Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I
*** *** ***

IA No. 1905 of 2020
in
C.P. (IB) No. 1661/MB/2017

An Application under Section 54 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 14(a) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and also read with Rule 11 National Company Law Tribunal, Rules, 2016.

Vijay P. Lulla,
Liquidator for
Penguin Umbrella Works Private Limited,
O/at – 201, Sachitanand Bldg., 2nd Floor,
12th Road, Khar (West), Mumbai – 400 052. ...Applicant

In the matter of

The Greater Bombay Co-Operative Bank Limited,
89, GBCB House, Bhuleshwar,
Mumbai – 400 002. ...Financial Creditor

V/s

Penguin Umbrella Works Private Limited,
B 12/13, Chinar, 1st Floor, R.A. Kidwai Marg,
Mumbai - 400 031. ...Corporate Debtor

Date of Order: 05.08 .2021

CORAM:
Shri. Bhaskara Pantula Mohan, Hon'ble Acting President
Shri. Narendra Kumar Bhola, Hon'ble Member (Technical)

Appearance:
For the Applicant: Mrs. Raina Birla (Advocate)

Sd/-

Per: Narendra Kumar Bhola, Member (Technical)

ORDER

1. This is an Application by the Liquidator of Penguin Umbrella Works Private limited (Corporate Debtor) under Sections 54 of the Insolvency & Bankruptcy Code, 2016 (the Code) read with Regulation 14(a) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (the Regulations) and also read with Rule 11 National Company Law Tribunal, Rules 2016 seeking dissolution of the Corporate Debtor.

2. The Company Petition (C.P. (IB) No. 1661/MB/2017) filed under Section 7 of the Code seeking Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was admitted by this Tribunal by order dated 12.06.2019, wherein Applicant was appointed as the Interim Resolution Professional (IRP). The IRP was later confirmed as RP in 1st CoC meeting held on 08.07.2019.

3. The Applicant submits that, in the meanwhile, he had preferred an Application under Section 19(2) of the Code in MA No. 2750 of 2019. Further affidavit has been furnished by the erstwhile management stating that the company was not in operation since last 15 years and that they do not have any assets or records of the company with them and whatever assets were mortgage to the Bank/ Financial Creditor have been sold by them. Accordingly, the said application was disposed of by this Tribunal vide order dated 25.02.2021.

4. The applicant submits that since the company was non-operational for more than 15 years and since no details were available, information memorandum could not prepared. Also, the name of the company was struck off from the list of the companies by the Registrar of the Companies vide public notice dated 03.10.2018. All these aspects were discussed in the 4th CoC meeting held on 17.01.2020 and the CoC resolved to liquidate the Corporate Debtor and decided to appoint applicant. Accordingly, applicant filed an Application in MA no. 480 of 2020 and same was allowed by this Tribunal vide order dated 14.02.2020. wherein

Sd/-

Applicant was appointed as the Liquidator to carry out the liquidation process. The status of the Corporate Debtor has since been changed to one 'under liquidation' as per Section 33 the Code.

5. The Applicant as a liquidator of the Corporate Debtor, published "Form B" on 19.02.2020 in Navrashtra and Financial express in Mumbai for getting claims from the stakeholders. The last date for receiving claims was 17.03.2020.

6. The Applicant submitted that he had received only one claim from the Greater Bombay co-operative Bank Limited (Financial Creditor) amount of Rs. 9,70,65,376.37/- and all the assets of the company were already secured with the same Financial Creditor, most of which have been sold and the only asset left to be sold was in the possession of the Financial Creditor.

7. The Applicant submitted that as per the Regulation 31A of the Regulation, the liquidator is required to constitute a Stakeholders Consultation Committee (SCC) within 60 days from the date of the commencement of the Liquidation. Thereafter Applicant conducted 1st meeting of the Stakeholders of Penguin Umbrella Works Private Limited was held on 23.03.2020 and resolved to file an Application for Dissolution of the Corporate Debtor under section 54 of the Code. The resolutions passed in the 1st Stakeholders meeting are as follows:

> *"RESOLVED THAT on the basis of the Affidavit received by the erstwhile Directors of the Corporate Debtor, it is clear that the Company is non operative since past 15 years and virtually there are no assets in the Company and therefore it is decided that Liquidator file an Application to wind up the Company under Regulation 14(a) of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 before Hon'ble Tribunal."*

8. The Applicant submitted that since there was only one claim received the list of the Stakeholders was not published and the same was decided in the stakeholders meeting held on 23.03.2020. The Applicant prepared and submitted the Assets Memorandum and Preliminary Report as per Regulation 34 and 13 respectively of

Sd/-

the Regulations on 07.07.2020 through email since there was lockdown due to Covid-19. As there are no assets to be sold and realized, the sale of Assets Report (Progress Report) was not prepared. The erstwhile management in the affidavit filed before this Bench has affirmed that the Company has no assets.

9. Thus, the Applicant has filed present application for dissolution of the Corporate Debtor as there is nothing in the company to be distributed. The Applicant submitted that there were no assets to be sold and realized and therefore, final Report in this regard cannot prepared. The Applicant further submitted that audited balance sheet is annexed to the application with the liquidation costs incurred for the Corporate Debtor.

10. The relevant provision for the purpose of dissolution of a Corporate Debtor is Section 54 of the Code. It reads as under:

> *"54. (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 subsection (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."*

11. The Corporate Debtor does not have any asset to be liquidated. The applicable Regulation under the Regulations, provides:

> *"Regulation 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*

Sd/-

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."

12. On examining the submissions made by the Counsel appearing for the Applicant and the documents annexed to the Application, it appears that the affairs of the Corporate Debtor have been standstill since last 15 years and there are no assets to liquidate. Also, the name of the company was struck off from the list of the companies by the Registrar of the Companies vide public notice dated 03.10.2018. We are satisfied from the documents on record that the dissolution is not with intent to defraud any person. The liquidation process has been duly completed as per the provisions of the Code without success. From the facts narrated above and the law on the subject it would be just and equitable to dissolve the Corporate Debtor. No party is going to be adversely affected or prejudiced thereby. In view of the above the Corporate Debtor deserves to be dissolved. Hence ordered.

ORDER

The Application be and the same is allowed. It is hereby ordered as follows.

i. Penguin Umbrella Works Private Limited, the Corporate Debtor, is hereby dissolved with immediate effect;

ii. The Registry is directed to forward a certified copy of this order to the Registrar of Companies, Mumbai within a period of seven days;

iii. The Liquidator is discharged. C.P.(IB)No.1661/MB/2017 stands closed.

Sd/-
Narendra Kumar Bhola
Member (Technical)

Sd/-
Bhaskara Pantula Mohan
Acting President