

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. NO. 1014 OF 2024
IN
COMPANY PETITION NO. IB-1005/ND/2018

IN THE MATTER OF:

MR. ANUP KUMAR
LIQUIDATOR, M/S A M Vinyl Pvt. Ltd.

...APPLICANT

IN THE MATTER OF:

M/S SWASTIK INTERCHEM PVT. LTD.

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/S A M VINYL PVT. LTD.

...RESPONDENT/CORPORATE DEBTOR

ORDER DELIVERED: 16.04.2024

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER
(JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENTS:

FOR THE LIQUIDATOR : Mr. Ishaan Mukherjee, Adv.

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. This interlocutory application has been filed under Regulation 44(2) of the IBBI (Liquidation Process) Regulations, 2016 read with Rule 11 of NCLT Rules, 2016 by the Liquidator Mr. Anup Kumar (hereinafter referred as "Applicant") seeking following relief: -

- a. Pass an order to allow the present application.
 - b. Pass an order under Regulation 44(2) of the IBBI (Liquidation Process) Regulations, 2016 read with rule 11 of NCLT Rules, 2016 extension of 90 days the Liquidation process of the Corporate Debtor from 24.02.2023 to 23.05.2024.
2. Briefly stated the facts of the present case as averred by the applicant are that Liquidation Process was initiated against M/s A M VINYL PVT. LTD. ('Corporate Debtor') vide this Adjudicating Authority order dated 06.07.2020 and Mr. Anup Kumar was appointed as the Liquidator.
 3. The Liquidator had made public announcement on 09.07.2020 and invited the stakeholders of the Corporate Debtor to file their claim. On 18.09.2020 the Liquidator had filed the preliminary report along with the list of stakeholders and assets memorandum and as per the development of the liquidation proceeding the Liquidator had filed the Thirteenth progress report as per the provision of Regulation 15 of IBBI (Liquidation Process) Regulations, 2016.
 4. The Liquidator had further sold the assets belonging to the Corporate Debtor as per the liquidation E-state as per the provision of Section 36 of IBC, 2016 through E-Auction to successful bidder M/s Elevpro LLP and the sale proceeds has been distributed among the stakeholders as per the provision of Section 53 of IBC, 2016.

5. It is further relevant to mention at this stage that the stipulated period of 365 days for completion of Liquidation process from 06.07.2020 had expired on 06.07.2021, and thereafter this Hon'ble Tribunal vide Order dated 02.07.2021 had allowed the exclusion for 48 days expiring 06.07.2021 till 23.08.2021.
6. It is pertinent to mention that vide order dated 23.08.2021 took into consideration that there are pending applications for recovery and de-freezing of the account of the Corporate Debtor and avoidance application which need to be decided and therefore this Tribunal vide order dated 24.08.2021 was pleased to allow further extension of 90 days from 23.08.2021.
7. Thereafter taking into consideration the above-mentioned Application being pending, this Tribunal vide Order dated 16.12.2021 was pleased to grant further extension of six months from 23.11.2021 till 23.05.2022. Further extension granted for three months vide order dated 01.06.2022, again extension was granted for three months vide order dated 18.11.2022, extension was granted for three months 23.02.2023, extension was granted for three months vide order dated 24.05.2023, extension was granted for three months vide order dated 21.08.2023 and further extension was granted for 2 months vide order dated 29.11.2023. Since the above applications are pending for reasons beyond the control of the applicant the applicant is moving the present application.

8. The Applicant submits that the Mr. Alok R Khemuka was declared as the successful bidder in relation to e-auction of the Corporate Debtor. The Applicant was required to accept the Letter of Intent (hereinafter “LOI”) dated 05.10.2023 and to pay a consideration of Rs. 7,56,000 (Rupees Seven Lakhs Fifty-Six Thousand only). It is submitted that the Liquidator on 19.01.2024 received the consideration. The Liquidator has to execute a Sale Deed and Assignment with respect to the same. Thus, it is submitted that at this stage that the extension for Liquidation period expiring on 23.01.2024 and for the Applicant to continue with the above compliance in lieu of the LOI dated 05.10.2023, extension of three months is required.
9. That further at this stage it is submitted that the Liquidator has completed all of his duties as enshrined under Section 35 of the Code, 2016 except for the following litigations are still pending before this Hon’ble Tribunal are as follows: -

S. N o.	IA No.	Name of the parties	Under Section	NDOH
1.	373/ND /2021	Directorate General of Foreign Trade & Anr.	60(5)	21.02.2024
2	3541/N D/2023	Liquidator of M/s. AM Vinyl Pvt Ltd. v Mr. Ashok Chopra	60(5)	21.02.2024
3.	3542/N D/2023	Liquidator of M/s. AM Vinyl Pvt Ltd. v Mr. Ashok Chopra	60(5)	21.02.2024
4.	3539/2 023	Liquidator of M/s. AM Vinyl Pvt Ltd. v Mr. Ashok Chopra	60(5)	21.02.2024

10. It is pertinent to mention at this stage that in IA 373/2021 this Hon'ble Tribunal vide order dated 19.01.2024 had listed the Application for final hearing. Further Application bearing IA No. 3541/2023, 3542/2023 and 3539/2023 are restoration Applications filed under section 60(5) of the code for seeking revival of Applications bearing no. 4156/2020, 3913/2021 and 3985/2021 respectively.
11. Heard the submission made by the Learned Liquidator. It is to be noted here that the Regulation which was prevalent at the time of passing the Liquidation order mandated the liquidation process to be completed within a period of one year. However, the Liquidator not being in a position to complete the process and under the circumstances, the Liquidator has filed the present application under Regulation 44(2) of IBBI (Liquidation Process) Regulations, 2016 for continuation of the Liquidation period of the Corporate Debtor for a further period of one year. In this context it is relevant to refer to Regulation 44 of IBBI (Liquidation Process) Regulations, 2016.

44. Completion of liquidation:

- (1) The Liquidator shall liquidate the corporate debtor within a period of one year from the liquidation commencement date, notwithstanding pendency of any application for avoidance of transactions under Part II of the Code, before the Adjudicating

Authority or any action thereof: Provided that where the sale is attempted under sub-regulation (1) of Regulation 32A, the liquidation process may take an additional period upto ninety days.

(2) If the liquidator fails to liquidate the Corporate Debtor within one year, he shall make an application to the Adjudicating Authority to continue such liquidation, along with a report explaining why the liquidation has not been completed and specifying the additional time that shall be required for liquidation.

12. Regulation 44 of IBBI (Liquidation Process) Regulations, 2016, is taken into consideration for the facts of the present case and it contemplates that if the liquidator has failed to liquidate the Corporate Debtor within one year, then he has to make an application to the Adjudicating Authority to continue such liquidation, along with a report explaining why the liquidation has not been completed specifying the additional time that shall be required for completion of the liquidation.

13. The Applicant in the application had averred that all assets have been sold and certain applications are pending before this Tribunal for adjudication, the Liquidation process in relation to the Corporate Debtor cannot be completed.

14. Thus, by taking into consideration all the facts mentioned above, this Authority feels that it is just and proper to extend the liquidation period for a further period of 90 days from the date of this order. Further, the

Liquidator shall make every endeavour to complete the liquidation process within the extended period. Further, the time spent in filing this extension application dated 23.02.2024 in the first instance till the date of adjudication of the instant application is also excluded.

15. In terms of the above directions, I.A. No. 1014/2024 stands allowed and disposed of.

**Sd/-
DR. SANJEEV RANJAN
MEMBER (TECHNICAL)**

**Sd/-
MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**