

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

**I.A. No. 342 of 2023
In
C.P. No. 27 of 2022**

Under Section 60(5) of
Insolvency & Bankruptcy Code,
2016

In the matter of

**CG POWER AND
INDUSTRIAL SOLUTIONS
LIMITED**

...Financial Creditor

vs.

CG POWER SOLUTIONS LIMITED

.... Corporate Debtor

I. A. No. 342 of 2023

Mr. Atul Jain

....Applicant/Resolution Professional

Order reserved on: 25.10.2023

Order pronounced on: 10.11.2023

Coram:

Hon'ble Ms. Reeta Kohli, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearance:

For the Applicant/Resolution Professional: Atul Jain

ORDER

Per: Ms. Reeta Kohli, Member (Judicial)

Brief Facts and Submission of the Applicant

1. Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor with effect from 27.04.2022 by this Hon'ble Bench of National Company Law Tribunal (NCLT). The Financial Creditor namely CG Power and industrial Solutions Private Limited was also a holding company of the Corporate Debtor. Since the Financial Creditor was a related party, the Committee of Creditors (CoC) only consisted of another Financial Creditor namely Stickwell (India) Private limited (Stickwell) as its sole member.
2. The time limit for completion of CIRP had expired on 26.12.2022. During the subsistence of CIRP, no resolution plan was received by the Resolution Professional (RP) from eligible prospective resolution applicants. Furthermore, the RP in the 6th CoC Meeting dated 19.12.2022 informed the CoC that the Corporate Debtor is neither an operating company nor does it have any assets. Thus in view of the aforementioned information, the CoC passed a resolution in the same meeting approving the Application for the early dissolution of the Corporate Debtor as per Section 54 of the Insolvency and Bankruptcy Code (IBC) to be filed by the Resolution Professional.
3. The RP has therefore filed this present Application under section 54 read with section 60(5) of the IBC read with Regulation 14 of the IBBI (Liquidation Process) Regulations, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, for seeking the following reliefs:-
 - *Allowing Dissolution of Corporate Debtor*
 - *Allowing the Financial Creditor namely CG Power and Industrial Solutions Private Limited to pursue Section 66 Application after the dissolution of the Corporate Debtor*

- *Directing that any recovery made through the Section 66 Application be distributed among the two Financial Creditors of the Corporate debtor in relation to the percentages of their claim*
4. It is pertinent to note that on 11.11.2019, the office of the Director General, Ministry of Corporate Affairs vide its order directed an investigation under Section 212 of the Companies Act, 2013 by the Serious Fraud Investigation Office (SFIO) into the affairs of the Financial Creditor namely CG Power and Industrial Solutions Private Limited and its 15 related companies including the Corporate Debtor.
 5. In November 2020, pursuant to a Swiss Challenge Bid Process, initiated at the instance of all the lenders of CG Power and Industrial Solutions Private Limited to restructure /resolve CG Power and Industrial Solutions Private Limited's debt in accordance with the Circular dated 07.06.2019 issued by the Reserve Bank of India on "*Prudential Framework for Resolution of Stressed Assets*", Tube Investments of India Limited acquired majority stake in CG Power and Industrial Solutions Private Limited thereby a new management took charge of the aforementioned Financial Creditor and the Corporate Debtor.
 6. On 06.08.2022, RP issued appointment letter to M/s Nagina & Co. LLP for conducting forensic audit of the Corporate Debtor.
 7. On 04.02.2023, M/s Nagina & Co. LLP submitted the forensic report/transaction audit report of the Corporate Debtor to the Resolution Professional.
 8. On 14.02.2023, RP submitted the transaction audit report of the Corporate Debtor with SFIO, New Delhi.
 9. In view of the observations and findings made in the transaction audit report of the Corporate Debtor, particularly in respect of fraudulent and wrongful trading, RP filed an Interlocutory Application numbered 1646 of 2023 against the erstwhile management of CG Power and Industrial Solutions Private Limited under Section 66 read with Section 60(5) of the IBC before this Hon'ble Tribunal, seeking an order against the respondents to make contribution of Rs. 1407.03 crores to

the assets of the Corporate Debtor on account of fraudulent and wrongful trading carried out by them in relation to the Corporate Debtor. The said Application was filed on 17.04.2023 after receiving approval from CoC on 08.02.2023 in its 7th Meeting. It is pertinent to note that the RP has not received any notice/communication from the Enforcement Directorate regarding any investigation in respect of the Corporate Debtor.

Order

1. In view of the submissions of the Resolution Professional stating that no asset is available for the purpose of 'Liquidation'. Through this Order it is hereby declared, on just and equitable grounds, that this is a fit case of a Corporate Debtor to be dissolved as prescribed under Section 54 of The Insolvency and Bankruptcy Code, 2016. Hence Corporate Debtor is ordered to be 'Dissolved' from the date of this Order.

2. For the purpose of determining whether Section 66 Application filed by the Resolution Professional will be adversely affected by the dissolution of the Corporate Debtor, we are of the considered opinion that the Corporate Debtor being an independent legal entity the Promoters or Key Managerial Personnel responsible for decision making can be held to be liable for the consequences of the action taken by them. They can be subjected to civil/criminal proceedings if at any stage by the Enforcement Directorate if they are found to be guilty. In addition this Bench relies on the judgement of the Hon'ble NCLAT in **Ramanathan Bhuvaneshwari Liquidator of M/s Zed Fabs India Pvt Ltd. (in Liquidation) [(2021)ibclaw.in 583 NCLT]** in which the Corporate Debtor was dissolved without prejudice to any action being taken by the SFIO and the said dissolution order did not absolve the concerned managerial personnel of the Corporate Debtor, who if finally found guilty after investigation, would be subjected to appropriate civil and criminal action against them. Hence in view of this judgement along

with Regulation 44A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and in view of the fact that the Application under section 66 is against the erstwhile management and not the current management of CG Power and Industrial Solutions Private Limited pursuance of the said Section 66 Application after dissolution of the Corporate Debtor is allowed.

3. In order to address the prayer of allowing Financial Creditor namely CG Power and Industrial Solutions Private Limited to pursue Section 66 Application after the dissolution of the Corporate Debtor, we see no embargo in this. Since the Key Managerial Personnel of the Corporate Debtor have changed and the Corporate Debtor has been dissolved, CoC in its own wisdom can authorise the Financial Creditor to pursue the Application under Section 66 of IBC pending adjudication. Additionally, this Bench relies on the judgement rendered in **Barclays Bank PLC, Mumbai Branch v. Piramal Capital and Housing Finance Limited [IA (I.B.C) 532/2022]**, in which it was held that there is no embargo on who shall pursue applications filed by the Resolution Professional under Sections 43, 45 and 66 of IBC. It further stated in the said judgement that any person or entity having the agreement of the CoC can pursue the Application filed under the abovementioned sections. In the present case, the CoC in its 7th Meeting dated 08.02.2023, approved that the cost of pursuing the Section 66 Application will be borne by the Petitioner, i.e., CG Power and Industrial Solutions Private Limited. Therefore, in view of the aforementioned judgements and peculiar facts of the case, CG Power and Industrial Solutions Private Limited is granted permission to pursue the said Section 66 Application.
4. In order to analyse the legitimacy of the relief regarding distribution of recovery made through the Section 66 Application among the two Financial Creditors of the Corporate Debtor in relation to the percentages of their claim, this Bench relies on the judgement of the

Hon'ble Delhi Court in **Tata Steel BSL Limited v. Venus Recruiter Private Limited [2023/DHC/000257]** in which it was held that avoidance applications are independent of the resolution of the Corporate Debtor and can survive CIRP. Any kind of benefit acquired from the adjudication of avoidance applications must be given to the creditors of the Corporate Debtor, which is in consonance with the scheme of IBC. In the present case, Section 66 Application pertaining to fraudulent and wrongful trading form part of Avoidance Transactions and therefore whatever benefit accrues from the adjudication of such an Application should naturally flow to the Creditors of the Corporate Debtor in accordance with the percentages of their claim in consonance with the abovementioned judgement and overall objective of IBC.

5. In conclusion, this IA No. 342 of 2023 in CP No. 27 of 2020 is allowed and all the reliefs as prayed for are granted.

SD/-
MADHU SINHA
MEMBER (TECHNICAL)

SD/-
REETA KOHLI
MEMBER (JUDICIAL)