

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

I.A.(IB) No. 1257/KB/2023
C.P. (IB) No. 10/KB/2019

*An application under Section 54(1) of the Insolvency and Bankruptcy Code,
2016 and Regulation 14 of the IBBI (Liquidation Process) Regulations, 2016*

In the matter of:

Syscraft Solutions Private Limited

...OPERATIONAL CREDITOR

Versus

We Excel Technologies Pvt. Ltd.

... CORPORATE DEBTOR

And

In the matter of:

Mr. Pankaj Kumar Kedia

...APPLICANT

In the matter of:

1. Syscraft Solutions Private Limited

...OPERATIONAL CREDITOR

2. We Excel Technologies Pvt. Ltd.

...CORPORATE DEBTOR

3. Mr. Pankaj Kumar Kedia

...APPLICANT.

Date of pronouncement of order: 01.04.2024.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearances (via Video Conferencing/Physical):

Mr. Udit Agarwal, Adv.

] For the Liquidator

Mr. Pankaj Kedia, Adv.

] Liquidator-in-person

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Mr. Abhijit Ghoshal, Adv.] For the Resolution Professional
Mr. Soumitra Ghosh, RP-in-person]

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. Learned Counsel for the Liquidator and Liquidator in person are present.
Learned Counsel for the Resolution Professional and Resolution Professional in person present.

2. **This application has been filed by the Applicant Liquidator seeking following reliefs :-**

1. *“To pass an order directing Syscraft Solution Pvt. Ltd., sole SCC member to pay the CIRP Cost and Liquidation Cost of as per Annexure M;*
2. *To pass an order for dissolution of the Corporate Debtor, We Excel Technologies Pvt. Ltd.;*”

3. **Facts of the Case :-**

1. It is submitted by the Ld. Counsel for the Applicant Liquidator of We Excel Technologies Pvt. Ltd, that the C.P.(IB) No.10/KB/2019 which was filed by the Operational Creditor, Syscraft Solutions Private Limited against the Corporate Debtor, We Excel Technologies Pvt Ltd. was admitted on 04.09.2019 wherein Mr. Soumitro Bhowse was appointed as IRP. The Admission Order dated 04.09.2019 is annexed with the Application and marked as **‘Annexure-A’**.
2. It is submitted that though the last date for completion of CIRP period was on 02.03.2020 no Resolution Plan was received by the Committee of Creditors (CoC) despite best efforts.

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3. Thereafter, Committee of Creditors in its 4th meeting held on 25.08.2021 had passed a resolution with 100% vote, for liquidation of the Corporate Debtor based on which, this Tribunal had ordered for liquidation of the Corporate Debtor on 24.01.2023. The Liquidation order dated 24.01.2023 is annexed with the Application and marked as '**Annexure-B**'.
4. It is also submitted that public announcement was made on 09.02.2023 in Form B of Schedule II in two newspapers viz: '**Financial Express**' and '**Ekdin Pratidin**' as per requirement under Regulation 12 of the Insolvency and Bankruptcy Board of (Liquidation Process) Regulations, 2016. Copies of the said newspapers are annexed with the Application as '**Annexure-C**'.
5. It is submitted that in response to public announcement, only one claim was received by the Applicant from Excel Infocom Pvt. Ltd. which was rejected by the Liquidator on 10.03.2023 after due verification. Thereafter, no claim was received from the original applicant nor from the sole member of CoC i.e. Syscraft Solution Pvt. Ltd.
6. However, claim of Syscraft Solution Pvt. Ltd. was admitted as per Regulation 30 of IBBI (Liquidation Regulations) 2016 and thus, Stakeholder's Consultation Committee was formed of one Operational Creditor only i.e. Syscraft Solution Pvt. Ltd. The list of Stakeholders is annexed is marked as '**Annexure-D**' to the application.
7. It is submitted by the Ld. Counsel for the Applicant that Stakeholders Consultation Committee (SCC) in its 1st meeting held on 14.02.2023 had decided not to appoint any fresh Valuers since there were no fixed assets such as Land & Building and Plant & Machinery and valuation done during the CIRP was

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considered to be the security and financial assets of the Company for liquidation. The liquidation value of the assets was Rs.44,03,901/- whereas the realisable value was Rs.75,703/- only. The details of assets are marked as **'Annexure-E'** to the application.

8. It is also submitted that during the 1st Meeting of Stakeholders Consultation Committee, the SCC member had further informed that the talks of settlement were in process and hence voted against upon the manner of sale, pre-bid qualifications and reserve price. Copy of the 1st Meeting of SCC held on 14.02.2023 is annexed as **'Annexure-F'**.
9. That the 2nd meeting of SCC was held on 22.03.2023 wherein the Liquidator had informed the members that assets of the Corporate Debtor had realisable value of Rs.75,703/- only in the form of cash and bank balance and other debtors showing in the books of the Company are disputed hence, realisation from them is **NIL**.
10. It was further discussed in the 2nd meeting of the SCC that apart from the CIRP cost of Rs.3,57,600/-, an expense of Rs.85,000/- had already been incurred which was still unpaid and hence early dissolution was proposed to which members contented that dissolution might be kept on hold since talks of settlement with the Suspended Management were in process. Copy of 2nd meeting of SCC is annexed as **'Annexure-G'**.
11. A notice for 3rd SCC meeting, which was scheduled to be held on 12.05.2023, was served via email dated 08.05.2023 but due to non-availability of members the meeting was adjourned to 13.05.2023 and finally cancelled.

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12. It is submitted 4th SCC meeting which was scheduled to be held on 27.05.2023, and later rescheduled on 28.05.2023, at the request of SCC member, was adjourned to 05.06.2023 and on that date too, due to non-availability of members the 4th SCC meeting was cancelled to copy of notice of 4th SCC meeting as well as emails are annexed as **‘Annexure-J’** and **‘Annexure-K’** respectively.
13. It was submitted by the Ld. Counsel for the Applicant that since the realisable value of Rs.75,703/- from the available assets was insufficient to bear the entire CIRP and Liquidation cost aggregating to Rs.5,57,400/-, a further expense was to be incurred till the dissolution order was passed.
14. The Liquidator had filed the Preliminary Report along with Asset Memorandum Report on 17.03.2023 as per the Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016.
15. The Liquidator had filed 2 (two) Progress Reports on 12.04.2023 and 04.07.2023 in compliance of Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016.
16. Vide letter dated 01.03.2023 addressed to the Liquidator the sole SCC member had shown its unwillingness to the liquidation proceedings due to financial stringencies and had requested to take the appropriate measures whereas during the 2nd SCC meeting held on 22.03.2023 it was informed that talks of settlement were in process. Since the letter dated 01.03.2023 was not on the letterhead of the Company, the Liquidator had asked

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them to send the revised letter to which no reply was received by the Liquidator. Copy of letter dated 01.03.2023 is marked as **'Annexure-L'**.

17. The Learned Counsel for the Liquidator would submit that repeated requests the members of Stakeholders Consultation Committee to make the payment of CIRP cost and Liquidation cost failed to elicit any response. Copies of emails are marked as **'Annexure-M'** and **'Annexure-N'** respectively.

18. It is submitted that the Corporate Debtor had no assets to sale, realise or distribute apart from the cash and bank balance of Rs.75,721/- only which had been utilized to meet the expenses. That the Audited Accounts of the Liquidator's Receipts and Payments Account for the financial year 07.02.2023 to 23.06.2023 prepared and audited by Kamlesh S Jain & Associates, is annexed as **'Annexure-O'**.

19. A Bank account in the name of "We Excel Technologies Pvt. Ltd. in Liquidation" had been opened with YES Bank, Stephen House Branch, Account No.019063300012473 as per the Regulation 41(1) of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 which was subsequently closed on 12.07.2023. Copy of the letter for closing the Bank account is marked as **'Annexure-P'**.

20. It is submitted that SCC member viz: Syscraft Solutions Private Limited was neither attending any meeting nor settling the claim with the Suspended Management paid any cost towards expenses.

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21. Considering all as enumerated above, it is further submitted by the Ld. Counsel for the Applicant that the Corporate Debtor had been liquidated completely and no assets remained unsold and hence it was prayed that the Corporate Debtor might be dissolved, CoC be directed to pay the sum of Rs.5,57,400/- as described in Annexure-‘M’ to meet the CIRP and Liquidation expenses. Copy of Final Report is annexed as **‘Annexure-Q’**.
22. It is also submitted that the Liquidator had submitted the Compliance Certificate in accordance with Regulation 45. Copy of the Compliance Certificate in Form-H which is marked as **‘Annexure-R’**.
23. We have considered the contentions and perused records.
24. The statutory provisions of the Code and other regulation dealing with the dissolution of the Corporate Debtor are as follows:

i. “54. 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.”

ii. Regulation 14 of IBBI (Liquidation Process)

Regulations provides as under:

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“14. Early dissolution.

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 the 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.”

A conjoint reading of these two provisions leads to the requirement of completion of the liquidation of the assets of the corporate debtor and subsequent application to the Adjudicating Authority by the liquidator for dissolution under section 54 of the IBC where the assets of the Corporate Debtor has been completely liquidated after distribution among the Stakeholders or for early dissolution under regulation 14 of the Liquidation Process Regulations when the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process, the liquidator may apply to the Adjudicating Authority for early dissolution.

25. In the instant case there are no realizable assets of the Corporate Debtor, no SCC was formed even liquidation costs so far incurred have also to be borne by the Liquidator himself. In the aforesaid circumstances continuation of liquidation process would result in incurring further expenses by the Liquidator and

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that the Liquidator has not open any Liquidation Account in the name of the Corporate Debtor since there are no realizable properties of the Corporate Debtor.

26. In view of the above facts and circumstances, this Adjudicating Authority in exercise of the powers conferred under sub-section (2) of section 54 of the Code hereby orders dissolution of the Corporate Debtor, viz., **We Excel Technologies Private Limited** thus, from the date of this Order, the Corporate Debtor stands dissolved. Consequently, Liquidator stands relieved subject to all procedural compliances.

27. The Liquidator and the Registry are hereby directed to serve a copy of this order upon the Registrar of Companies, West Bengal, 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.

28. **IA(IBC)/1257(KB)2023** along with **CP(IB)/10(KB)2019** is allowed and **disposed of** with the above directions. Post this **CONT.A.(IBC)/9(KB)2023** on **24.04.2024**.

29. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

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30. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
31. File be consigned to records.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Signed on this, the 1st day of APRIL, 2024.

SG.Steno/SKB,Steno