

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III

I.A. 5107/2023

In

C.P. No. (IB) 4658/MB/C-III/2018

Under Section 54 of the Insolvency and Bankruptcy Code, 2016

Pankaj Sham Joshi)
Liquidator of Kosak Engineering and)
Rubber Products Private Limited)
9, Sudarshan Co-op., Hsg., Soc., Ltd.)
Mahant Road, Vile Parle East,)
Mumbai – 400057) **... Applicant/Liquidator**

IN THE MATTER OF

Reliance Asset Reconstruction Co. Ltd. *... Financial Creditor*

Vs

Kosak Engineering and Rubber Products Pvt. Ltd. *... Corporate Debtor*

Order pronounced on: 29.04.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Liquidator : Adv. Aayush Kothari a/w Adv. Shreyansh Desai
i/b M/s V. Deshpande & Co.

Per: Sh. Charanjeet Singh Gulati, Member (Technical)

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1. This I.A. is filed by Mr. Pankaj Sham Joshi, the Liquidator of Kosak Engineering and Rubber Products Private Limited (**Corporate Debtor**) under Section 54 of the Insolvency and Bankruptcy Code, 2016 (**I&B Code**) seeking following reliefs:

- a. *To approve dissolution of the Corporate Debtor is terms of Section 54 of the Code read with Regulation 45(3)(b) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;*
- b. *To relieve the Applicant from his duties as a liquidator of the Corporate Debtor.*

Commencement of CIRP

2. This Tribunal vide order dated 25.09.2019 in CP(IB)/4658/2018 initiated Corporate Insolvency Resolution Process (**CIRP**) of Kosak Engineering and Rubber Products Private Limited (**Corporate Debtor**) and Mr. Pankaj Sham Joshi (**Applicant** herein) was appointed as the Interim Resolution Professional (**IRP**). The 1st Committee of Creditors (CoC) Meeting was held on 25.10.2019 wherein the CoC unanimously resolved to appoint the Applicant as the Resolution Professional (**RP**).

Initiation of Liquidation Process

3. Upon failure of the Resolution Process, the CoC, in its 2nd meeting dated 14.01.2020, resolved to liquidate the Corporate Debtor. Accordingly, the liquidation order was passed on 26.03.2021 in IA 366/2021 thereby initiating the liquidation process of the Corporate Debtor and the Applicant was appointed as the Liquidator.
4. Pursuant to the Liquidation order, the Applicant/Liquidator made public announcement on 27.03.2021 in Form B of Schedule 2 of the IBBI (liquidation Process) Regulations, 2016, thereby inviting claims from the stakeholders to submit their claims on or before 24.04.2021. The public announcement was made in the following newspapers:
 - i) Financial Express (*English*) – having wide circulation in Mumbai.
 - ii) Navakal (*Marathi*) – having wide circulation in Mumbai.
 - iii) Financial Express (*English*) – having wide circulation in Pune.

iv) Pudhari (*Marathi*) – having wide circulation in Solapur.

List of Stakeholders

5. The Liquidator prepared the list of stakeholders and constituted the Stakeholders Consultation Committee (**SCC**) on 14.05.2021 in accordance with Regulation 31A of the IBBI (liquidation Process) Regulations, 2016. The list of stakeholders was filed before the Adjudicating Authority on 25.05.2021.
6. The list of stakeholders of the Corporate Debtor is reproduced below:

| Sr. No. | Stakeholder Name | Category | Amount Admitted | Voting Share |
|----------------|--|------------------------------|------------------------|---------------------|
| 1 | Reliance Asset Reconstruction Co Ltd | Unsecured Financial Creditor | Rs. 5,18,26,183 | 97.52% |
| 2 | Kewal V Kantekar | Unsecured Financial Creditor | Rs. 94,56,896 | Nil (Related Party) |
| 3 | P M Nayak & Co, Chartered Accountants | Operational Creditor | Rs. 2,71,747 | 0.51% |
| 4 | Specific Engineering Corporation Pvt Ltd | Operational Creditor | Rs. 10,45,566 | 1.97% |
| | Total | | Rs. 6,26,00,392 | 100% |

Assets of the Corporate Debtor

7. The Liquidation Estate of the Corporate Debtor comprised of the following assets:
- Land & Building (Lot 1):** situated at A-60, Chincholi MIDC, Solapur – 413255 (Area- 4500 sq. mts.) with 8 overhead cranes attached therewith; and
 - Plant & Machinery (Lot 2):** Equipment including Lathes, Boring machines, Shot Blasting machines, 8 overhead cranes, measuring instruments and metal scrap.

Valuation of assets of Corporate Debtor

8. The Average Fair Value and Average Liquidation Value of the assets of the Corporate Debtor, as submitted by the appointed Valuers, is as follows:

| Asset Description | Valuer | Fair Value | Liquidation Value |
|--------------------------------|------------------------|------------------------|--------------------------|
| Land & Building | RV Abhishek Joshi | Rs. 2,57,00,000 | Rs. 1,93,00,000 |
| | RV Anuja J. Kalantri | Rs. 2,62,00,000 | Rs. 1,96,50,000 |
| | Average Value | Rs. 2,59,50,000 | Rs. 1,94,75,000 |
| Plant & Machinery | RV Mahadev R. Kalburgi | Rs. 45,97,335 | Rs. 36,77,868 |
| | RV Avinash K Nighojkar | Rs. 50,00,000 | Rs. 37,50,000 |
| | Average Value | Rs. 47,98,668 | Rs. 37,13,934 |
| Aggregate Average Value | | Rs. 3,07,48,668 | Rs. 2,31,88,934 |

CIRP Cost and Liquidation Cost

9. The details of the CIRP costs and Liquidation costs as submitted by the Liquidator are as follows:

| Particulars | Amount |
|---|----------------------|
| CIRP Cost accounted up to 25.03.2021 | Rs. 22,06,636 |
| CIRP Cost accounted after LCD i.e. 26.03.2021 | Rs. 6,89,552 |
| Liquidation cost | Rs. 37,32,957 |
| Total | Rs. 66,29,145 |

10. The reconciliation of the CIRP costs and liquidation costs is derived hereinunder:

| Particulars | Amount |
|---|----------------------|
| CIRP Cost | Rs. 22,06,636 |
| Liquidation Cost | Rs. 28,65,684 |
| Amount utilized for payment of pending CIRP and Liquidation Costs | Rs. 15,56,825 |
| Total | Rs. 66,29,145 |

Details of Sale of Assets and Distribution under Section 53, IBC

11. The Liquidator conducted a total of 9 e-auctions in accordance with Regulation 33(1) of the Liquidation Regulations for sale of assets of the Corporate Debtor. The Plant & Machinery of the Corporate Debtor was

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successfully sold to M/s KD Enterprises in the 6th e-auction conducted on 17.09.2022. The remaining assets i.e. Land & Building of the Corporate Debtor was sold to M/s Lokmangal Bio-Tech Private Limited in the 9th e-auction conducted on 07.03.2023.

12. The details regarding the sale of assets of the Corporate Debtor is as follows:

| Assets | E-Auction | Date of auction | Successful Bidder | Amount Realized (In Rs.) | Date of Realization | Date of Sale certificate |
|-------------------|---------------------------|------------------------|----------------------------|---------------------------------|----------------------------|---------------------------------|
| Plant & Machinery | 6 th e-auction | 17.09.2022 | KD Enterprises | 30,69,000 | 21.09.2022 | 22.09.2022 |
| Land & Building | 9 th e-auction | 07.03.2023 | Lokmangal Bio-Tech Pvt Ltd | 1,11,80,700 | 23.03.2023 | 03.04.2023 |

13. Details of realization amount of the Corporate Debtor including the amount realized from the sale of assets of the Corporate Debtor is as follows:

| Particulars | Realization Amount |
|---|---------------------------|
| Sale consideration of Land & Building | Rs. 1,11,80,700 |
| Sale consideration of Plant & Machinery | Rs. 30,69,000 |
| Add: GST collected on sale | Rs. 5,52,420 |
| Opening Balance in CIRP Retention Account | Rs. 98,758 |
| Total Realization | Rs. 1,49,00,878 |
| Less: Amount utilized for payment of pending CIRP and Liquidation Costs | Rs. 15,56,824 |
| Balance Amount left to be paid under section 53 | Rs. 1,33,44,054 |

14. We note that the above total amount realized from the sale of the assets of the Corporate Debtor being is lesser than the Liquidation value i.e. **Rs. 2,31,88,934/-**.

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15. The Liquidator has distributed the proceeds realized from the sale of assets of the Corporate Debtor to the stakeholders in accordance with Section 53 of the I&B Code. The details of distribution made to the stakeholders is as under: -

| Section 53(1) | Stakeholders under section 53(1) | Amount Claimed (Rs.) | Amount Admitted (Rs.) | Amount Distributed (Rs.) | % |
|----------------------|---|-----------------------------|------------------------------|---------------------------------|----------|
| (a) | CIRP Costs | 22,06,636 | 22,06,636 | 22,06,636 | 100% |
| (a) | Liquidation Costs | 28,65,684 | 28,65,684 | 28,65,684 | 100% |
| (b)(i) | Workmen Dues | - | - | - | - |
| (b)(ii) | Secured Creditor | - | - | - | - |
| (c) | Employees Dues | - | - | - | - |
| (d) | Unsecured Financial Creditors | 6,31,35,320 | 6,12,83,079 | 82,71,734 | 13.50% |
| (e)(i) | Government Dues | - | - | - | - |
| (e)(ii) | Other Financial Creditors | - | - | - | - |
| (f) | Operational Creditors | 15,05,514 | 13,17,313 | - | 0% |
| (g) | Preferential Shareholders | - | - | - | - |
| (h) | Equity Shareholders | - | - | - | - |
| | Total | 6,97,13,154 | 6,76,72,712 | 1,33,44,054 | |

Filing of Necessary Reports

16. The Liquidator had filed the Preliminary Report and the Asset Memorandum Report on 17.11.2021 under Regulation 12 and Regulation 34(4), respectively, of the Liquidation Regulations.
17. We note that in compliance with Regulation 15 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator filed Quarterly Progress Reports. The details of the progress reports are as follows:

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| Progress Report | Period | Date of filing |
|------------------------|-------------------------|-----------------------|
| 1 st | 26.03.2021 – 31.03.2021 | 25.04.2021 |
| 2 nd | 01.04.2021 – 30.06.2021 | 31.07.2021 |
| 3 rd | 01.07.2021 – 30.09.2021 | 14.10.2021 |
| 4 th | 01.10.2021 – 31.12.2021 | 15.01.2022 |
| 5 th | 01.01.2022 – 31.03.2022 | 09.04.2022 |
| 6 th | 01.04.2022 – 30.06.2022 | 15.07.2022 |
| 7 th | 01.07.2022 – 30.09.2022 | 15.10.2022 |
| 8 th | 01.10.2022 – 31.12.2022 | 14.02.2023 |
| 9 th | 01.01.2023 – 31.03.2023 | 02.05.2023 |

18. It is submitted that the Liquidator has also updated the audited Financial Statements of the Corporate Debtor. Thus, the books and accounts and Audited Financial Statements for the Financial Years 2021-22, 2022-23 and 2023-24 were prepared and signed by the Liquidator on behalf of the Corporate Debtor.

19. The Final Report as per Regulation 45 of the IBBI Liquidation Regulations, 2016 is submitted by the Liquidator along with this Application. Further, the compliance certificate in Form H filed under Regulation 45(3) of the Liquidation Regulations is also annexed to this Application.

Completion of Liquidation Process of the Corporate Debtor

20. The Bank accounts of the Corporate Debtor including the one opened for Liquidation purpose has been closed and the closure statements are also annexed to the Application. Details of the Bank Accounts of the Corporate Debtor maintained by the Liquidator are as follows:

| Name of Bank & Branch | Account No. & IFSC | Purpose | Date of closure |
|---|--------------------------------|--|------------------------|
| Corporation Bank (now merged with Union Bank-Airoli, Navi Mumbai) | 510101000280827 UBIN0904716 | Retention account for CIRP and Liquidation | 24.04.2023 |

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| | | | |
|--|--------------------------------|---|------------|
| Union Bank of India- Airoli, Navi Mumbai | 047121010000003 UBIN0904716 | Liquidation account for sale of assets and distribution | 10.05.2023 |
| Vijaya Bank (now merged with Union Bank- Mangalwar Bazar Branch, Solapur | 80140200000087 BARB0VJSHOL | Pre-CIRP bank account | 15.04.2023 |

21. It is submitted that the Liquidator had obtained a fresh GST registration bearing no. 27AABCK2539A2ZY for the Corporate Debtor. After all the sale proceeds were distributed in accordance with section 53 of I&B Code and all bank accounts were closed, the Liquidator applied for cancellation of GST registration which was accordingly cancelled on 29.05.2023. A copy of the GST Certificate and Cancellation Order is annexed to the Application.
22. The Statement of Receipts and Payments of the Corporate Debtor from the liquidation commencement date i.e. 26.03.2021 till 30.04.2023 is annexed to the Application. It is seen from the said Statement that balance as on 30.04.2023 is *Nil*.
23. It is also submitted that no PUFEE transactions were determined by the Liquidator/stakeholders and hence, no such applications are pending before this Tribunal.
24. The Liquidator submits that all the assets of the Corporate Debtor has been realized and the funds received have been utilized as per the provisions as laid down in the Code and the Regulations framed thereunder. Since there are no other assets of the Corporate Debtor left to be realized and no matter is pending in respect of the Corporate Debtor, the Liquidator has filed the present application under section 54 of the I&B Code seeking dissolution of the Corporate Debtor.

25. It is noted that the present application for dissolution has been filed after the expiry of the period of one year. In this regard, the Liquidator submits the following:

- i) The Liquidation Process of the Corporate Debtor commenced on 26.03.2021. As per Regulation 44(1) of the Liquidation Regulations, liquidation process is to be completed in one year i.e. 26.03.2022.
- ii) The Hon'ble Supreme Court in **Re: Cognizance for Extension of Limitation** excluded the period from 15.03.2020 till 02.10.2021 while computing the period of limitation under all statutes.
- iii) The Liquidator filed IA 2715/2021 seeking exclusion of period from 26.03.2021 till 02.10.2021 while computing the liquidation process period. The said IA was allowed vide order dated 22.03.2022 thereby extending the liquidation completion period till 02.10.2022.
- iv) Since 9 e-auctions were conducted for sale of assets of Corporate Debtor, the Liquidator filed IA 3857/2022 seeking extension of the liquidation period by 6 months. The said IA was allowed vide order dated 12.05.2023 and the liquidation process period was extended from 02.10.2022 till 01.04.2023.
- v) The Liquidator has accordingly completed the liquidation process within the extended time limit.

Observations

26. We have heard the Counsel for the Liquidator and perused the records.

27. At this juncture, it is relevant to quote Section 54 of The Insolvency and Bankruptcy Code, 2016 which provides as follows:

“54. (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 subsection (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.”

28. From the perusal of the Application along with the final report and the Compliance Certificate filed in Form-H by the Liquidator, it is seen that the Corporate Debtor has been completely liquidated and no asset is available as reported by Liquidator. Accordingly, this Tribunal is of considered view that no assets are left with the Corporate Debtor which requires to be disposed of or realized.
29. In view thereof, we are inclined to allow the present application to dissolve the Corporate Debtor under section 54 of I&B Code, 2016.

ORDER

30. Accordingly, we hereby order for the dissolution of the Corporate Debtor i.e. **Kosak Engineering and Rubber Products Private Limited** with the following directions:
- i) The Corporate Debtor stands dissolved from the date of this order.
 - ii) The Liquidator, Mr. Pankaj Sham Joshi, is discharged from his duties and responsibilities as the Liquidator of the Corporate Debtor.
 - iii) The Liquidator and the Registry are directed to forward a copy of this Order to the concerned authorities and the Registrar of Companies having jurisdiction and also to the IBBI, within 7

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(seven) days from the date of receipt of this order, for further necessary action as prescribed under Law.

31. In the result, IA No. 5107 of 2023 is hereby **allowed and disposed** of and C.P.(IB)- 4658 (MB)/2018 is hereby **closed**.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Uma, LRA

Sd/-

Lakshmi Gurung
Member (Judicial)