

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

I.A.(IB) No. 1377 of 2023
C.P. (IB) No. 784/KB/2019

*An application under Section 54(1) of the Insolvency and Bankruptcy Code, 2016,
read*

*with Regulation 45(3) of the Insolvency and Bankruptcy Board of India (Liquidation
process) Regulations, 2016 and Rule 11 of NCLT Rules, For Dissolution of the
Corporate Debtor.*

In the matter of:

Mr. Nandalal Khandelwal

...OPERATIONAL CREDITOR

Versus

M/s Aparna Polyflex Private Limited (In Liquidation)

...COMPANY IN LIQUIDATION

And

In the matter of:

MR. Animesh Mukhopadhyay

...RESOLUTION PROFESSIONAL/APPLICANT

In the matter of:

1. Mr. Nandalal Khandelwal

...FINANCIAL CREDITOR

2. M/s Aparna Polyflex Private Limited (In Liquidation)

...CORPORATE DEBTOR

3. Mr. Animesh Mukhopadhyay

...RESOLUTION PROFESIONAL/ APPLICANT

Date of pronouncement of order: 13.03.2024

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CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearances (via Video Conferencing/Physical):

Mr. Ankita Baid, Adv.] For the Liquidator.
Mr. Animesh Mukhopadhyay] Liquidator-in-person.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. Learned Authorized Representative for the RP present and the Learned Counsel for RP in person present.

2. **This application has been filed by the Applicant seeking following prayer:**

2.1 To exclude/condone the delay of 593 days in filing this instant application.

2.2 To allow dissolution of the Corporate Debtor in accordance with Section 54(1) of the Code and the rules and regulations framed thereunder.

2.3 To relieve the liquidator from his current duties and dissolve his office.

3 **IA (I.B)/1607/(KB)/2023:**

3.1 It is submitted that CP (IB) No. 784/KB/2019 had been filed by Nandalal Khandelwal (hereinafter referred to as the Operational Creditor), under Section 9 of the Insolvency and Bankruptcy Code read with Rule 6 of the Insolvency and Bankruptcy Board of India (application to Adjudicating Authority) Rules, 2016, for initiating CIRP with regard to Aparna Polyflex Ltd (hereinafter referred to as the Corporate Debtor), claiming its dues. The aforesaid petition was heard on various dates and the Tribunal *vide* its order pronounced on 01.10.2019, directed for commencement of CIRP in the matter of the Corporate Debtor and the Applicant herein was appointed as Interim Resolution Professional.

3.2 It is submitted that the CoC in the meeting held on 18.02.2020, passed the resolution for initiating of liquidation in the matter of the Corporate Debtor. Therefore, this Tribunal *vide* order dated 25.02.2020 passed the order of commencement of

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liquidation in the matter of the CD and appointed the Applicant herein as the Liquidator.

- 3.3 It is submitted that the Public Announcement inviting claims from stakeholders was made on 01.03.2020 and a total of 8 claims amounting to Rs.1955530000.00/- were received. A copy of the public announcement dated 01.03.2020 is annexed hereto and marked with the letter “C”
- 3.4 It is admitted that in the wake of covid-19 pandemic, the subsequent nationwide lockdown and the Applicant being Covid positive, this Tribunal *vide* order dated 12.04.2021 allowed an exclusion of 232 days which is annexed as letter ‘D’.
- 3.5 It is admitted that the liquidation process came to a halt again due to increasing Covid cases and the consent lockdown in various jurisdictions in the nation between 20.04.2021 – 30.06.2021. The list of Stakeholders was published in “Financial Express” and local Bengali vernacular “EKDIN” on 07.07.2021, is annexed as letter ‘E’.
- 3.6 It is submitted that the Liquidator *vide* email dated 25.08.2021 informed SFIO about liquidation proceedings of the CD and requested for access to the books and other documents of the CD. However, SFIO *vide* email dated 04.10.2021 forwarded the matter to RoC.
- 3.7 It is submitted that in the 1st and 2nd SCC Meeting held on 30.04.2021 and 06.09.2021 respectively, the issues with regard to assets of the CD were discussed in details.
- 3.8 It is stated that an application be filed under Section 38 of the IBBI Liquidation Regulations. Copies of the minutes of the 1st 2nd and 3rd Stakeholders’ meeting are annexed hereto and collectively marked with the letter “G”. Hence, an application under Regulation 38 of the IBBI Liquidation Process Regulations, being IA 1092/KB/2021, was filed by the Applicant herein and the same was allowed by this Tribunal *vide* order dated 06.01.2022.
- 3.9 It is stated that in the 4th SCC meeting held on 26.02.2022, the Applicant herein placed the distribution chart of the said shares between the creditors of CD which was acceptable to the said stakeholders. The shares were finally transferred to the

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unsecured financial creditors/stakeholders of CD *vide* sale certificate dated 04.03.2022.

3.10 It is admitted that according to the balance sheet of the CD, an amount of Rs. 56,561/- was lying in two different bank accounts of HDFC Bank (Jaipur) and ICICI Bank. The Applicant *vide* letters dated 09.09.2021 requested the said Banks to close the accounts of the CD and transfer the remaining amount in the liquidation account of the CD opened with Punjab National Bank, Garia Branch, bearing Account No. 0123050017055. The details of the two bank accounts are as follows:

Bank Account	Amount
HDFC Bank, Ashoke Marg, Jaipur A/c: 0054230009750	28110.30
ICICI Bank A/c.000605025818	28451.20
Total	56561.50

3.11 That the two bank accounts of the CD were closed after transferring the funds into the liquidation account of the CD which was opened with Punjab National Bank. The dates of closure are mentioned below:

Bank Account	Date of closure of account
HDFC Bank, Ashoke Marg, Jaipur A/c: 0054230009750	15.09.2022
ICICI Bank A/c. 000605025818	30.07.2022

Copies of the closure reports of the two bank accounts of the CD are annexed as letter "L".

3.12 That the State Tax Department, Gujarat had filed its claim on 08.03.2021 but the same was not admitted in the absence of an Application under Section 42 of the Code. Again, after 1.5 years, on 24.11.2022, the said Tax Department sent a fresh

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claim Form C in accordance with the judgment of the Hon'ble Supreme Court in State Tax Officer v Rainbow Papers Ltd. [Civil Appeal No. 1661 of 2020] and judgment of the learned NCLT, Ahmedabad dated 13.09.2022 in Umiya Trading v. Stratus Foods Put. Ltd. Wherein the position of the said State Tax Department was considered as a secured Financial Creditor.

3.13 That the valuation was only done with respect to the financial assets of the CD as there are no fixed assets. The average liquidation value and the fair market value of the financial assets of the CD is mentioned below:

Valuer	Fair Market value (in Rs.)	Liquidation Value (in Rs.)
Rajiv Kumar Agarwal	9,71,124	6,71,542
Neeraj Kumar Surekha	11,09,614	8,25,665
Total Value	20,80,738	14,97,207
Average Value	10,40,369	74,86,03.5

3.14 That the Applicant herein has submitted before this Tribunal various reports on various dates as mentioned below:

Particulars of Report	Date of Submission
Preliminary Report by the Liquidator	07.07.2021
List of Stakeholders	06.07.2021
Asset Memorandum	07.07.2021
1 st Quaterly Progress Report	07.07.2021
2 nd Progress Report(2 nd Quarter)	07.07.2021
3 rd Progress Report(3 rd Quarter)	07.07.2021
4 th Progress Report (4 th Quarter)	07.07.2021
5 th Progress Report(5 th Quarter)	07.07.2021

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6 th Progress Report(6 th Quarter)	01.09.2021
7 th Progress Report(7 th Quarter)	05.03.2022
8 th Progress Report(8 th Quarter)	05.03.2022
9 th Progress Report(9 th Quarter)	20.04.2022
10 th Progress Report(10 th Quarter)	14.07.2022
11 th Progress Report(11 th Quarter)	15.10.2022
12 th Progress Report(12 th Quarter)	25.01.2023

3.15 It is also stated that after receiving funds from the Financial Creditors and amounts realized from the banks on closing of the accounts, the following amounts have been utilized to pay the CIRP and liquidation costs as mentioned herein below:

Amounts received from	Amount
BHACHAU TRADERS PRIVATE LIMITED	100000.00
BHACHAU TRADERS PRIVATE LIMITED	197892.00
Amount realized from ICICI Bank	28451.20
Amount realized from HDFC Bank	28110.30
Total	3,54,453.50

CIRP Cost Particulars	Amount
RP and IRP Fees	147000
Valuers' fees	43600
Total CIRP Cost	190600

Liquidation Cost Particulars	Amount
Liquidation Cost-Bank charges	1145.36
Publication cost	19278.00
Liquidator's fee	6773.00
Liquidator's cost for preservation of documents	48000.00
Auditor's remuneration	30000.00

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Conveyance	782.84
Legal Charges	57874.30
Total	163853.50

Particulars	Amount and Status
CIRP cost	190600
Liquidation Cost	163853.50
Amount of Liquidation cost left unpaid	NIL

3.16 It is admitted that the Corporate Debtor may be dissolved in accordance with Section 54(1) of the Code read with Regulation 45 of Liquidation Process Regulations. A copy of the compliance certificate in Form H issued by the Applicant herein is annexed hereto and marked with the letter “Q”.

3.17 It is admitted that a delay of 593 days be excluded/condoned in filing the instant application caused by time taken to get the lien removed from the two bank accounts of the CD being ICICI Bank and HDFC Bank; time taken by the ICICI Bank and HDFC Bank in closing the accounts of CD; time taken to close the liquidation account of the CD as HDFC bank had wrongly debited charges before transferring the amounts to liquidation account of the CD and the delay caused in deciding the status of the claim of State Tax Department, Gujarat due to their non-responsiveness to the Applicant’s inquiries.

4. Hence it is ordered that:-

4.1 It is submitted that under Section 53 of the IBC, 2016 on 30.08.2021 that is 1st SCC meeting, on 06.09.2021 that is 2nd SCC meeting, on 05.10.2021 that is 3rd SCC meeting and on 26.02.2022 that is 04th SCC distribution sheet was placed before the SCC in the meeting held on 26.02.2022 the same was approved and the

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copy of the minutes of 1st, 2nd and 3rd are attached as **Annexure G** and 4th SCC is attached as **Annexure I**.

4.2 The Liquidator has shown in the application estimated liquidation value and realisation amount vis-à-vis breakup of amount realised, liquidation costs (inclusive of liquidator's fees and provision for expenses) and amount distributed to stakeholder.

4.3 The Liquidator has duly annexed with the application copy of statement of bank account maintained with HDFC Bank and Punjab National Bank, during CIRP period.

4.4 The Liquidator has annexed closure certificate of liquidation account being **A/c.No.005423200009750** issued by the HDFC Bank, Stephen House, 4 B.B.D. Bag – East, Kolkata-700 001 and account being **A/c.No.000605025818** issued by Punjab National Bank, maintained in the name “Liquidation M/s Aparna Polyflex Private Limited” certifying that the said account has been closed after the balance become “**zero**” along with statement of account.

4.5 The Liquidator had held four SCC meetings altogether and in compliance of regulation 15 of the Regulations 2016, the Liquidator had filed twelve Periodical Progress Reports from time to time before this Adjudicating Authority.

4.6 As per Form H submitted by the Liquidator, application u/s. 43 to 66 shall be pursued by the financial stakeholder, Punjab National

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Bank and they shall be beneficiary of any proceeds that come out from the application.

4.7 In terms of regulation 45(3) of the Regulations 2016, the Liquidator has also filed **Final Report** and Compliance Certificate in **Form H** as well as a copy of **Bank Statement** showing “zero” balance in the liquidation account.

4.8 Upon hearing the Ld. Counsel appearing for the Liquidator and perusing the documents annexed to the application, it appears that affairs of the Corporate Debtor have been completely wound up and its assets have been completely liquidated. The bank account has also been closed.

4.9 In view of the facts and circumstances stated above, there is no impediment to the Corporate Debtor being dissolved, and it is ordered accordingly. However, keeping in view of the pendency of IA(IBC)/1377(KB)2023, **the main C.P. shall not be disposed of.**

4.10 The Liquidator is further directed to serve a copy of this order upon the Registrar of Companies, West Bengal, immediately and, in any case, within **fourteen days** of receipt of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.

4.11 The Liquidator shall stand discharged from his responsibilities, subject to all procedural compliances.

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4.12 **IA(IBC)1377(KB)2023** in **CP(IB)/784(KB)2019** is allowed with the above directions and is accordingly **disposed of**.

4.13 **CP(IB)/784(KB)2019** shall stands **disposed of**.

4.14 The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

4.15 Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, 13th March, 2024.

SG, Steno.