

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

**I.A (IBC) (Dissolution) No. 08/2024
IN
CP(IB)-908/ND/2020**

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

IN THE SETTLED MATTER OF:

M/s ORATOR MARKETING PRIVATE LIMITED

... FINANCIALCREDITOR

versus

M/s SAMTEX DESINZ PRIVATE LIMITED
(CIN: U18209DL2017PTC320315)
(UNDER LIQUIDATION)

... CORPORATE DEBTOR

versus

M/s Prudential Hotels Private Limited
[CIN : U01403DL2006PTC151397]
No. 5, E Block, Local Shopping Centre,
Masjid Moth, greater Kailash-II
New Delhi

...CORPORATE DEBTOR

AND IN THE MATTER OF:

AND IN THE MATTER OF: MR. VIMAL KUMAR
(LIQUIDATOR OF SAMTEX DESINZ PRIVATE LIMITED)

... APPLICANT

CORAM:

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

Appearances:

For the Liquidator/Applicant: Mr. Milan Negi & Mr. Nikhil Jha, Advocates

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**I.A No. 08/2024
in
CP(IB)-908/ND/2020**

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

Date Of Pronouncement: 08.07.2024

1. This is an application for dissolution of Corporate Debtor M/s Samtex Desinz 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 seeking dissolution of the Corporate Debtor. The prayer made by the Liquidator in the Application is as follows: -

- a. *Dissolve the corporate debtor i.e. "M/s Samtex Desinz Private Limited" in terms of Section 54 of IBC;*
- b. *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 Financial Creditor (M/s Orator Marketing Private Limited) before this Adjudicating Authority to initiate Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against the Corporate Debtor (M/s Samtex Desinz Private Limited) being Company Petition No. (IB)-638/(ND)/2020. This Adjudicating Authority vide order dated 02.09.2021 ("Admission Order") admitted the petition and appointed the applicant herein, Mr. Vimal Kumar [IBBI/IPS-002/IP-00995/2020-2021/13236] as the Interim Resolution Professional ("IRP") for the Corporate Debtor.

2.2 That the aforesaid admission order dated 02/09/2021 passed by this Adjudicating Authority was received by the IRP on 08/09//2021. Subsequently, the public announcement was made on 11/09/2021.

2.3 It is stated that the business/operations of the Corporate Debtor were shut down in the year 2020 and the registered office was also vacated by the Corporate Debtor, which was being run from a rented premises. Subsequent to the admission of the present petition, the bulky records of the Corporate Debtor were taken under control by the Applicant and were shifted to a newly rented premises. Further, as per books of accounts of the Corporate Debtor, there were several Debtors of the Corporate Debtor, from whom money was to be recovered. Given this, the applicant herein through his counsel had sent Legal Demand Notices to Seventy-Four (74) Debtors of the Corporate Debtor, whose addresses were available in the records. However, most of the Debtors of the Corporate Debtor claimed that the ledgers provided by the ex-management of the Corporate Debtor were either incomplete or wrong.

2.4 The Information Memorandum had been prepared and approved by the COC.

2.5 As per the decisions taken at the Fourth COC meeting, the Applicant on 06/04/2022, in terms of Section 25 (2)(h) of Code, published 'Form G' inviting 'Expression of Interest' ("EOI"), from prospective Resolution Applicants. The said 'Form G' was published in newspapers namely 'Jansatta' (Hindi) and 'Financial

Express' (English). However, pursuant to publication of 'Form G', no resolution plan was received by the Applicant till the last date of submission of resolution plans.

2.6 Subsequently, at the Fifth CoC meeting held on 30/04/2022, the COC observed that since the CD is not a going concern, and CIRP timeline is due to expire on 29/05/2022, there is no possibility of any Resolution Applicant, who may come forward to take-over the Corporate Debtor. Thus, COC was of the opinion that issuance of fresh EOI is not viable, and hence the CoC instructed the applicant herein (erstwhile RP) to file an application for liquidation under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 before this Adjudicating Authority.

2.7 Subsequently, an application being IA/2447/2022 was filed by the Applicant herein (erstwhile RP) under Section 33(2) of the Code, seeking liquidation of the Corporate Debtor. This Adjudicating Authority vide its order dated 11/04/2023, allowed the said application and passed the order for liquidation of the Corporate Debtor namely "M/s Samtex Desinz Private Limited" and appointed the applicant herein as 'Liquidator'.

2.8 The Applicant issued the public announcement on 16/04/2023, in the Newspaper(s) namely 'Jansatta' (Hindi) and 'Financial Express' (English) Delhi/NCR editions, inviting claims from all the stakeholders, as stipulated in Regulations 17, 18 & 19 of the IBBI (Liquidation Process) Regulations, 2016. The last date for submission of claims before the liquidator was 10/05/2023.

2.9 Subsequently, the Applicant has sent intimations about liquidation order of the CD to the following statutory authorities namely: -

- (i) Registrar of Companies, NCT of Delhi & Haryana.
- (ii) Regional Director, Southern Region (Ministry of Corporate Affairs)
- (iii) Income Tax Department
- (iv) Employee Provident Fund Organization (EPFO).

2.10 However, till the last date of submission of claims i.e. 10/05/2023, the Liquidator had received only Four (4) claims. Further, in terms of amendment made in Regulation 30 of the IBBI (Liquidation Process) Regulations, 2016 vide Notification No. IBBI/2022-23/GNIREG094 dated 16th September 2022, the Liquidator is also required to consider the claims collated during the corporate insolvency resolution process, but not submitted during the liquidation process. The Applicant verified all the claims and prepared, the final list of all the stakeholders and intimated to concerned stakeholders.

2.11 The Applicant constituted the Stakeholders Consultation Committee ("SCC") under Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016 and the nominees to represent in the SCC were registered and duly intimated to the respective stakeholders.

2.12 In compliance with Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the applicant liquidator had prepared a detailed Preliminary Report and filed before this Adjudicating Authority vide I.A/3850/2023, which was taken on record by this Adjudicating Authority vide its order dated 25.07.2023. The said Preliminary Report contains the following details:

- a. Capital Structure of the CD (Authorized capital, Paid-up Capital & the list of shareholders as per the latest records available with MCA);
- b. List of assets with estimated values as on the liquidation commencement date {11/04/2023};
- c. List of Liabilities with estimated values as on the liquidation commencement date
- d. A brief note on requirements. under Regulation 13 (c) and 13 (d) of the IBBI (Liquidation Process) Regulations, 2016.

2.13 Along with the Preliminary Report, the Applicant had also filed the following: -

- (i) Final List of stakeholders, prepared under Regulation 31 of the IBBI (Liquidation Process) Regulations, 2016.
- (ii) The 'Assets Memorandum' containing details of Assets along with its Liquidation values' prepared under Regulation 34 of IBBI (Liquidation Process) Regulation, 2016.

2.14 It is submitted that the corporate debtor does not have any fixed assets. However, there are total 125 (One Hundred and Twenty-Five) Sundry debtors for total value of

Rs. 2,42,36,548/-. The Liquidator had sent the legal notices to the sundry debtors having liabilities above Rs. 1 Lakh (whose addresses were available) to pay the dues. However, most of sundry debtors had disputed the dues, shown by the Corporate Debtor in their respective ledger account. The Liquidator had managed to only recover a total amount of Rs. 81,148/- from the debtors of the Corporate Debtor, during Liquidation.

2.15 During the period of CIRP, the Applicant could process the refund of Tax Deduction at Source (TDS) and the Security deposit made against the Electricity Connections of the Corporate Debtor and had utilized the funds for meeting part payments of the CIRP cost.

2.16 As per Regulation 41 (1) of the IBBI (Liquidation Process) Regulations, 2016, the applicant has opened a separate Liquidation account in the name of “Samtex Desinz Private Limited” maintained with the ICICI Bank, Sector 62, Noida Branch, on 20/06/2023 bearing the Current Account No. 086105012706 having IFSC CODE: ICIC0000861.

2.17 It is further stated that Income Tax refund for the amount of Rs.25,31,580/- was credited to the account of CD on 28/04/2022. Same amount was again credited in the bank account of CD on 23/05/2023. The Applicant took up the matter with Income Tax Department. The Letters were sent and delivered and grievance has been raised for taking back the amount of double credit. Finally, with regular and

concerted efforts of the RP, amount of Rs. 25,31,580/- could be refunded to Income Tax department on 14111/2023. Copies of emails, acknowledging the receipt of amount of double credit by Income Tax Department are annexed

2.18 The Registered Valuers appointed by the Applicant (erstwhile RP) for valuation of CD during the CIRP process was taken on record for the Liquidation process, as there were no significant changes in the assets or liabilities during the time. Based on the registered valuers report, the estimated liquidation value of the CD is arrived at as Rs.61,89,465/-. Therefore, as per the report provided by the Registered Valuers, after realization of TDS and Security deposit to the CD account and utilization of same for making part payment of CIRP/Liquidation Cost, the liquidation value of the assets of CD is "**NIL**". Copies of valuation reports have been annexed to the petition.

2.19 The liquidator has conducted two (2) SCC Meetings, till date.

- (i) First meeting took place on 18/04/2023 consisting of only COC member (Financial Creditor) namely Orator Marketing Pvt. Ltd. In this meeting, COC member having 100% voting right has recommended for early dissolution of the Corporate Debtor as there are no assets/securities available and the liquidation value is '**NIL**'.

- (ii) 2nd SCC meeting took place on 27/05/2023 after constitution of SCC. The members of this meeting included the following: -
- a. Sole Financial Creditor namely M/s Orator Marketing Pvt. Ltd.
 - b. Two (2) representatives of Operational Creditors namely: -
 - (i) 'New India Colour Company Limited' represented through Mr. R. K. Jain,
 - and
 - (ii) 'M/s Fibre Chem' represented through Mr. Abhilekh Seth and Mr. Santosh Kumar Singh, official of EPF, Noida attended the meeting.

2.20 In the 2ND meeting also, the Financial Creditor has re-iterated that the Corporate Debtor be dissolved as there are no assets, either movable or immovable, available in the Corporate Debtor, which can be realized.

➤ Accordingly, following 3 draft Resolutions were put forth for consideration and voting of Committee Members: -

A. EARLY DISSOLUTION.OF THE CD

B. TO APPROVE THE FEE OF THE LIQUIDATOR @ Rs. 1,25,000/- per month till the dissolution of the Corporate Debtor.

C. TO APPROVE THE APPOINTMENT OF MR. SIDHARTH SHANKAR (ADVOCATE) AND APPROVE HIS PROFESSIONAL FEE @ Rs. 25,000/- per month till the dissolution of the Corporate Debtor

➤ The voting results of the aforementioned 3 resolutions are summarized below:-

Agenda	Assented		Dissented		Absent	
	No. of persons	%	No. of persons	%	No. of persons	%
1	3	37.71	5	22.08	10	40.21
2	2	34.40	6	25.39	10	40.21
3	2	34.40	5	22.08	11	43.52

2.21 Considering the percentage out of participating SCC members wherein: -

- (i) Early dissolution got 63.07% votes in favour
- (ii) Fee of the liquidator got 57.53% votes in favour and
- (iii) Professional fees of the advocate got 60.91% in favour.

2.22 Though, the requisite voting in favour of resolution for early dissolution should be 66%, however as per Regulation 31 A of Code, advice of the SCC is not binding on the Applicant/Liquidator. Hence, keeping in view the '**NIL**' liquidation value of the CD, the Liquidator is of the view that applying for dissolution of the Corporate

Debtor before this Adjudicating Authority would be the most feasible option. The same decision has been uploaded to IBBI website also.

2.23 It is further stated that as per Section 53 of the Code, the entire CIRP costs and the Liquidation costs was to be paid as first priority. Accordingly, the recovery proceeds were duly distributed in accordance with the provisions of the code. The entire proceeds were distributed from the current account of the CD by the Liquidator in the following manner (relevant recipients mentioned): -

- (i) CIRP & Liquidation Cost: Rs. 55,59,175/- was paid as first Priority.
- (ii) Unpaid CIRP & Liquidation Cost: Rs. 10,00,000/.

2.24 It is further submitted that no amount was distributed to the following stakeholders despite their claims being admitted as the liquidation estate got exhausted already-

1. Unsecured Financial Creditors
2. Operational Creditors
3. Government Dues

2.25 That the following progress reports have been submitted by the applicant: -

- (i) 'First Progress Report' for the quarter ended 30th June 2023 under Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, vide Application being

IA/4459/2023, which was taken on record vide order dated 24/08/2023. passed by this Adjudicating Authority.

- (ii) 'Second Progress Report' for the quarter ended 30th September 2023 under Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, vide Application being IA/6171/2023, which was taken on record vide order dated 21/11/2023 passed by this Adjudicating Authority.

2.26 The Liquidator, upon liquidation of CD had closed the existing bank account of CD, details of which are as follows: -

- (i) Current A/c No. 006963300002733 with Yes Bank, New Friends Colony Branch, New Delhi
- (ii) Current A/c No. 50398416311 with Indian Bank, Parliament Street, New Delhi.

2.27 Further, upon receiving the liquidation order of CD by this Adjudicating Authority,

The Liquidator had opened a fresh bank account, as per following details: -

Account Name - Samtex Desinz Pvt. Ltd. (Under Liquidation)

Bank Name - ICICI Bank

Account No - 081605012706

IFSC Code - ICIC0000816

Branch Name - Sector 63, Noida

However, upon distribution of entire proceeds, the said bank account was closed on 23/02/2024. Copy of bank statement and closure confirmation letter dated 07/03/2023, issued by ICICI Bank, have been annexed to the present petition.

2.28 Since, there was no unclaimed dividend, undistributed proceeds or income earned thereon, there was no necessity to open a 'Corporate Liquidation Account'. The Applicant had further not found any transactions that required any avoidance application that could be filed before this Adjudicating Authority.

2.29 Further, another Operational Creditor namely M/s Different Counts Pvt. Ltd. has filed a suit for recovery being CS(Comm)/153/2022 before the Hon'ble District Judge (commercial Court)- 05, South-East District, Saket Court, New Delhi, during moratorium period. However, claim filed by the said operational creditor to the tune of Rs.22,77,911/- is duly admitted by the Liquidator. The said civil suit is pending adjudication despite submission of CIRP order before Hon'ble Judge and moratorium period. The Applicant/Liquidator declares that there are no pending proceedings or litigations either against or behalf of the CD, except the said litigations, as mentioned above.

2.30 The Liquidator has given intimation to the following statutory authorities (as applicable): -

a. Provident Fund on 21.12.2021

- b. Employee State Insurance Corporation on 21.12.2021
- c. Inspector of Factory on 09.11.2021
- d. Others on 23.12.2021.

2.31 In compliance with Regulation 45(3) of the IBBI (Liquidation Process) Regulations, 2016, the Compliance Certificate in 'Form-H' and the final report have also been submitted and annexed to the present petition.

2.32 That in view of the above facts and circumstances, the applicant prayed to dissolve the Corporate Debtor by allowing the present application. It is further prayed that the applicant/liquidator be kindly discharged of her duties as the liquidator.

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 we are inclined to allow the present Application to dissolve the Corporate Debtor.
6. Since the claim of the plaintiff as discussed at Point No. 2.29 herein above, has already been admitted by the Liquidator, there appears to be no impediment in proceeding with dissolution in the present petition.
7. Accordingly, there being no other impediment, the present application is **allowed** and the Corporate Debtor is ordered to be dissolved with immediate effect. The Liquidator, Mr. Vimal Kumar [IBBI/IPS-002/IP-00995/2020-2021/13236] is hereby discharged from his duties as the liquidator in the present case.
8. 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 also to the Insolvency and Bankruptcy Board of India within seven days from the date of this order.
9. Let the copy of the order be served to the parties.

Without costs.

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

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