



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

**I.A- 6092/2022
IN
CP(IB)- 1181/ND/2018**

(Under Section 54 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

M/S HOLY-LAND MARKETING PVT. LTD.

... FINANCIAL CREDITOR

VS

M/S LAKSH FOODS PVT. LTD.

... CORPORATE DEBTOR

And in the matter of

MS. NARESH KUMAR MUNJAL
RESOLUTION PROFESSIONAL OF CORPORATE DEBTOR

... APPLICANT

VS

M/S LAKSH FOODS PVT. LTD.

... RESPONDENT NO 1

INDUSIND BANK LIMITED

... RESPONDENT NO 2

Coram:

**Shri Rahul Bhatnagar (Member Technical)
Shri Mahendra Khandelwal (Member Judicial)**

Appearance

For the Petitioner/Operational Creditor: Advocate Prashant Chauhan for
Liquidator Mr. Amit Talwar

For the RP: Mr. Naresh Kumar Munjal, RP in person



For the Indusind Bank: Adv. Gulshan Kr. Sachdev

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date of pronouncement: 05.04.2024

1. This is an application for dissolution of Corporate Debtor M/s Laksh Foods Pvt. Ltd. that has been filed by the RP under Section 54 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IBC, 2016).

The prayer made by the RP in the Application is as follows –

- i. *To issue necessary directions to Financial Creditor, Indusind Bank Ltd before dissolution for reimbursement of outstanding CIRP expenses of Rs 3,40,767 submitted as per COC Resolution vide minutes of its 4th meeting & details as per 6th meetings held on 22 August 2019 and 12 April 2021 respectively,*
- ii. *To Dissolve the Corporate Debtor and the CIRP proceedings of Corporate Debtor and dismissal of the CIRP of Corporate Debtor initiated under this court via order dated 21.12.2018.*
- iii. *To relieve Resolution Professional, Mr. Naresh Kumar Munjal from all duties as IRP/RP under the Insolvency and Bankruptcy Code, 2016.*
- iv. *To make such orders against the suspended Directors as may be necessary for meeting the ends of justice or to prevent abuse of the*



process of the Hon'ble Tribunal in the matter of CIRP of Laksh Foods Private Limited, Corporate Debtor.

2. To put it briefly, the facts of the case are as under: -

- i. That, Corporate Insolvency Resolution Process was initiated by the Operational Creditor M/S Holy-Land Marketing Private Limited under Section 9 of the Insolvency and Bankruptcy Code, 2016 vide order dated 21.12.2018 and appointed Mr. Naresh Kumar Munjal as IRP in the matter to carry out Corporate Insolvency Resolution Process and to comply with the provisions of the Code.
- ii. Consequently, the IRP issued the requisite announcements and invited claims from creditors of the Corporate Debtor and constituted Committee of Creditors.
- iii. That on December 24, 2018, the Applicant along with his team visited the registered office of the Corporate Debtor situated at Shop No. 1, SFS DDA Market, Phase Ashok Vihar, New Delhi-110052 to gather all information, documents, and records pertaining to the Corporate Debtor and to take control over the business of the Corporate Debtor. During the visit to the registered office. the Applicant came to know that no office was being run by the corporate debtor from such address for last over last 4 years, which is registered with the Registrar of Companies (ROC) and available on website of Ministry of Corporate Affairs.



- iv. That on the basis of the forms filed with MCA, it was observed that the Corporate Debtor filed the financial statements with the ROC only up to the financial year ending March, 31, 2014.
- v. On December 29, 2018, in terms of the provisions of the Code and IBBI (Insolvency Resolution Process, for Corporate Person) Regulations, 2016, IRP made Public Announcement.
- vi. On the basis of information collated from various sources including petitioner M/s Holy- Land Marketing Private Limited on January 02, 2019, the RP contacted Yes bank Ltd, Andhra Bank, Punjabi Bagh, New Delhi, and HDFC Bank, Kirti Nagar, New Delhi. After persistent efforts with the officials of Yes Bank Limited, two bank accounts of the Corporate Debtor were found which were then frozen by the bank. The applicant after getting further information, visited HDFC Bank, Kirti Nagar on January, 24, 2019 through authorised advocate to identify the details of account. On visit to the above banks, the Applicant found that the Corporate Debtor has given its address and on visit to aforesaid address, it was found that CD and its suspended Directors left for unknown address at Naraina, New Delhi.
- vii. That the IRP visited residential address at 14/45, Road No. 45, West Punjabi Bagh; New Delhi 110026 (As per MCA Data) of suspended directors to find that they sold their property and left for unknown address.



- viii. That on January, 04, 2019, considering the fact that the Corporate Debtor was not accessible at any of addresses available with bank accounts nor its Registered office was maintained for last more than 4 years the Applicant, wrote letter to ROC, Delhi to seek support from the office of ROC to enable him to locate the address of the Company or its Directors or take any other action as may deem fit in this regard and proceed with the CIRP of the Corporate Debtor.
- ix. Based on the MCA Data and information available from financial statements filed with MCA till 31.03.2014, the IRP approached the Statutory Auditor, Mr. Suresh Verma, Partner, M/S Bansal Dalmia & Co., Chartered Accountants of the Corporate Debtor to find the financial details and whereabouts of the Corporate Debtor and its Directors. On January 15, 2019, the Applicant issued a letter to the auditor seeking information about the Company and its Directors. However, the IRP could not locate the Directors of the CD.
- x. The applicant convened the first meeting of CoC on 21.01.2019 with sole Operational Creditor i.e., M/s Holy Land Marketing Private Limited.
- xi. That IRP received claim from another Operational Creditor and from one Financial Creditor i.e., IndusInd Bank Ltd and accordingly the IRP reconstituted the CoC.



- xii. That 2nd Meeting of CoC was held on 05.03.2019 wherein the resolution for appointment of IRP as RP was neither approved nor rejected by the members of CoC.
- xiii. That the applicant filed multiple applications including application under 19(2) of the Code against the ex-management against non-corporation by the ex-management.
- xiv. That MM Saket Court declared the suspended directors as absconder under section 82 of CRPC vide order dated 26.05.2019.
- xv. That the RP also filed complaint against the Directors before the IBBI
- xvi. That the 6th meeting of CoC was held on 12.04.2021 wherein it has been concluded that assets of the CD have not been found. Hence, the members of COC decided to dissolve the CD and CIRP proceedings of the Corporate Debtor. It was also observed that in current scenario where the corporate debtor has no assets and the liquidation period of one year only implies zero returns with superfluous costs such as liquidator's fee, public notice etc which, in fact is in deviation with the Code's cardinal principle of value maximization.
- xvii. That after taking detailed examination the following resolutions were passed:

"RESOLVED THAT pursuant to Section 54 of the IBC, 2016 Mr. Naresh Kumar Munjal, Resolution Professional be and is hereby authorized by Committee of Creditors to file necessary application for dissolution of Corporate Debtor recommended by Committee of Creditors with the Hon'ble Tribunal and comply



with all the incidental and ancillary compliances with respect to that,

"RESOLVED FURTHER THAT pursuant to the order of Hon'ble Tribunal dated 19.02.2021 Mr. Naresh Kumar Munjal, Resolution Professional, be and is hereby authorised to take action as may be directed by IBBI / Special Court in pursuance to the complaint filed / to be filed by IBBI under section 236 of IBC, 2016

"RESOLVED FURTHER THAT pursuant to order of Hon'ble Tribunal dated 23.03.2021 Mr. Naresh Kumar Munjal, Resolution Professional be and is hereby authorised to take necessary action as may be required and directed by Ministry of Corporate Affairs in pursuance to application filed by him with the MCA."

xviii. The said resolution was approved by sole member of CoC and hence the present application is filed by the RP for dissolution of CD.

3. We have heard the submissions made by the Applicant and perused the Application filed by the RP and has gone through the documents placed on record filed by the applicant.

4. In an application for dissolution, this Adjudicating Authority is required to see whether the assets of the Corporate Debtor are completely liquidated or not. In the instant case, the applicant submitted that the assets of the Corporate Debtor are not available, owing to fact that the ex-management of the Corporate Debtor cannot be traced. Hence, they have moved an application for early dissolution of the CD without going into Liquidation.



5. It has been observed that the assets of the Corporate Debtor cannot be realized. Consequently, the COC concurred with the early dissolution of the Corporate Debtor in light of the aforesaid.
6. The CoC in its 6th CoC Meeting dated 12.04.2021 had unanimously resolved to directly dissolve the Corporate Debtor.
7. In a similar case, NCLT Bengaluru Bench had allowed direct dissolution of the Corporate Debtor on an application made by the Resolution Professional as directed by the Committee of Creditors in C.P.(IB)/96/BB/2020 and I.A/No. 435/2020 under Section 54 of Code, 2016 read with Section 60(5) of the Code, 2016 filed by Mr. Mandar Shrikant Wagh, IRP of M/s. Synew Steel Private Limited on the ground that no useful purpose will be served by placing the Corporate Debtor under Liquidation, as all the assets available with the Corporate Debtor were already realized, the Liquidation process under the provisions of the Code, 2016 is deemed to have been completed and therefore, it would be just and proper to dissolve the Company.
8. Further, in the case of *M/s. Air Pegasus Private Limited* [I.A. No. 198/2020 in C.P.(IB) No. 180/BB/2018], the NCLT, Bengaluru Bench approved direct dissolution of the Corporate Debtor without going through the Liquidation Process on similar reasoning. On an appeal by the Managing Director of the Corporate Debtor, the Hon'ble NCLAT, Chennai in *Shyson Thomas vs. Mr. Madhugiri Venkatarayappa Sudarshan* [T.A(AT)No.8 of 2021 in C.A(AT)(CH)(INS)/925/2020; order



dated 01.06.2023] had upheld the National Company Law Tribunal, Bengaluru Bench order dated 24.06.2020 of passing an Order of Dissolution' of the Corporate Debtor (M/s. Air Pegasus Private Limited), with immediate effect. The Hon'ble NCLAT, Chennai had observed as follow:-

"43. It cannot be lost sight off that the 'Corporate Debtor', had 'No Realisable Financial Assets', and the only 'Valuable Asset', was 'Intangible' in nature of the 'Air Operator Permit', a 'License', issued by the 'DGCA' and the 'Validity' of the said 'License', had lapsed on 23.03.2020.

44. It cannot be brushed aside that the 'Dissolution' of the 'Corporate Debtor', was approved by the 'Financial Creditor' with '100% Voting Rights', and in IA No. 198 of 2020, filed by the 1st Respondent / Resolution Professional (under Section 54 of the I & B Code, 2016), an 'Order', dissolving the 'Corporate Debtor' / 'M/s. Air Pegasus Private Limited' (Applicant Company), was passed with an immediate effect, etc.

45. At this juncture, this 'Tribunal', pertinently points out that there is no fetter that the 'Corporate Debtor', cannot be 'Dissolved', without undergoing the 'Process of Liquidation'.

53. Suffice it for this 'Tribunal', to make a pertinent mention that in the absence of any 'Asset(s)' / the 'Resolution Plan(s)', the Resolution Professional, had no other go, but to pray for an 'Order of Dissolution', to be passed by the 'Adjudicating Authority'. After all, the end of 'Liquidation', requires complete 'Dissolution' of an 'Entity'."

9. In view of the judgements as referred above, we are of the considered view that the circumstances of the present case also fully justified, that no useful purpose would be served, by placing the Corporate Debtor under Liquidation process, under the provisions of Code. Since no assets of the CD as well as the ex-management of the CD are traceable. Further, the Ex-Directors were declared as 'Absconders' under section 82 of CrPC



by Hon'ble Metropolitan Magistrate Saket Court New Delhi vide order dated 26.05.2019. Thus, it would be just and proper for this Adjudicating Authority to dissolve the Corporate Debtor as prayed by the Resolution Professional.

10. We are of the view that the ultimate objective of Code is either to resolve the insolvency by way of Resolution Plan or to dissolve the Corporate Debtor, as expeditiously as possible so as to maximize the value of the assets. If the facts and circumstances of a case, justify, that it would not serve any purpose to keep the Corporate Debtor under regular CIRP proceedings, and thereafter under Liquidation proceedings, under the provisions of Code, the Adjudicating Authority, by exercising its inherent powers conferred under the Code read with Rule 11 of the NCLT, Rules, 2016, may pass appropriate order(s) in the interest of speedy justice.

11. As far as fees of RP is concerned vide order dated 01.01.2024 it was noted as under: -

Heard the Ld. Applicant in person, Ld. Counsel on behalf of Indusind Bank and Ld. Counsel on behalf of M/s Holy Land Marketing Pvt. Ltd. Counsel for the Indusind Bank submitted that they will finally settle the dues of the RP/Liquidator at Rs.1,50,000/- to which the Liquidator has agreed. Order in the matter is reserved.

12. Accordingly, Indusind Bank Ltd is directed to reimburse the fees of RP of Rs. 1,50,000/- as agreed by them and accepted by the RP.



13. In view of the above IA 6092/2022 is **allowed** and M/s Laksh Foods Pvt. Ltd. stands dissolved with immediate effect.
14. It is clarified that dissolution of the Corporate Debtor would not in any way absolve the Promoters/Directors of the Corporate Debtor from any personal liability or guarantee given in respect of the Corporate Debtor, under any law for the time being in force.
15. The Registry is directed to send a copy of this order passed under Section 54(2) to the ROC Delhi & Haryana, with which the Corporate Debtor is registered and the IBBI within seven days from the date of this order.

SD/-
(Rahul Bhatnagar)
Member (Technical)

SD/-
(Mahendra Khandelwal)
Member (Judicial)