

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

IA-5372/ND/2022
IN
CP(IB)-33/ND/2019

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

IN THE MATTER OF:

M/s. STRESSED ASSET STABILIZATION FUND

...Financial Creditor

Versus

M/s. HOTLINE CPT LIMITED.

...Corporate Debtor

And

IN THE MATTER OF

MR. CHIRAG SHAH

(Liquidator of Hotline Cpt Ltd.)

Office at 208, Ratnaraj Spring,
Beside Navnirman Bank,
Opp. HDFC Bank House,
Navrangpura, Ahemdabad

... Applicant/Liquidator

Order Delivered on: 24.04.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI, MEMBER (TECHNICAL)

Appearance

For Liquidator: Mr. Chirag Shah, Mr. Prateek Kushwaha Advs.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This Application has been filed by the Resolution Professional of M/s. Hotline CPT Limited on 12.10.2022 before this Adjudicating Authority under Section 54 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”), for seeking the following reliefs:
 - a. Allow the present Application and dissolve the Corporate Debtor i.e., M/s. Hotline CPT Limited under Section 54 of the Insolvency and Bankruptcy Code, 2016;*
 - b. Consequentially, discharge the Applicant, i.e. Mr. Chirag Shah from the duties of Liquidator of the Corporate Debtor;*
 - c. Direct the Registrar of Companies to take necessary action in respect of dissolved company as per law; and*
 - d. Pass such other further order/order(s) as may be deemed fit and proper in the facts and circumstances of the case.*

2. To put it briefly, the facts of the case are that the petition for initiating CIRP was admitted by this Tribunal vide order dated 27.08.2019 and the Applicant Mr. Chirag Shah was appointed as Interim Resolution Professional and later in the first meeting of the Committee of Creditors (CoC) appointment of the Applicant was confirmed as the Resolution Professional.

3. The Applicant conducted the CIRP in terms of the provisions of the Code and in the last meeting of the CoC due to no chance for the revival of the business of the Corporate Debtor the members of CoC passed the agenda to liquidate the Corporate Debtor with 90.32% majority vote.

4. This Adjudicating Authority was pleased to initiate the liquidation process of the Corporate Debtor vide its order dated 31.07.2020 and the Applicant was appointed as the Liquidator of M/s. Hotline CPT Limited.

The Applicant made public announcement in Form-B for inviting claims from the creditors on 06.08.2020.

5. In accordance with the Regulation 41 of IBBI (Liquidation Process) Regulations, 2016, the Applicant had opened a Bank Account in the name of “Hotline CPT Limited in Liquidation” in IDBI Bank, C.G. Road Branch, Ahmedabad, Gujarat for the receipt of all the money due to the Corporate Debtor.
6. As per the Regulation 35 of the IBBI (Liquidation Process) Regulations, 2016, the Applicant had considered the average of the estimates of the value of the assets of the Corporate Debtor arrived under Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In view of the same, the Applicant had not appointed new valuers for conducting valuation of assets of the Corporate Debtor as there was no value addition and change in assets, the Applicant did not conduct the valuation again and considered the valuation done during the Corporate Insolvency Resolution Process.
7. In accordance with Regulation 5(1)(a) read with Regulation 13 and as per Regulation 5(1)(b) read with Regulation 34 of the Liquidation Process Regulations, 2016, the Applicant filed Preliminary Report and Asset Memorandum with this Adjudicating Authority on 30.09.2020. The Applicant received claims from the creditors and performed various duties as per the various provisions of the Code, 2016 and Regulations framed therein. The Applicant in compliance with the provisions of the Code, 2016 constituted Stakeholders Consultation Committee (SCC) and called 1st meeting of SCC on 01.10.2020.
8. That after the commencement of the Liquidation process, the Applicant took custody of the assets. The Applicant formed the liquidation estate

as per the provisions of the Code, 2016. The Applicant published the sale notice on 05.10.2020 in three widely spread newspaper namely Financial Express in English (All India Edition) and Jansatta (Delhi Edition) and Raj Express (Gwalior Edition) in Hindi as per Regulation 33(1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

9. The Applicant received expression of interest from 11 prospective bidders. The Applicant prepared E-Auction process document to conduct E-Auction on "AS IS WHERE IS, AS IS WHAT IS, WHATEVER THERE IS AND NO RECOURSE BASIS" prior publishing the auction notice. In addition, those who were interested to take part in the E-Auction Process requested the Applicant to share E-Auction Process document to complete further process. Furthermore, the Applicant shared the E-Auction Process document through the E-Mail to the prospective bidders from 06.10.2020 to 10.10.2020.
10. As per the terms and conditions of E-Auction, the Applicant received Rs. 15,000 Non-Refundable Fees from 11 prospective bidders for participation in E-Auction Process held through approved service provider E-Procurement Technologies Limited (<http://nclt.auctiontiger.net>) on 16.10.2020 from 03.00 PM to 05.00 PM. The terms mentioned in the E-Auction Process document, Bidder had to pay 10% of Reserve Price as an Earnest Money Deposit (EMD) in partly payment (5% before auction and 5% in 24 hours after declaring as a successful bidder).
11. The Auction was concluded, and M/s. Chirag and Company Private Limited was declared as highest bidder for Rs. 14.00 Crore made for Block A asset which is composite of Land & Building and Plant & Machinery and for Block B Assets M/s. Raghav Steel Company was declared as highest bidder for Rs.10.20 crore. That in terms of the

successful auction, the Applicant received full consideration amount from the above-mentioned successful bidders. The Applicant upon receiving full consideration amount from the successful bidder issued Sale Certificate and Letter of Possession to the successful bidder on 03.11.2020.

12. After issuing Sale Certificate and Letter of Possession the Applicant asked the successful bidder for specific date and time for the execution and registration of sale deed to which the successful bidder replied that he need some time as due to outbreak of COVID — 19 and lockdown imposed by the government the Applicant is facing financial crunches. The Applicant considered the request of the successful bidder due to the reason that full consideration amount has been paid by the successful bidder.

13. That despite various reminders over texts and calls the reason again given by successful bidder for the execution of the sale deed was financial issues. Since there was inordinate delay from the side of the successful bidder i.e., Chirag & Co. Pvt Ltd., therefore, the Applicant herein wrote a letter dated 29.11.2021 to the successful bidder requesting for the date and time for the execution of the sale deed as the Applicant was duty bound to take action in compliance with the provisions of the Code, 2016. In response to email sent by the Applicant, the successful bidder replied belatedly on 03.01.2022 wherein the successful bidder assured that they are arranging funds for the execution of the sale deed and the same shall be done by the end of January 2022. However, successful bidder failed to honour his words and failed to execute the sale deed causing unnecessary delay in proceeding for dissolution of the Corporate Debtor.

14. The Applicant had received full consideration amount from the abovementioned successful bidders. The Applicant had discovered another non-agricultural land situated in Dhanot, Gujarat in the name of the Corporate Debtor. The Applicant has added the said asset in the liquidation estate of the corporate debtor and valuation was also done with respect to the said discovered property. The liquidation value of the said asset was fixed Rs. 12.45 Lakhs. That to sell the Dhanot property the Applicant had published the sale notice on various occasions.
15. The Applicant at every step had consulted the SCC for the future course of action with respect to the effective liquidation of the Corporate Debtor. In compliance of the provisions as specified in Schedule I of the Regulation 33 of IBBI (Liquidation Process) Regulations, 2016 to reduce the Reserve price, the Applicant in the 5th SCC meeting held on 22.02.2021 consulted the SCC members and accordingly it was decided to reduce the price of an asset by 10%. Thereafter, Applicant had again made publication to sell the assets on 23.02.2021. With respect to the said publication the Applicant had received interest from 2 prospective bidders.
16. The e-auction was conducted on 01.03.2021 and Mrs. Suman Khatri was declared as highest bidder. The successful bidder as per the Regulations specified by the IBBI failed to make the final consideration on time due to outbreak on 2nd wave of Covid-19. Mrs. Suman Khatri had requested the Applicant to grant the extension to make the complete payment considering the ongoing situation in the country and family situation as the whole family of Mrs. Suman Khatri was tested positive for Covid-19. On the request of Mrs. Suman Khatri, the Applicant had granted extension to make the payment before 15.07.2021 after having the oral discussion with the SCC members.

17. The Applicant had received the whole consideration from Mrs. Suman Khatri along with the appropriate interest till the date of payment. That after successfully selling the assets of the Corporate Debtor the Applicant had distributed the proceeds of the assets among the creditors of the Corporate Debtor as per section 53 of the Code, 2016. The Applicant had successfully sold out all the assets of the Corporate Debtor within the period of one year as specified in the IBBI (Liquidation Process) Regulation, 2016. Since, the liquidation period was coming to an end on 30.07.2021 and still there were several formalities pending before going into the dissolution of the Corporate Debtor, the Applicant herein had filed an application being IA No. 4336/2021 for the extension of the liquidation period which was allowed by this Adjudicating Authority vide its order dated 28.02.2022. This Adjudicating Authority while passing liquidation extension order directed the Applicant to complete the pending work and proceed for the dissolution of the Corporate Debtor before 30.07.2022.
18. That as per Regulation 44 of IBBI (Liquidation Process) Regulation, 2016 the Applicant being a liquidator have to liquidate the assets of the Corporate Debtor within a period of one year which has already been done within the prescribed time frame. The liquidation process in the present matter started on 30.07.2020 and the Applicant liquidated all the assets by 15.07.2021. The Applicant sold all the assets through E-Auction and have also received full consideration amount.
19. That with respect to the asset sold by the Applicant to the successful bidder of Block A, Gwalior, the Applicant received complete consideration amount but the successful bidder, i.e., Mr. Chirag and Co Pvt. Ltd. failed to execute the sale deed due to which the Applicant was unable to proceed with the dissolution. That the Applicant herein informed the successful bidder that this Adjudicating Authority granted time till 30.07.2022 to the Applicant for the completion of the pending

work and to proceed with the dissolution to which the successful bidder did not show any concern and again sought time to arrange funds for the execution of the sale deed.

20. That time and again the successful bidder was delaying the process by not executing the sale deed. The Applicant herein was forced to file an application being IA No. 2074/ 2022 for seeking appropriate orders against the successful bidder to execute the sale deed so that the Applicant can proceed for dissolution of the Corporate Debtor. Due to the pendency of the execution of the sale deed which is a major event for the closure of the liquidation process, the Applicant was unable to file the dissolution Application within the period i.e., before 30.07.2022 as directed by this Adjudicating Authority.

21. The last date for the liquidation as per order passed by this Hon'ble Adjudicating Authority to complete the liquidation process was 30.09.2022. As per the order passed by this Hon'ble Adjudicating Authority, the Applicant was supposed to complete the liquidation process and file an application for the dissolution of the Corporate Debtor. The Applicant was unable to file an application for the dissolution of the Corporate Debtor as the successful bidder i.e., M/s. Chirag and Co. has executed the sale deed only on 21.09.2022 and the time left for filing of dissolution was very less. It is submitted that the present dissolution application is being filed with delay which was caused due to the delay on part of M/s. Chirag and Co. a successful bidder which is not deliberate on part of the Applicant.

22. That 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 under Regulation 45 of the Liquidation Process Regulations, 2016 has been attached with this Application.

23. The Compliance certificate in Form-H as per Regulation 45(3) of the Liquidation Process Regulations, 2016 is prepared and has been filed along with the present application.

24. That Applicant/Liquidator has filed application(s) and various documents/Reports which was required to be submitted as per the provisions of IBC, 2016 read with relevant regulations.

25. That as required by Regulation 45(3) of IBBI (Liquidation Process) Regulations, 2016, Final Report has been filed by the Liquidator.

26. That compliance report in form H in terms of regulation 45(3) has been placed on record by the Applicant.

27. 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.

28. The Applicant has closed the bank Account bearing Account number 0009102000076207 with IDBI Bank on 12.10.2022.

29. That in view of the facts and circumstances, it is submitted that all the assets of CD have been completely liquidated and/ or distributed to stakeholders as per the provisions of law and there is nothing left to be further liquidated.

30. Thus in view of the facts and circumstances, the Applicant has prayed that the corporate debtor may be dissolved under Section 54 of IBC, 2016.

31. 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).”

32. 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 his Final Report and Form-H.

33. 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.

34. Accordingly, there being no other impediment, the present Application is allowed and the Corporate Debtor is ordered to be dissolved with the immediate effect.

35. 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/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**