

NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-V

Under Section 54 of the Insolvency and Bankruptcy Code, 2016.

I.A. No. 375 OF 2023

IN

CP No. 54 OF 2021

Mr. Mukesh Kumar Jain,

..... Applicant/Resolution Professional

In the matter of

Jinvik Exports Private Limited

..... Financial Creditor

Versus

Oshiya Industries Private Limited

..... Corporate Debtor

Order Reserved on: 09.02.2023

Order Pronounced on: 03.03.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri. Prabhat Kumar, Member (Technical)

Appearance:

For the Applicant/RP: Mr. Manoj Kumar Mishra, Advocate.

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The present application has been filed by **Mr. Mukesh Kumar Jain, Applicant/ Resolution Professional of Oshiya Industries Private Limited** under Section 54 of the Insolvency and Bankruptcy Code, 2016 seeking an order of dissolution of the Corporate Debtor i.e. Oshiya Industries Private Limited having CIN No. U27106MH2007PTC171471.

2. The Adjudicating Authority vide its order dated 21.07.2022, in a Petition filed by the Operational Creditor under Section 9 of the Code (CP (IB)-54/MB/2021), directed the initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely Oshiya Industries Private Limited, by virtue of which Mr. Prabhakar Kumar was appointed as Interim Resolution Professional (IRP). Since Mr. Prabhakar Kumar had withdrawn his consent to act as IRP, this Bench vide order dated 26.08.2022 appointed Mr. Mukesh Kumar Jain as the IRP of the Corporate Debtor.
3. The Applicant submits that the public announcement in Newspapers “Financial Express (English Edition)” and “Tarun Bharat (Marathi Edition)” was made on 17.09.2022 and initially received a claim of Rs. 29,52,732/- from the Financial Creditor. Thus, the CoC was constituted on 05.10.2022 having sole member i.e. the Financial Creditor with 100% voting share. The Applicant, as per Regulation 13 of IBBI (liquidation Process) Regulation, 2016, filed a Report on constitution of CoC and the list of Creditors vide IA No. 2915/2022.
4. The Applicant further received claims of Rs. 55,17,06,931/- from Union Bank of India and a claim of Rs. 30,31,53,637/- from Dy. Commissioner of State Tax, Mumbai which were admitted. Thus, the CoC was reconstituted on 20.10.2022. The Applicant, as per Regulation 13 of IBBI (liquidation Process) Regulation, 2016, filed a Report on reconstitution of CoC and the 1st Progress Report for the quarter period of 16.09.2022 till 20.10.2022 vide IA No. 3136/2022.
5. The Applicant in the 2nd CoC meeting held on 07.11.2022 and vide a Notice dated 05.11.2022 resolved for the Liquidation of the Corporate Debtor. The relevant portion of the resolution is reproduced herein:

“RESOLVED THAT the corporate debtor, M/S. OSHIYA INDUSTRIES PVT. LTD, be and is hereby liquidated under section 33(2) of the IBC, 2016 and

the resolution professional is hereby authorised to submit an application with Hon'ble NCLT, Mumbai for approval of the liquidation.”

“RESOLVED FURTHER THAT the Hon'ble NCLT shall be requested to dissolve the Corporate Debtor as there are no assets in the corporate debtor and fund to meet the liquidation cost.”

“RESOLVED FURTHER THAT the Resolution Professional is authorized to do all the needful things for the dissolution of the company along with application for dissolution of the Corporate Debtor.”

“RESOLVED FURTHER THAT the CIRP expenses (including RP fee) incurred by resolution professional till getting liquidation order shall be reimbursed by CoC members in to the corporate debtors bank account on a monthly basis.”

6. The Applicant further submits that no payment has been received towards his fees or towards reimbursement of the CIRP cost of Rs. 4,38,465/- neither by the financial creditor nor by the CoC.
7. Since neither any funds are available with the Corporate Debtor nor it owns any assets, no distribution has been made to the creditors. There has been NIL receipts and payments. As the Corporate Debtor has no assets/funds, the Applicant has prepared and filed the Final Report along with Compliance Certificate in Form – H dated 11.01.2022 under Regulation 45 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
8. Since there is NIL receipts and payments, the Applicant sent a request dated 10.01.2023 for the closure of the Bank Account. Accordingly, the Account was closed on 12.01.2023.
9. The Applicant/RP has prayed that the Company/Corporate Debtor may be ordered to be dissolved directly in view of his Progress Report confirming no assets/ funds with the Corporate Debtor and CoC resolution also seeking direct dissolution.

10. On careful perusal of the Application and the Progress Report filed by Applicant/RP on record, it is noticed that neither there are Assets left with the Corporate Debtor nor are there any trade receivables. According to the Learned Liquidator, the Company has no Asset which can be liquidated, as is also evident from the Report of the Liquidator.

11. As per the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016, vide Regulation No.14, it is prescribed as under :-

“14. Any time after the preparation of Preliminary Report, if it appears to the liquidator that –

(a) The realizable properties of the corporate debtor are insufficient to cover the cost of 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. For the purpose of pronouncement of Dissolution of a Corporate Debtor Section 54 of The Insolvency and Bankruptcy Code, 2016, 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.

13. From the combined reading of Regulation 14 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 and Section 54 of The Insolvency and Bankruptcy Code, 2016, it follows that when the Corporate Debtor does not have any Assets/ funds to liquidate or distribute, the Corporate Debtor can be ordered to be dissolved. In this case, since there are no assets for liquidation and funds available for distribution, we find that this is a fit case for ordering direct dissolution of the Corporate Debtor on the basis of progress report filed by the Applicant/RP.

14. Therefore, through this Order, it is hereby declared that not only it is just and equitable but because of the fact that no asset is available for the purpose of 'Liquidation' as reported by Learned Liquidator, this is a fit case where the Corporate Debtor should be dissolved as prescribed under Section 54 of The Insolvency and Bankruptcy Code, 2016. It is ordered accordingly and the Corporate Debtor shall stand 'Dissolved' from the date of this Order.
15. Since the Debtor Company stands Dissolved vide this order and no proceedings are now pending, the Registry is directed that the case file be consigned to records.
16. 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.
17. Accordingly, IA No. 375 of 2023 is hereby **allowed** and disposed of and CP No. 54 of 2021 is hereby closed. In view of the disposal of the above Company Petition, all the pending IA's and MA's, if any, also stands disposed of.

SD/-

PRABHAT KUMAR
Member (Technical)

SD/-

KULDIP KUMAR KAREER
Member (Judicial)