

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Through Physical Hearing / VC Mode (Hybrid))

ITEM No.08
C.A.Nos.04, 40 & 45/2024 in
C.P. No.36/BB/2018

IN THE MATTER OF:

M/s. Stove Kraft Pvt. Ltd. & Anr. ... Petitioners
Vs.
M/s. Pigeon Appliances Pvt. Ltd. & Anr. ... Respondents

Order under Section 241-242 of Companies Act, 2013

Order delivered on 04.07.2024

CORAM:

SHRI K. BISWAL
HON'BLE MEMBER (JUDICIAL)

SHRI MANOJ KUMAR DUBEY
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner : Shri Saji P. John
The Liquidator : Shri Konduru Prasanth. R
For the Liquidator : Ms. Lakshmi Menon, Adv

ORDER

C.A.No.04/2024:

1. This Application has been filed by the Applicant/Liquidator, under Section 290 (1) (C) of the Companies Act, 2013 seeking leave of this Tribunal to proceed further with the winding up proceeding by selling the immovable property of the Company by Public Auction.
2. It is stated in the application that the winding up order was passed in the present case on 15.06.2022 by appointing the Applicant herein as the Company Liquidator. It is further stated that as per Section 290 (1) (c) of the Companies Act, 2013 and Rules 165, 166 & 167 Companies (Winding up Rules) 2020 it is mandatory to seek the directions of this Tribunal and obtain sanction for selling the immovable property of the Company in liquidation.

Therefore, to proceed further with the winding up proceedings by selling the immovable property of the Company by public auction, the Applicant has filed the present application.

3. Heard the Ld. Counsel for the Applicant and perused the records. We have also gone through the Section 290 (1) (c) of Companies Act, 2013 and Rules 165, 166 & 167 of the Companies (Winding up Rules), 2020 which are extracted below:

“290. Powers and duties of Company Liquidator:

(1) Subject to directions by the Tribunal, if any, in this regard, the Company Liquidator, in a winding up of a company by the Tribunal, shall have the power –

a) ...

b) ...

c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract with power to transfer such property to any person or body corporate, or to sell the same in parcels;”

The Companies (Winding up) Rules, 2020:

“165. Sale to be subject to sanction and to confirmation by Tribunal. *–Unless the Tribunal otherwise orders, no property or asset belonging to company which is being wound up by the Tribunal shall be sold by the Company Liquidator without the previous sanction of the Tribunal, and every sale shall be subject to confirmation by the Tribunal.*

“166. Procedure at sale *– Every sale shall be held by the Company Liquidator, or if the Tribunal shall so direct, by an agent or an auctioneer approved by the Tribunal, and subject to terms and conditions, if any, as may be approved by the Tribunal and all sales shall be made by public auction or by inviting sealed tenders or by electronic bidding or in such manners as the Tribunal may direct.”*

“167. Expenses of sale. *– Where property forming part of a company’s assets is sold by the Company Liquidator through an auctioneer or other agent, the gross proceeds of the sale shall, unless, the Tribunal otherwise orders, be paid over to the liquidator by such auctioneer or agent and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent in accordance with the scales, if any, fixed by the Tribunal.”*

4. Therefore, on perusal of the above Sections and Winding Up Rules, and in view of the facts and circumstances of the case, we hereby allow the present application directing the Company Liquidator to issue E-Auction Sale Notice

through paper publication in English and Kannada News Papers and to conduct E-Auction through NeSL platform and to issue sale certificate to the successful H1 Bidder. The Applicant is directed to file a Memo of compliance within a period of 30 days after the completion of the same.

Accordingly, C.A.No.04/2024 stands disposed of.

C.A.No.40/2024:

1. This Application has been filed by the Applicant/Liquidator, under Section 277 (4) of the Companies Act, 2013 seeking constitution of Winding up Committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator in carrying out the functions as provided in Sec. 277 (5) of the Companies Act, 2013.
2. Heard the Ld. Counsel for the Applicant/Liquidator.
3. It is stated that the winding up order was passed in the present case on 15.06.2022 by appointing the Applicant herein as the Company Liquidator. Pursuant to the same, the Company Liquidator has made Public Announcement in WIN-43 on 11.07.2022 in two Newspapers viz., *Financial Express* and *Hosadtinganta* inviting claims along with relevant proof of respect thereof from the creditor/s of the Respondent Company. It is further stated that Section 277 (4) stipulates that the application is to be made within three weeks from the date of the winding up order for constitution of winding up committee.
4. During the hearing, the Ld. Counsel for the Applicant stated that they had previously filed an application requesting for constitution of winding up Committee in the year 2022. However, due to certain office objections, the Applicant was unable to comply the same in time. Therefore, the instant application has been refiled as C.A.No.40/2024. The Ld. Counsel also orally requested to condone the delay in filing the application from the date of order of winding up and the same is allowed.
5. As per Section 277 (4) of the Companies Act, 2013, the Company Liquidator has to make an application to the Tribunal for constitution of winding up committee to assist and monitor the progress of the liquidation proceedings by the Company Liquidator in carrying out the function as provided in Sub-Section (5) and such Winding up Committee shall comprise of the following persons:

- (a) Official Liquidator attached to this Tribunal
 - (b) Nominee of Secured Creditors;
 - (c) A Professional nominated by the Tribunal.
6. The Applicant submitted that the communication is made with the Official Liquidator on 13.07.2022 regarding the commencement of the winding up of the Respondent Company. Further, the winding up committee shall also comprise of nominee of secured creditor. It is stated there is a claim submitted by Stove Kraft Private Limited as a Creditor. Therefore, in view of the facts and circumstances of the case, we dispose of the present application with the following directions:-
- a) We hereby constitute the Winding up Committee comprising of the Official Liquidator, attached to the Hon'ble High Court of Karnataka, Ms. Medha Kulkarni, Chartered Accountant as a Professional and one Nominee of Secured Creditors.
 - b) The committee will assist and monitor the process of liquidation proceedings as provided under the provisions of Section 277 (4) of the Companies Act, 2013 and the Liquidator will further comply the provisions of Section 277 (5) of the Companies Act, 2013.
 - c) The Company Liquidator shall be the convener of the meetings of the winding up committee which shall assist and monitor the liquidation proceedings in following areas of liquidation functions, namely:
 - i. Taking over assets;
 - ii. Examination of the statement of affairs;
 - iii. Recovery of property, cash or any other assets of the company Including benefits derived therefrom;
 - iv. Review of audit reports and accounts of the company;
 - v. Sale of assets;
 - vi. Finalization of list of creditors and contributories;
 - vii. Compromise, abandonment and settlement of claims;
 - viii. Payment of dividends, if any; and
 - ix. Any other function, as the Tribunal may direct from time to time.
 - d) The Company Liquidator shall place before the Tribunal a report along with minutes of the meetings of the committee on monthly basis duly signed by the members present in the meeting for consideration till the final report for dissolution of the Company is submitted before this Tribunal.

- e) The Company Liquidator shall prepare the draft final report for consideration and approval of the winding up committee.
- f) The Final report so approved by the winding up committee shall be submitted by the Company Liquidator before the Tribunal for passing for a dissolution order in respect of the company.
- g) The Company Liquidator is directed to serve the copy of this Order to the Registrar of Companies, the Official Liquidator appointed by this Tribunal and all other concerned parties.
- h) With the above directions the **C.A.No.40/2024** in C.P.No.36/BB/2018 is allowed and disposed of.

C.A.No.45/2024:

1. This Application has been filed by the Applicant/Liquidator, under Section 281 (1) of the Companies Act, 2013 seeking to take on record 7th Progress Report for period from 16.12.2023 to 15.03.2024.
2. Heard the Ld. Counsel for the Applicant/Liquidator.
3. In the circumstances, and for the reasons mentioned in the Application, the C.A. is hereby allowed by taking on record the 7th Progress Report on the liquidation process of Corporate Debtor for the period from 16.12.2023 to 15.03.2024.
4. **Accordingly, C.A.No.45/2024 stands disposed of.**

**-Sd-
MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

**-Sd-
K. BISWAL
MEMBER (JUDICIAL)**