

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

**I.A. (Dissolution) No. 06/2024
in
CP(IB)-532/PB/2016**

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

IN THE SETTLED MATTER OF:

M/s Variscon Engineering Services Private Limited
[CIN: U31909DL2002PTC114411]

Having its address at:

A-62, FIEE COMPLEX, BASEMENT OKHLA INDUSTRIAL AREA, PHASE-II,
NEW DELHI, Delhi, India – 110020

...OPERATIONAL CREDITOR

versus

M/s Pier One Constructions Private Limited
[CIN: U45201DL2005PTC138693]

Having its address at:

B-257 OKHLA INDUSTRIAL AREA, PHASE-1, NEW DELHI, India – 110020

...CORPORATE DEBTOR

AND IN THE MATTER OF:

Mr. Sandeep Goel
Liquidator for M/s Pier One Constructions Private Limited

Having office at:

410, Pratap Bhawan, 5 Bahadur Shah Zafar Marg,
New Delhi - 110002

Email - liquidator.pierone@gmail.com

... APPLICANT

**I.A. (Dissolution) No. 06/2024
in
CP(IB)-532/PB/2016**

CORAM:

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

Appearances:

For the Liquidator/Applicant: Mr. Abhishek Anand along with Mr. Karan Kohli and Ms. Palak Kalra, Advocates

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date Of Pronouncement: 15.07.2024

1. This is an application for dissolution of Corporate Debtor M/s Pier One Constructions Private Limited that has been filed by the Liquidator under Section 54 of the Insolvency & Bankruptcy Code, 2016 read with Regulation 45(3)(b) of The IBBI (Liquidation Process) Regulations 2016. The prayer made by the Liquidator in the Application is as follows: -
 - a. *Dissolve the corporate debtor i.e. M/s Pier One Constructions Private Limited in terms of Section 54 of IBC;*
 - b. *Discharge the applicant i.e., Mr. Sandeep Goel, as the Liquidator of the Corporate Debtor;*
 - c. *Condone the delay of 17 days in filing the present application owing to facts and circumstances mentioned therein.*
 - d. *Direct the RoC, Delhi to update the status of the Corporate Debtor as "dissolved" and undertake necessary action at their end;*
 - e. *pass such further direction(s) as this Adjudicating Authority may deem fit in the interest of justice.*

2. The Liquidator has made the following submissions: -

2.1 That an application under Section 7 of the Code was filed by the Operational Creditor (M/s Variscon Engineering Services Private Limited) before this Adjudicating Authority u/s 9 of the IBC to initiate Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor (M/s Variscon Engineering Services Private Limited) being Company Petition No. (IB)-532/(PB)/2016. This Adjudicating Authority vide order dated 21.11.2017 (“Admission Order”) admitted the petition and appointed the applicant herein namely Mr. Sandeep Goel [IBBI/IPA-003/IP-N-00073/2017-18/10583] as the Interim Resolution Professional (“IRP”) for the Corporate Debtor.

2.2 In terms of Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016; the applicant had made a public announcement on 14.12.2017 in the following newspapers namely: -

- (i) Business Standard (English Edition)
- (ii) Business Standard (Hindi Edition)

The last date of receipt of claims as stated in the aforesaid public announcement was specified as 25.12.2017.

2.3 Thereafter, as per Section 18(1)(a) of the IBC, the applicant had collated all the

claims submitted by the creditors on the basis of documents received from the claimants. However, the same could not be verified in the absence of latest financial records of the corporate debtor. Accordingly, the applicant had constituted the Committee of Creditors (CoC) on 04.01.2018 comprising of only one financial creditor of the Corporate Debtor, i.e. Standard Chartered Bank. Thereafter, in the 1st CoC meeting convened on 10.01.2018, the CoC confirmed the appointment of the applicant (then IRP) as the Resolution Professional (RP).

2.4 In the absence of any viable resolution plans, the applicant had subsequently filed an application bearing C.A. No. 501 of 2018 seeking Liquidation of the Corporate Debtor in terms of Section 33 of the IBC. This Adjudicating Authority vide order dated 04.07.2018 passed an order for liquidation and had appointed the applicant herein as the Liquidator in the matter.

2.5 Thereafter, the applicant liquidator had made a public announcement in terms of Regulation 12(1) of the Liquidation process Regulations, 2016 in Form – B on 14.07.2018 in the following newspapers: -

- (i) Financial Express (English) – Delhi/NCR Edition.
- (ii) Jansatta (Hindi) - Delhi/NCR Edition.

The last date for submission of claims therein was specified as 10.08.2018.

- 2.6 That in terms of Regulation 15(1)(a) of Liquidation Process Regulations, 2016, the liquidator had filed a total of 21 progress report(s) at various stages of the liquidation process, which were taken on record by this Adjudicating Authority vide its various orders from time to time and is a matter of record.
- 2.7 That Standard Chartered Bank had filed its claim before the applicant amounting to Rs. 5,37,27,738.24/-. The applicant herein had sent a letter dated 16.08.2018 to Standard Chartered Bank (being a Financial Creditor) seeking a query whether the Bank wishes to relinquish the sole asset of the Corporate Debtor situated at D-2 Second Floor, Geetanjali Enclave, New Delhi – 110017 (hereinafter referred to as “said property”) to the Liquidation Estate.
- 2.8 In its response dated 26.09.2018, Standard Chartered Bank intimated the applicant stating that it does not wish to relinquish its right over the “said property” in terms of Section 52 of IBC. It further mentioned that the Bank wishes to realize the said property/asset on its own.
- 2.9 It is further contended that Standard Chartered Bank had issued a public notice dated 28.09.2019 for the sale of “said property” pursuant to which an auction was conducted on 31.10.2019 from 2pm to 4pm.

- 2.10 It is contended that the applicant through various telephonic conversations and e-mails had requested Standard Chartered Bank about the outcome of the auction, but there was no update provided by the Bank.
- 2.11 It is further alleged that Standard Chartered Bank failed and omitted to mention that the “said property” belonged to the Corporate Debtor (undergoing liquidation).
- 2.12 Later, at the meeting of all stakeholders held on 15.01.2020, Standard Chartered Bank informed that they had assigned their debt u/s 5 of the SARFAESI Act, 2002. Subsequently, the liquidator was provided an unregistered instrument titled “Deed of Assignment” dated 13.12.2019, executed between Standard Chartered Bank and “Asset Reconstruction Company India Limited” (ARCIL).
- 2.13 Thereafter, ARCIL vide email dated 01.02.2021 that a sale notice for the “said property” was published on 30.01.2021. Later vide email dated 21.02.2021, ARCIL informed the liquidator that the e-auction was conducted successfully wherein the highest bidder paid an amount equivalent to Rs. 3,03,50,000/-.
- 2.14 Thereafter, the Liquidator had sought multiple extension(s) of the Liquidation Period from time to time due to various reasons by moving Interlocutory Application(s) which had been allowed by this Adjudicating Authority and are a matter of record.

2.15 The liquidator submitted that the requirements of Regulation 14 of the Liquidation Process Regulations, 2016 have been fulfilled in the following respects: -

A. The Realizable Properties of the Corporate Debtor are insufficient to cover the cost of Liquidation Process: -

- (i) That the applicant liquidator received claims totaling Rs. 7,87,70,685.24 of which the entire amount was admitted.
- (ii) The claimants were as follows: -
 - Standard Chartered Bank (Financial Creditor) whose claim was worth Rs. 5,37,27,738.24/-.
 - M/s Delta Protech Private Limited (Operational Creditor) whose claim was worth Rs. 1,47,27,339/-.
 - M/s Variscon Engineering Services Private Limited (Operational Creditor) whose claim was worth Rs. 1,03,15,608/-.
- (iii) During the Corporate Insolvency Resolution Process, the total CIRP Costs incurred amounted to Rs. 10,95,000/- Plus GST of Rs. 1,93,500/- leading to total amount of Rs. 12,88,500/-.
- (iv) During the Liquidation proceedings, the Liquidation Costs incurred amounted to Rs. 20,09,430/- Plus GST Rs. 3,47,569/- leading to total liquidation cost of Rs. 23,56,999/-.

- (v) That the sole asset of the Corporate Debtor, being the property bearing no. D - 2, Second Floor, Geetanjali Enclave, New Delhi - 110017 was assigned by the Financial Creditor, i.e. Standard Chartered Bank, to the assignee, i.e. Asset Reconstruction Company India Limited ("ARCIL") vide Deed of Assignment dated 13.12.2021.
- (vi) The Applicant had filed an application being I.A. No. 4765 of 2020 praying for the asset of the Corporate Debtor to be handed over to form part of the Liquidation Estate. However, vide order dated 17.03.2021 this Adjudicating Authority had recorded the undertaking given by ARCIL that it will not appropriate the sale proceeds pending disposal of the Application. Additionally, this Adjudicating Authority had directed the counsel for ARCIL to take instructions with regard to payment of CIRP cost, liquidation cost, liquidator fee and expenses as per Section 52 of the Code read with Regulation 21 of IBBI Regulations.

In light of the aforesaid submissions, the Liquidator is of the opinion that the affairs of the corporate debtor do not require any further investigation.

2.16 This Adjudicating Authority during the course of hearing on 04.02.2022 in I.A. No. 4765/2020 had recorded that counsel(s) appearing on behalf of respondent as well as liquidator had mutually agreed to receive Rs. 9.80 lakhs without prejudice to their claim in the application. The Liquidator has confirmed that on

13.01.2023, he had received Rs. 9,80,000/- in the Liquidation Account of the Corporate Debtor as per terms of the aforesaid order.

2.17 That this Adjudicating Authority vide its order dated 26.09.2023 directed the Respondent No.2 therein to pay a total sum of Rs. 11,98,500/- to the applicant Liquidator as the outstanding CIRP and Liquidation costs.

2.18 Thereafter, a settlement was arrived at pursuant to which ARCIL agreed to make the payment of Rs. 6,98,500/- as the full and final payment against Rs. 11,98,000/-.

2.19 Accordingly, ARCIL paid Rs. 6,98,500/- to the Liquidation account on 16.02.2024. The Liquidator had further disbursed the expenses to service providers on 17.02.2024. Further, the applicant on receipt of payment prepared the receipts and payments account and got the same audited before filing the present Dissolution application.

2.20 The details of the amount distributed to the stakeholders as per 53 of the IBC (Waterfall Mechanism) as per IBC: -

S. No.	Stakeholders under Section 53	Amount Claimed	Amount Admitted	Amount Distributed	Amount Distributed to the Claimants
--------	-------------------------------	----------------	-----------------	--------------------	-------------------------------------

					(%age)
I	Unpaid Insolvency Resolution Process Cost	6,85,000	6.85,000	6,85,000	100%
2	Liquidation Cost	9,93.500	9,93.500	9.93.500	100%
3	Standard Chartered Bank (Secured Financial Creditors)	5,37,27,738.24/-	5,37,27,738.24/-	Sole Assets sold by assignee (ARCIL) of Standard Chartere d Bank for sum of Rs 3,03,50,0 00.	-
4	Operational creditors (Government	2,18,60,794/-	-	-	-

	Dues)				
5	Operational creditors (other than Workmen, Employees and Government Dues)	2,50,42,947/-	2,50,42,947/-	-	-

The Liquidator submitted that there remains nothing to be realized further and accordingly prayed that the Corporate Debtor may be dissolved.

2.21 That the Liquidation Process is an exhaustive process. and there is a delay of 17 days in filing dissolution application. without any reason or fault attributable to the Applicant herein. Furthermore, the Liquidation Process of the Corporate Debtor is only delayed due to the facts enumerated above. This Adjudicating Authority condones the delay and hereby proceeds to adjudicate the present application on merits.

2.22 In compliance of Regulation 45 of the Liquidation Process Regulations. 2016, the Applicant has prepared the final report prior to filing of dissolution application containing Statement of Assets and its realization and distribution of amount in

accordance to Section 53 of the Code. Copy of the final report is has been annexed to the present petition as annexure A - 21.

2.23 The Compliance Certificate in FORM 'H' as per Regulation 45 (3) of the Liquidation Process Regulation, 2016 has also been submitted along with the petition, marked as annexure A - 22.

2.24 In the instant matter, as the sole asset of the Corporate Debtor has been assigned by Standard Chartered Bank to ARCIL. and thereafter. it has been e-auctioned by ARCIL. Therefore, there are no other assets of the Corporate Debtor which are remaining to be disposed/realized by the Applicant.

2.25 Hence the instant applicant is being filed by the applicant seeking Dissolution of the Corporate Debtor under Regulation 45 of the Liquidation Process Regulations. 2016 before this Adjudicating Authority in the interest of justice.

ANALYSIS AND FINDINGS

3. We have heard the submissions made by the Applicant, perused the Application filed by the Liquidator and have gone through the documents on record filed by the Liquidator. Here, it is worthwhile referring to Section 54 of IBC, 2016 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).”

4. That from the conjunct reading of the above provisions, this Adjudicating Authority is required to see whether the assets of the Corporate Debtor are completely liquidated or not. In this case, the assets of the CD have been completely liquidated and the proceeds thereof have been distributed amongst the various stakeholders in accordance with order of priority as per Section 53 of The Insolvency and Bankruptcy Code, 2016 [Waterfall Mechanism].
5. The Liquidator has fulfilled Regulation 45 of IBBI (Liquidation Process) Regulations, 2016 and other relevant provisions of law as discussed above, therefore, there being no impediment, we are inclined to allow the present Application to dissolve the Corporate Debtor.
6. The present application is **allowed** and the Corporate Debtor is ordered to be dissolved with immediate effect. The Liquidator, Mr. Sandeep Goel [IBBI/IPA-003/IP-N-00073/2017-18/10583] is hereby discharged from his duties as the liquidator in the present case.
7. The Registry is directed to send a copy of this order passed under Section 54(2) to the ROC, NCT of Delhi & Haryana, with which the Corporate Debtor is registered and

also to the Insolvency and Bankruptcy Board of India within seven days from the date of this order.

8. Application for dissolution of M/s Pier One Constructions Private Limited stands **allowed**.

9. Let the copy of the order be served to the parties.

Without costs.

-SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)