

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
SPECIAL BENCH

IA-5205/ND/2021
IN
CP(IB)-2612/ND/2019

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

IN THE MATTER OF:

M/s. OM LOGISTICS PRIVATE LIMITED

...Operational Creditor

VERSUS

M/s. MICRO POWER TECHNOLOGY PVT. LTD.

...Corporate Debtor

AND

IN THE MATTER OF

MS. DEEPA GUPTA

B-2/110, Sector-16,
Rohini, New Delhi-110085

...Applicant/Liquidator

Order Delivered on: 23.07.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Appearance

For the Liquidator: Mr. Anurag Bhatt, Mr. Lokesh Pathak, Advs.

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

1. This Application has been filed by the Resolution Professional of M/s. Micro Power Technology Pvt. Ltd. on 19.10.2021 before this Adjudicating Authority under Section 54 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”), for seeking the following reliefs:
 - a. *“Pass an order for dissolution of the Corporate Debtor from the date of the order passed by this Hon’ble Tribunal in this regard in view of the provisions of Section 54(2) of the Code;*
 - b. *Pass an order directing the financial creditor being the UCO Bank and other members of the Stakeholders committee to make contributions towards the Liquidation Cost and Insolvency Resolution process cost; and*
 - c. *Pass any other order as may be deemed fit by this Hon’ble Tribunal under the facts and circumstances of the present case and in the interest of justice.”*

2. To put it briefly, the facts of the case are that the petition for initiating CIRP was initiated vide order dated 19.02.2020 passed by this Hon’ble Tribunal and Mr. Reetesh Kumar Agarwal was appointed as the Interim Resolution Professional. The Interim Resolution Professional constituted the Committee of Creditors, wherein, the Committee of Creditors was constituted with Union Bank of India as sole member of COC.

3. The members of the Committee of Creditors in their meeting resolved to replace the Interim Resolution Professional and appointed Ms. Deepa Gupta as the Resolution Professional and a letter of assignment dated also issued in the name of the Applicant herein. The replacement of the Interim Resolution Professional was approved by this Hon'ble Tribunal vide its order dated 09.11.2020 passed in IA 4714 of 2020.

4. In the 4th meeting of Committee of Creditors dated 11.12.2020, since, despite expiry of 180 days including the exclusion of 97 days granted due to COVID-19 pandemic, no assets of Corporate Debtor were found by the Resolution Professional, the members of committee of creditors resolved to file an Application for liquidation of the Corporate Debtor.
5. An Application bearing no. 04/2021 was filed before this Hon'ble Tribunal for Liquidation of Corporate Debtor. The aforesaid Application was heard and this Hon'ble Tribunal vide its order dated 03.02.2021 was pleased to pass an order of Liquidation for the Corporate Debtor. It is submitted that vide the aforesaid order dated 03.02.2021, this Hon'ble Tribunal was pleased to appoint Ms. Deepa Gupta as the Liquidator for the Corporate Debtor.
6. That on being appointed as the Liquidator of the Corporate Debtor, the Applicant issued public announcement in requisite Form B in view of the provisions of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (in short "Liquidation Regulation") on 08.02.2021 in the newspapers Business Standard (Both Hindi and English).
7. Pursuant to Form B published by the Liquidator, claims were received and the details of the stakeholders is as under: -

S.No	Name	Amount claimed (INR)	Amount admitted INR
1.	Union Bank of India	56,81,356	56,81,356
2.	Tata Capital Financial Services Ltd.	4,27,728	4,27,728
3.	Leoch Batteries Pvt. Ltd.	59,78,561	54,95,893
4.	Universal Power Systems	12,25,524	8,28,058

5.	Neeraj Singh Bisht	1,40,769	NIL
----	--------------------	----------	-----

8. In accordance with the claims received by the Liquidator, the Liquidator constituted a stakeholder's committee comprising of the members as stated above.
9. The Liquidator in order to carry out the Liquidation process requested the statutory auditor of the Corporate Debtor to provide the balance sheets of the Corporate Debtor for financial year 2019-20, 2020-21 and the status of the movable and immovable property/ assets of the Corporate Debtor as provided under the balance sheet of the Corporate Debtor for financial year 2017-18. However, despite communications made by the Liquidator no information was provided to the Liquidator.
10. The Liquidator did not receive any information from either the auditor or the erstwhile management, the Liquidator sent a letter of non-cooperation to the erstwhile management as well as the auditor. However, no information was provided to the Liquidator.
11. As per the Balance Sheet for financial year 2017-18, it was seen that the Corporate Debtor had the assets of the following value: -
- i. Stocks; Rs. 132.33 Lakhs
 - ii. Fixed Assets; Rs. 37.78
12. Apart from the financial statements for financial year 2017-18, no other financial document, either audited or otherwise available of the Corporate Debtor.

13. That despite several requests of the Liquidator, no information of the assets as mentioned above were provided to her. Neither the auditor nor the erstwhile management of the Corporate Debtor is providing any information to the Liquidator and hence, the Liquidator is unable to trace the assets of the Corporate Debtor. Since, no details of the assets of the Corporate Debtor are available; the Liquidator is unable to ascertain the Liquidation value of the Corporate Debtor.
14. Further the Liquidator had conducted physical visit to the registered office of the Corporate Debtor wherein, it was found that the premises of the Corporate Debtor was vacated in year 2018. Neither there was any staff nor there was any plant, machinery or fixed assets of the Corporate Debtor available at the registered office of the Corporate Debtor.
15. The aforesaid fact was also brought to the notice of the stakeholder's committee by the Liquidator during the meeting of the stakeholder's committee. It is submitted that after looking at the non-cooperation by the directors, the stakeholders vide their meeting dated 4.9.2021, resolved that since, no Liquidation Estate of the Corporate Debtor is available for realization, continuation of the liquidation process shall not lead to any fruitful conclusion. Thus, it was resolved by the stakeholders that the Corporate Debtor be dissolved in view of the provisions of Section 54 of the Code. Extract of the Resolution passed by the stakeholders in the stakeholders meeting for dissolution of the Corporate Debtor is reproduced as under: -
- “Resolved that the stakeholders, FC (Union Bank of India) be and is hereby accorded to move on application before Hon’ble NCLT for dissolution of the CD, M/s. Micropower Technology Private Limited.”*
16. Further the Liquidation cost of the Liquidator and expenses carried out by the Liquidator were also ratified by the Stakeholders committee in the aforesaid

meeting of the stakeholders. Extracts of the resolution passed in this regard is reproduced as under:-

"Resolved that the stakeholders, FC(Union Bank of India) be and is hereby accorded to approve and ratify the fees of the liquidator and liquidation cost which includes publication charges of Form B ,Publication of list of stakeholders, filing INC-28, booking conference room for stakeholder meeting(invoices already supplied to the branch)".

17. The expenses which are due of the Applicant being the Liquidator and the Resolution Professional is Rs. 2,73,578/-. The Liquidation Process Cost as well as the insolvency resolution process cost of the Corporate Debtor was approved by the members of the stakeholder's committee and thus, they are liable to make payment for the same.
18. The proposed timeline for completion of liquidation of the Corporate Debtor is approximately 1 year from the liquidation commencement date of the Corporate Debtor to the Liquidator as per Regulation 44 of the Liquidation Regulation however, due to complete shutdown of the office of the Liquidator due to corona virus infection and significant time taken in preparation of receipt and payment account of the Corporate Debtor, the Liquidator was unable to file the instant application on time.
19. In compliance of Regulation 45 of the Liquidation Process Regulations, 2016 the Applicant has prepared final report prior to dissolution application containing Liquidation Statement of Assets and its realization and distribution of amount in accordance with Section 53 of the I&B Code, 2016. Copy of Final

Report dated 03.06.2024 under Regulation 45 of the Liquidation Process Regulations, 2016 is attached with this Application.

20. The Compliance certificate in Form-H as per Regulation 45(3) of the Liquidation Process Regulations, 2016 is prepared and filed along with the present application.
21. The Applicant/Liquidator filed application(s) and various documents/Reports which was required to be submitted as per the provisions of IBC, 2016 read with relevant regulations.
22. That as required by Regulation 45(3) of IBBI (Liquidation Process) Regulations, 2016, Final Report has been filed by the Liquidator.
23. It is submitted by the Applicant that there is no Litigation pending against the Corporate Debtor to the best of knowledge, belief and effort of the Liquidator.
24. That in view of the facts and circumstances, it is submitted that all the assets of Corporate Debtor have been completely liquidated and/ or distributed to stakeholders as per the provisions of law and there is nothing left to be further liquidated.
25. Thus in view of the facts and circumstances, the Applicant prayed that the corporate debtor may be dissolved under Section 54 of IBC, 2016.
26. 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).”

27. 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 the Final Report and Form-H.
28. Since, in the instant case, 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.
29. Accordingly, there being no other impediment, the present Application **IA-5205/ND/2021** is allowed and the Corporate Debtor is ordered to be dissolved with immediate effect.
30. 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.

Sd/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)