

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**BENCH – V, NEW DELHI**

**I.A- 5954/2022**

**IN**

**CP(IB)-421/ND/2019**

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

In the matter of:

**M/s SUMUKHI SALES PRIVATE LIMITED**

**....OPERATIONAL CREDITOR**

***Versus***

**M/s YM FOODWAYS PRIVATE LIMITED**

**....CORPORATE DEBTOR**

**IN THE MATTER OF:**

**SATYA PRAKASH**

Liquidator

M/s Y M Foodways Private Limited

IBBI/IPA-002/IP-N00906/2019-2020/12920

B-277, Gali No. 14, Tomar Colony, Burari, Delhi-84

**...Applicant/Liquidator for Corporate Debtor**

**Order Delivered on: 15.01.2024**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant : Mr. Satya Prakash, Liquidator  
with Mr. Vinod Chaurasia, Adv.

**ORDER**

**PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

1. This application bearing number I.A. 5954/2022 in CP(IB) 421/ND/2019 has been filed for dissolution of Corporate Debtor under Section 54 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IBC) praying for the following reliefs:
  - i. To pass an order to dissolve the Corporate Debtor under section 54 of the IBC, 2016*
  - ii. Direct the RoC to record dissolution of the Corporate Debtor;*
  - iii. Discharge Liquidator from the Liquidation process and any proceedings related to Corporate Debtor after necessary compliances with RoC and intimation to IBBI;*
  - iv. Pass such other/ further and other reliefs as this NCLT may deem fit and proper in the facts and circumstances of the present case.*
2. To put it briefly, the facts of the case are that the Application under section 9 of IBC for initiating CIRP was admitted by this Adjudicating

Authority vide order dated 21.11.2019 and Mr. Amit Kaushal was appointed as IRP.

- 3.** Applicant submitted that the Committee of Creditors (“CoC”) was constituted on 12/12/2019 with two Operational Creditors only as no financial creditor submitted his claim.
- 4.** Applicant submitted that, COC in its meeting dated 17.02.2020 resolved to replace Mr. Amit Kaushal by Mr. Satya Prakash IP Registration No-IBBI/IPA- 002/IP-N00906/2019-2020/12920 as Resolution professional for the Corporate Debtor and this was accordingly confirmed by this Adjudicating Authority vide its Order dated 27.02.2020.
- 5.** Applicant submitted that the Form G was published on 18.02.2020, but no expression of interest “EOI” was received, reason being that the Corporate Debtor has closed its operations well before the Insolvency Commencement Date “ICD”, and no assets were left except book entries.
- 6.** Applicant submitted that , CoC in its 4th meeting held on 25.08.2020 unanimously (with 100% vote share) resolved that Corporate debtor should be liquidated in accordance with the provisions of the IBC-2016.
- 7.** Applicant further submitted that on review of the Transaction Auditor Report (hereinafter referred to as TAR), search and seizure operation conducted by the Income Tax Department and other relevant documents of the Corporate Debtor, erstwhile Resolution Professional has formed his opinion that transactions amounting to Rs. 1123.87 Crs falls within the scope of the fraudulent or wrongful trading as per the provisions of the section 66 of the Code. Accordingly an application IA-5610/2020 under section 25(2)(j) read with Section 66 of the Insolvency

and Bankruptcy Code, 2016 was filed, but it was dismissed by this Adjudicating Authority vide order dated 21.02.2022 on the ground that the liability was not specified by the applicant on respective respondents in accordance with their tenure in office as Director.

- 8.** Applicant further submitted that on the decision of CoC, erstwhile RP filed an application (IA No- 4943/2020 u/s 33 (1) & 34 (3) for liquidation of Corporate Debtor and this Adjudicating Authority passed an order u/s 33 (2) to liquidate the Corporate debtor on 04.02.2021 and erstwhile RP was appointed as Liquidator.
- 9.** Applicant submitted that the Liquidator again filed an IA- 1328/2022 before the this Adjudicating Authority on 09.03.2022 for PUFEE transactions amounting to Rs. 1123.87 Crs under Section 25 (2)(j) read with Section 66 of the Insolvency and Bankruptcy Code, 2016 seeking appropriate directions in continuation to the order of this Adjudicating Authority dated 21.02.2022 in the matter of IA-5610/2020.
- 10.** Applicant submitted that pursuant to liquidation, public announcement in newspapers and at centralized platform managed by IBBI was issued on 13.02.2021 for invitation of claims.
- 11.** Applicant submitted the financial position of the corporate debtor as on date of commencement of Liquidation which is as below along with Audited Financial Statements of the Corporate Debtor as on March 31, 2020;

<b>ASSETS:</b>				
S.L.	Particulars	Book Value as on 31/03/2020 as per Audited financial Statements (Rs.)	Book Value as on 04/02/2021 i.e. Liquidation Commencement Date (Rs.)	Liquidation Value as per provisions of IBC, 2016 (Rs.)
1	Trade Receivables/ Debtors:	1153600	0	0
2	Plant & Machinery)	0	0	0
4	Inventory	0	0	0
5	GST Credit	2714186	2714186	0
6	Deferred tax assets	490523	490523	0
11	FDR	277088	277088	277088
12	Cash and Cash Equivalent	189761	134796	134796
<b>TOTAL</b>		<b>4825158</b>	<b>3616593</b>	<b>411884</b>

**12.** Applicant submitted that in response to public announcement made on 13/02/2021 per the regulation 12 of IBBI (Liquidation Process) Regulations-2016 Liquidator received 2 claims from government departments as Operational Creditors and 2 other Operational Creditors. Summary of claims as received during the Liquidation are given hereunder:-

<b>LIABILITIES:</b>		
<b>Particulars</b>		<b>Claims admitted Amount (Rs.)</b>
Operational Creditor- Government		25,92,73,886
Operational Creditor- Others		25,66,964

Liquidation Cost	20,56,129
Total	26,38,96,979

13. Applicant submitted that the Stakeholders Consultation Committee was constituted on 17/04/2021 comprising 2- OC- govt, 2- OC- Others, details of which are as under:

Sl. NO.	Name of Operational Creditors	Address of Stakeholders	Amount claimed by the Creditors in INR	Amount admitted by Liquidator in INR	Voting power in the SCC
1	M/s Ashai Sales Private Limited	Flat No. EWS G-3, Block 4, S-3 Rukmani Vihar, Vrindavan, Mathura, UP - 281121, <a href="mailto:asahisales2018@gmail.com">asahisales2018@gmail.com</a>	20,27,431	20,27,431	0.77%
2	M/s Sumukhi Sales Private Limited	H. No.: 3-A/Block, S.G.M. Nagar Faridabad Haryana - 121001, <a href="mailto:sumukhisales2017@gmail.com">sumukhisales2017@gmail.com</a>	5,39,533	5,39,533	0.21%
3	Department of Trade & Taxes, GNCTD, New Delhi	Office of the Assistant Commissioner, Department of Trade and Taxes, AVATO (Ward-81), Vyapar Bhawan, IP Estate, New Delhi-110001, EMAIL ID: <a href="mailto:ward81.podtt@delhi.gov.in">ward81.podtt@delhi.gov.in</a>	1,00,98,655	1,00,98,655	3.86%

4	Assistant Commissioner of Income Tax, Central Circle-2(3), Kolkata	Office of the DCIT, Central Circle- 2(3), Kolkata, Aaykar Bhawan Poorva, 4th Floor, Room No- 403, 110 Shantipally, E.M. Bye Pass, Kolkata-700107, Email: <a href="mailto:kolkata.dcit.cen2.3@incometax.gov.in">kolkata.dcit.cen2.3@incometax.gov.in</a>	24,91,75,231	24,91,75,231	95.16%
<b>TOTAL</b>			<b>26,18,40,850</b>	<b>26,18,40,850</b>	<b>100</b>

- 14.** Applicant submitted that the Liquidator has already declared in earlier progress reports that the Corporate Debtor has closed its operation well before the Initiation of CIRP and has no assets, stock, etc to realize, and the Liquidator has completed the liquidation process except disposal of PUF E transaction issue.
- 15.** Applicant submitted that the Liquidator realized FDR. A brief detail of realization during the Liquidation are as under;

S.L.	Particulars	Book Value as on 04/02/2021 i.e. Liquidation Commencement Date (Rs.)	Liquidation Value as per provisions of IBC, 2016 (Rs.)	Realisation on disposal of Assets. (Rs.)
1	Trade Receivables/ Debtors:	0	0	0
2	Plant & Machinery)	0	0	0
4	Inventory	0	0	0
5	GST Credit	2714186	0	0
6	Deferred tax assets	490523	0	0
11	FDR	277088	277088	336350

12	Cash and Cash Equivalentents	134796	134796	134796
<b>TOTAL</b>		<b>3616593</b>	<b>411884</b>	<b>471146</b>

- 16.** As per the provisions of section 53 of IBC, 2016, the realised amount has been adjusted against Liquidation Cost, and nothing was distributed to any other Stakeholders, rather the Liquidation cost is still due to recover, details of which are as under:

Sl. No.	Stakeholders under section 53 (1)	Amount Claimed (Lakhs)	Amount Admitted (Lakhs)	Amount Distributed (Lakhs)	Amount Distributed to the Amount Claimed (%)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	(a): CIRP Costs					
2	(a): Liquidation Costs	20.56	20.56	4.71	22.9%	Part of Liquidation cost is pending and the same will be recovered from the realization of NRRA as assigned u/R 37A
3	(b)(i)	NA	NA	NA		
4	(b)(ii)	NA	NA	NA		
5	(c)	NA	NA	NA		
6	(d) FC- Unsecured	NA	NA	NA		
7	(e)(i) OC- Govt	2592.74	2592.74	0		
8	(e) (ii)	NA	NA	NA		
9	(f) OC- Others	25.66	25.66	0		
10	(g)	NA	NA	NA		
11	(h)	NA	NA	NA		
<b>Total</b>		<b>2638.96</b>	<b>2638.96</b>	<b>4.71</b>	<b>0.17%</b>	

- 17.** Applicant submitted that the total cash as Liquidation value was Rs. 471146/- which was utilised against Liquidation Cost of Rs.20,56,129/- accordingly Rs.1584983/- still pending to recover.
- 18.** Further the Applicant submitted that the Stakeholders denied to reimburse the pending Liquidation cost.
- 19.** Applicant submitted that the Liquidator sent intimation(s) as applicable in respect of the Corporate Debtor to statutory authorities which are as below.

Date of intimation(s) to statutory authorities as applicable	
a. PF	No registration

b. ESI	No registration
c. Income Tax Dept	29.09.2021
d. Inspector of Factory	NA
e. GST/VAT	05.05.2022
f. Others	-

- 20.** Applicant submitted that the Liquidation Bank Account was closed on 22/07/2022.
- 21.** Applicant submitted that the Application IA- 1328/2022 on PFUE Transactions amounting to Rs. 1123.87 Crs under Section 25 (2)(j) read with Section 66 of the Insolvency and Bankruptcy Code, 2016 is pending before this Adjudicating Authority and the same has already been assigned under regulation 37A and the assignment has also been approved by this Adjudicating Authority as vide order dated 03/11/2022. Thus the said Application shall be persued by the assignee i.e VRSA Consultancy LLP.
- 22.** As per the Deed of Assignments dated 24.05.2022 the sharing of the proceeds of the assets will be as per the Deed of Assignment which has already been placed on record in the IA 2881/2022. The liquidator will be the Observer for proceedings in distribution of assets as per the Schedule 3 of the Deed of Assignment.
- 23.** We have gone through the present Application filed by the Liquidator praying for closure of liquidation process and dissolution of the Corporate Debtor and in terms of Section 54 of the Insolvency and

Bankruptcy Code, 2016 read with Regulation 45 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

24. That Applicant/Liquidator has filed application(s) and various documents/Reports which were required to be submitted as per the provisions of IBC, 2016 read with relevant regulations.
25. That the Liquidation process has been conducted as per the timeline indicated in regulation 47 details of which has been given in Form-H accompanied with this application.
26. That as required by Regulation 45(3) of IBBI (Liquidation Process) Regulations, 2016, Final Report has been filed by the Liquidator.
27. That compliance report in form H in terms of regulation 45(3) was placed on record by the Applicant.
28. That there is no litigation pending against the Corporate Debtor to the best of knowledge, belief and effort of the Liquidator.
29. That in view of the facts and circumstances, since the Applicant submitted that all the assets of Corporate Debtor have been completely liquidated and/ or distributed to stakeholders as the provisions of law and there is nothing left to be further liquidated.
30. In view of the facts and circumstances, the Applicant prayed that the Corporate Debtor may be dissolved under Section 54 of IBC, 2016.
31. We have heard the submissions made by the Applicant, perused the Application and the compliance Affidavit filed by the Liquidator. Here, it is worthwhile referring to Section 54 of IBC, 2016 and Section and Regulation 45 IBBI (Liquidation Process) Regulations, 2016:

**“Section 54 IBC-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.”

**“IBBI (Liquidation Process) Regulations, 2016  
45. Final report prior to dissolution.**

1) When the corporate debtor is liquidated, the liquidator shall make an account of the liquidation, showing how it has been conducted and how the corporate debtor’s assets have been liquidated.

2) If the liquidation cost exceeds the estimated liquidation cost provided in the Preliminary Report, the liquidator shall explain the reasons for the same.

3) The liquidator shall submit an application along with the final report and the compliance certificate in Form H to the Adjudicating Authority for –

(a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or

(b) for the dissolution of the corporate debtor, in cases not covered under clause (a).”

**32.** That from the conjunct reading of the above provisions, this Adjudicating Authority is required to see that whether the assets of the Corporate Debtor are completely liquidated or not. In the instant case the Liquidator has furnished his Final Report and Form-H.

- 33.** Since in the instant case as discussed above, all the assets of the Corporate Debtor have been liquidated and all the requirements of Regulation 45 of IBBI (Liquidation Process) Regulations, 2016 have been fulfilled, therefore, we are inclined to allow the present Application under Section 54(2) of the IBC, 2016.
- 34.** Accordingly, there being no other impediment, the present Application is allowed and the Corporate Debtor is ordered to be dissolved with the immediate effect.
- 35.** 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.

Let copy of the order be served to the parties.

**Sd/-**

**(RAHUL BHATNAGAR)  
MEMBER (TECHNICAL)**

**Sd/-**

**(MAHENDRA KHANDELWAL)  
MEMBER (JUDICIAL)**