IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH- V

C.P. (IB) No. 3107/ND/2019
IA (I.B.C)/ 5814(ND)/2021

IN THE MATTER OF:

KAMIYA & CO ... **OPERATIONAL CREDITOR**

VERSUS

M/S MYSTIC MONK DESIGNS PVT. LTD.

... **CORPORATE DEBTOR**

AND IN THE MATTER OF:

MR. PAWAN KUMAR GARG
(Resolution Professional of M/S MYSTIC MONK DESIGNS PVT. LTD.)

...APPLICANT

APPLICATION UNDER SECTION 54 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 READ WITH SECTION 60(5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016; RULE 11 OF NCLT RULES, 2016 AND REGULATION 14 OF INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (LIQUIDATION PROCESS) REGULATIONS, 2016 SEEKING APPROPRIATE ORDER(S) FOR DISSOLUTION OF MYSTIC MONK DESIGNS PRIVATE LIMITED

Order Reserved on : 04.01.2022
Order Delivered on : 25.02.02022

CORAM:

SH. ABNI RNJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

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

Present:

FOR THE APPLICANT : Karan Malhotra, Adv for RP

FOR THE CORPORATE DEBTOR : Jhum Jhum Sarkar. Adv for CD

ORDER

PER SH. AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

1. The instant application **IA (I.B.C) 5814/ND/2021** has been filed by the applicant resolution professional to initiate liquidation proceeding of Corporate Debtor namely, **M/s MYSTIC MONK DESIGNS PRIVATE LIMITED** in terms of Section 54 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "The Code") and Rule 11 of NCLT Rules, 2016 and Regulation 14 Of Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 seeking appropriate order(s) for dissolution of Corporate Debtor.
2. Brief facts of the present matter are that the main IB petition no. 3107/ND/2019 was filed by Operational Creditor for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor. The said application was allowed vide order dated 24.08.2021 and Mr. Pawan Kumar Garg was appointed as IRP for

the Corporate Debtor. Thereafter, the Applicant was appointed as the Resolution Professional of Corporate Debtor (hereinafter called "RP")

3. In accordance with the provisions of the Code, via public announcement, RP received claims from the creditors of the Corporate Debtor and thereafter CoC was constituted. The Report with respect to constitution of CoC is placed on record. It is submitted that the CoC was constituted with only one member i.e. the Operational Creditor himself.

4. In the first CoC meeting held on 24.09.2021, RP apprised the CoC that no operation has been carried out by Corporate Debtor from past 2 years and there are no employees in the Corporate Debtor and that there is no operative bank account of the Corporate Debtor and the only Bank Account of the Corporate Debtor having Account No. **0341574005** has been closed on **12.07.2021** by Bank on the basis of RBI circular. Applicant submitted that a Demand Draft for the refund of balance amount of Rs. 12,771.57 in bank account of the Corporate Debtor at the time of closing of account has been handed over to him. Applicant/RP appointed two sets of valuers, Mr. Niraj Kumar having registration number IBBI/RV/06/2021/13764 and Mr. Gyaneshwar Sahai having registration number IBBI/RV/03/2018/10226 in accordance with the terms of Regulation 27 of the IBBI (Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulation**"). Applicant also advised the CoC that there was no requirement to keep the Corporate Debtor as

a going concern. Minutes of the 1st CoC meeting has been placed on record. **Annexure A1.**

5. At the Second CoC Meeting held on **12.10.2021,** CoC noted that there is no source of revenue generation and there are no physical assets in the Corporate Debtor. Also, CoC noted that neither there is any possibility of revival nor any resolution plan received. CoC opined that CIRP Process should be completed at the earliest for the reason that CIRP cost is more than the claim admitted and the Corporate Debtor has negligible asset value. It is further submitted that Applicant had also placed the financial statements of the Corporate debtor and requested the CoC to discuss on the issue of Form G and eligibility criteria under Sec 25(2)(h) of the IB Code. CoC opined that as there were no assets, no operations since last two years, there is no logic on the issuance of Form G to invite EOI and Resolution Plan. Copies of the Financial Statements of the Corporate Debtor for 2018-19 to 20-21 and unaudited statement for the period 1.04.2021 to 24.08.2021 are annexed as **Annexure A3**. It is submitted that the financial statements of the Corporate Debtor show that Corporate Debtor is not in a position to extinguish all the liabilities, by way of repayment. Minutes of the Second CoC Meeting has been put on record and annexed as **Annexure A2.**

6. At the 3rd meeting of CoC held on **30.10.2021**, it was informed by Applicant to CoC that the Corporate Debtor had no physical assets except bank balance of Rs. 12,777.57/- and Cash in Hand Rs. 1658/-. Therefore, CoC after deliberation advised the RP to drop the agenda/resolution for issuance of Form-G and resolution for Liquidation/dissolution should be placed before the member of the Committee.

7. It was also 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 IBC, 2016, the CoC shall make 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 contributing towards the entire CIRP cost which is more than the admitted claim, no bank account of the Corporate Debtor, thus liquidation process will add liquidation cost on the members of the committee and there will be no purpose solved in conducting the liquidation process which will itself consume time and further expenses.

8. In the peculiar facts of the Case, CoC recommended to directly proceed for dissolution as there were no physical assets to be liquidated. Applicant/RP proposed to CoC to proceed in accordance with Sec 54 of the Code viz. **Dissolution of the Corporate Debtor. CoC approved this proposal/recommendation of RP to proceed in accordance with Sec 54 with 100% voting.** A copy of the minutes of the 3 rd meeting of CoC is annexed hereto and marked as **ANNEXURE A5**.

9. It is humbly submitted that under Rule 11 of the NCLT Rules, 2016 this Hon'ble Adjudicating Authority has inherent powers to order an Early/direct dissolution of the Corporate Debtor as contemplated under Rule 14 of IBBI (Liquidation Process) 2016.

10. We heard the Ld. Counsel for the Applicant and perused the case records.

11. For the purpose of pronouncement of Dissolution of a Corporate Debtor Section 54 of IBC, 2016 reads as under:

> ***"Section 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."*

12. In the light of the above section, it is noticed that the Corporate Debtor does not have assets to be liquidated hence an Application is moved for the "Dissolution of the Corporate Debtor". This Section is to be read along with **Regulation 14 of IBBI (Liquidation Process) Regulations 2016 which says that:**

" Any time after the preparation of the 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 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."*

13. We have perused the documents, minutes of the meeting of CoC which are placed on record by Applicant/RP, and noticed that Corporate debtor's financial condition is insufficient to meet the current liabilities, Moreover, there are no assets to be liquidated as such. Applicant/RP has also annexed a chart showing the financial position of the Corporate Debtor.

14. The only amount which can be realized is **Rs. 14,429/- (as amount laying in bank account and cash in hand) as against the CIRP Cost of Rs 2,87,430/- (Shown in the proposed distribution in accordance to Section 53 of IBC, 2016).** Applicant submitted that this is the Estimated CIRP cost as on 24.11.2021 and this is after adjustment of advance of Rs. 2,00,000 received from the Operational Creditor vide NCLT order dated 24.08.2021.

15. The Adjudicating Authority of the Bengaluru Bench in the matter of ***Synew Steel Private Limited,* in CP. IB No. 96/BB/2020,** in similar circumstances ordered for dissolution of the corporate debtor since, there were no funds available for further CIRP and liquidation proceedings of Corporate Debtor.

16. In sequel of the above discussions, we are of the affirmed view that the company has/will be left with no asset and the only member constituting CoC unanimously resolved for dissolution of corporate debtor, therefore, it is just and equitable that instead of resorting to the liquidation of the corporate debtor, it is a fit case that the corporate debtor be dissolved as laid down under Section 54 of the Code read with Regulation 14 of the Regulations from the date of this order. **Accordingly, the Corporate Debtor stands 'Dissolved' from the date of this Order.**

17. **IA 5814/ND/2021** in the main Matter **CP (IB) 3107/ND/2019** moved by resolution professional for dissolution of the Corporate Debtor stands accepted. Other IA(s) relating to this Company Petition, pending, if any, stands dismissed.

18. The RP has to distribute the proceeds of the assets, if any, as per the Section 53 of IBC and file a statement of account of the CD with the Registry within 10 days from today for record.

19. Copy of this Order shall be forwarded within 15 days to the concerned authorities and the Registrar of Companies having jurisdiction, for further necessary action as prescribed under Law.

File, after due completion, be consigned to records.

Sd/- 25/2

AVINASH K. SRIVASTAVA
MEMBER (T)

Sd/-

ABNI RANJAN KUMAR SINHA
MEMBER (J)