CIRP is being borne by the RP/Applicant himself. The CoC is not in a position to pay for any more expenses and even the publication expenses of EoI could not be paid in full and the publication agency has been writing mail to the Applicant for payment of the remaining amount.

A copy of the e-mails received from banks dated 28.04.2023 and 29.04.2023 for confirmation of closing of bank accounts and sending final statements are also filed along with the application.

20. In terms of the provisions of the Code, the Applicant has also prepared a status report.

A copy of the status report of the work done by the RP is filed along with the application.

21. Considering the above scenario and the fact that 180 days period of CIRP is expiring on 03.05.2023, it would be fit to dissolve the Corporate Debtor without going into the rigors of liquidation as liquidation would not serve any purpose and would be an additional burden on the CoC and the Applicant herein and there are no assets to liquidate.

22. Due to the financial constraint of the Operational Creditor and financial burden upon the Applicant it was also brought to the attention of the CoC that there is certain compliance which would have to be done before the filing of the Dissolution Application before the Adjudicating Authority like MCA filing, audit and other compliance. The CoC opined that it does not have funds to meet such expenses as it had lost its money on the Corporate Debtor and thus approved and ratified only a limited amount of expenses



and opined those necessary exemptions be sought from this Tribunal from filing such compliances and in view of the opinion, a resolution was passed to file an application for exemption from compliance at the time of filing the application for dissolution except the obligatory/unavoidable compliances.

23. The Present Interlocutory Application appears to be bonafide and in the interest of the Corporate Debtor and to enable the Applicant to perform his duties under the Code.
24. Upon hearing the Resolution Professional and on perusal of the documents annexed to all the applications, it appears that the affairs of the Corporate Debtor have been completely wound up and its assets have been completely liquidated. In view of the above facts and circumstances, there is no impediment to the Corporate Debtor being dissolved. Hence, **IA-2783/2023** stands **allowed** and the Corporate Debtor is ordered to be dissolved.
25. The Liquidator is further directed to serve a copy of this order upon the Registrar of Companies, NCT of Delhi and Haryana, immediately and, in any case, within fourteen days of receipt of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.
26. The Liquidator shall stand discharged from his responsibilities, subject to procedural compliances.
27. **IA-2783/2023** and **IB-65/ND/2020** shall stand disposed of in accordance with the above directions.
28. The Registry is directed to send copies of this order to all the parties for information, for taking necessary steps and to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
29. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.



30. File be consigned to the record.

No order as to costs.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**