BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A.No.14/2021
U/s.54 R/w Section 60(5) of the IBC, 2016
& Regulation 45 (3) (B) of the IBBI
(Liquidation Process)
Regulations, 2016
And
C.P.(IB)No.137/BB/2018
U/s.9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of:

Motappa Thimmarayaswamy
Liquidator of
M/s. SGP Software Solutions Pvt. Ltd.
No.228, 5th Main, 5th Cross,
Shiva Krupa, K.G.Nagar,
Bengaluru – 560 019 - Applicant

Date of Order: 1st February, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present, through Video Conference:

For the Applicant : Shri K. Chetan Kumar

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.14/2021 in C.P.(IB)No.137/BB/2018 is filed by Motappa Thimmarayaswamy, Liquidator of M/s.SGP Software Solutions Pvt. Ltd. (Applicant), U/s.54 R/w Section 60(5) of the IBC, 2016 & Regulation 45 (3) (B) of the IBBI (Liquidation Process) Regulations, 2016, by seeking to dissolve the Corporate Debtor (M/s. SGP Software

Solutions Private Limited); and to direct Punjab National Bank, Cantonment Branch, Commercial Street, for closure of Bank Account and to issue demand draft in favour of Liquidator for Rs.65,089.28 towards the fees and reimbursement of expenses.

2. Brief facts of the instant Application, which are relevant to the issue in question, are as follows:

(1) Initially, the main Company Petition bearing C.P.(IB)No.137/BB/2018 was filed by Mr. Joji Thomas (Petitioner), U/s.9 of the IBC, 2016, by inter alia seeking to initiate CIRP in respect of M/s. SGP Software Solutions Private Limited (Respondent/Corporate Debtor), same was admitted by the Adjudicating Authority, vide its Order dated 24.09.2019, by appointing the Applicant as IRP, imposing moratorium etc. During the first meeting of CoC held on 06.11.2019, the IRP was appointed as the Resolution Professional. As there was no Resolution Plan received for revival of the Corporate Debtor, the CoC at their 3rd meeting held on 19.06.2020, approved for initiation of liquidation of the Corporate Debtor. Subsequently, the Resolution Professional has filed I.A.No.255/2020 and the same was disposed of by this Adjudicating Authority. vide its order dated 26.08.2020. Pursuant to the said Liquidation Order, he made Public Announcement in Form-B dated 13.09.2020, one in Financial Express (English Newspaper) another in local language Samyuktha Karnataka (Kannada Newspaper), stating that the Corporate Debtor is in Liquidation, in terms of Regulation 12 of the IBC (Liquidation Process) Regulations, calling upon stakeholders to submit their claims on or before 25.09.2020.

(2) Pursuant to Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall constitute a consultation committee within sixty days from the liquidation commencement

date, based on the list of stakeholders prepared under Regulation 31, to advise him on the matters relating to sale under Regulation 32. Accordingly, the Liquidator has constituted the Stakeholders Consultation Committee on 9.11.2020, based on the representations received from the creditors of each class.

Sl. No.	Category	Representative	Email Id's
1	Government	Superintendent, Range DND4, ND4 Division, North Commissionerate	nd4-cgst@gov.in
2	Operational Creditors	Employees State Insurance Corporation	subid.hira@esic.nic.in – legal
3	Shareholder/Promoters	Mr. Joseph Philip	Philip@quadra.in
4	Employees	Mr. Prashanth Cheluvaraj	prashic@gmail.com

(3) As per the Balance Sheet prepared on the liquidation commencement date, the Corporate Debtor has a sole asset i.e., software worth Rs.21,372/-. The registered valuers during the CIRP have provided the liquidation value of the software as zero as the same is out dated and the cost involved in upgrading the same is unascertainable. However, the Liquidator had issued public notice for sale of asset of the Corporate Debtor i.e. Intellectual Property (Software) on 12.12.2020 and the e-auction was held on 14.12.2020, and same was sold to the sole bidder Mr. Harsha M for Rs.4,100/-.

(4) As on the date of commencement of liquidation, the Corporate Debtor was maintaining the following Bank Accounts:

Sl. No.	Name of the Bank and Address	Account Number	Status
1	Punjab National Bank, Cantonment Branch, No.143, Commercial	0040002100094790	As orally informed by the Bank, the account has been lien marked. However, the Bank

	Street, Bengaluru – 560001.		has not provided any documents in this connection. The Bank balance available as on 1.1.2020 is Rs.65,089.28/-.
2	HDFC Bank, Malleshwaram, 15th Cross Branch Margosa Road, Malleshwaram, Bengaluru – 560 055	50200006401851 and 50200009759992	Closure request has been submitted by the Liquidator to the concerned Branch. However, awaiting for the confirmation on closure of the Bank accounts.

(5) As on the date of this Application, the Bank balance in the account maintained at Punjab National Bank (Account No.0040002100094790) is Rs.65,089.28/-. Further the total CIRP cost is Rs.9,06,452/- including the fees of the Liquidator. The balance of Rs.65,089.28/- as available at Punjab National Bank shall be adjusted towards the cost incurred by the Liquidator during the CIRP period. It is also stated that the sole assets of the Corporate Debtor has been sold by the Liquidator and there is no other asset available for realization except for Bank balance at Punjab National Bank.

(6) Accordingly, the Liquidator of the Applicant Company has filed a Final Report of the Liquidation, by inter-alia stating as follows:

a. <u>Statement of Account maintained by the Liquidator of M/s. SGP Software Solutions Pvt. Ltd. (in Liquidation) for the period from 26.08.2020 to 08.01.2021</u>

Receipts			**Payments**		
Date	**Particulars**	**Amount In Rs.**	**Date**	**Particulars**	**Amounts in Rs.**
23.8.2020	Lien on Bank Balance in PNB Bank	60,989	12.9.2020	Public Announcement	21,168
17.12.2020	Sale of Assets	4,100	30.9.2020	NCLT Filing fees for list of stakeholders	1,000
31.12.2020	Amount spent	51,004	15.10.2020	NCLT filing fees	1,000

	by Liquidator			for preliminary report	
			30.10.2020	NCLT filing fees for Progress Report	1,000
			20.11.2020	Public Announcement on filing of list of stakeholders	13,608
			12.12.2020	Public Announcement for sale of assets	6,048
			14.12.2020	E-auction service	1,180
			15.12.2020	Printing and postage	6,000
			8.1.2021	Closing Bank Balance in PNB Bank	65,089
	Total	**1,16,093**		**Total**	**1,16,093**

It is further stated that all the asset of the Corporate person have been disposed of; and none of the litigations are pending against the Corporate person as per the record available.

3. Heard Shri K. Chetan Kumar, learned Counsel for the Applicant/ Liquidator, **through Video Conference.** We have carefully perused the pleadings of both the parties along with extant provisions of the Code, and the Rules made thereunder.

4. Before considering the merits of case, it is necessary to refer relevant provisions and rules, as available under the Code and the Rules made thereunder.

"Section 54 of the Code reads as *(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".*

Regulation 45. Final report prior to dissolution, reads as:

***(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)".*

5. In terms of Section 60 of Code, the Adjudicating Authority shall be NCLT having territorial jurisdiction over the place, where the registered office of corporate person is located. By conjointly reading the above provisions, the ultimate objective of Code is either to resolve the issue by way of Resolution Plan or to dissolve the Corporate Debtor, as expeditiously as possible. The above facts and circumstances of the case, justify there would not serve any purpose to keep the Corporate Debtor under CIRP proceedings, and thereafter under Liquidation proceedings, under the provisions of Code, the Adjudicating Authority, by exercising its inherent powers conferred under the Act, can pass appropriate order(s) in the interest of speedy justice.

6. The facts as mentioned above justify dissolution of the Company rather than to continue the Corporate Debtor under Liquidation process, under the extant provisions of the Code and Rules made there under. The assets of the Company were completely liquidated except to close the Bank Accounts of the Corporate Debtor and to pay the fees to liquidator, which will be closed after passing order by the Adjudicating Authority in the instant case. The liquidation process under the provisions of Code is deemed to have been completed under Chapter III of Part II of Code. Therefore, it would be just and proper

for the Adjudicating Authority to dissolve the Company, as prayed for by the Liquidator.

7. In the result, by exercising powers conferred on the Adjudicating Authority, under Section 54 and other connected Provisions of Code, and the Rules made there under, **C.P.(IB)No.137/BB/2018 and I.A.No.14/2021**, are hereby disposed of with the following directions:

(1) It is hereby dissolved the Corporate Debtor namely, M/s. SGP Software Solutions Pvt. Ltd., with immediate effect;

(2) The Registry is directed to forward a copy of this Order to the Registrar of Companies, Karnataka, Bengaluru;

(3) The Liquidator is also directed to forward copy of this Order to all other Statutory Authorities including IBBI, connected with the affairs of the Company.

(4) Personal liability/Guarantee of any Director/Promoter of the Corporate Company, if any, would not absolve them by virtue of this order. Aggrieved party/Parties are at liberty to continue or to take appropriate legal course of action against them.

(5) The Liquidator is permitted to submit a copy of this Order with the Punjab National Bank, Cantonment Branch, Commercial Street, Bengaluru for closure of aforesaid Bank Account and PNB is directed to issue demand draft in favour of the liquidator for an amount of Rs.65,089.28/- towards the fees and reimbursement of expenses. Further, the Liquidator shall also ensure the closure of HDFC Bank Account, Malleshwaram, Bengaluru.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

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