IA(IBC)/1187 (KB)2023 in CP(IB)/145(KB)2018

An application Under Section 54 of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 read with Regulation 45(3) of the IBBI (Liquidation Process) Regulations, 2016 relevant provisions of the Insolvency and Bankruptcy Code, 2016.

In the matter of

Oriental Bank of Commerce

....Financial Creditor

Versus

Kolkata Conductor & Cable Pvt.Ltd.

.... Corporate Debtor

And

In the matter of:

Mr. Suman Kumar Agarwal , Liquidator of Kolkata Conductor & Cable Pvt.Ltd

... Applicant

Order pronounced on: 05/11/2024

Coram:

Smt. Bidisha Banerjee : Member (Judicial)

Shri Balraj Joshi, : Member (Technical)

Appearances (through video conferencing):

For Liquidator : Ms. Tanvi Luhariwala, Adv.

: Ms. Madhuja Barman, Adv.

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ORDER

Per: Bidisha Banerjee, Member (Judicial)

- 1. This Adjudicating Authority convened through hybrid mode.
- 2. IA(IBC)/ 1187 (KB)2023- is an application filed Under Section 54 of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 read with Regulation 45(3) of the IBBI (Liquidation Process) Regulations, 2016 relevant provisions of the Insolvency and Bankruptcy Code, 2016 by the Liquidator of GM Agro Allied Private Limited, the Corporate Debtor, seeking for an order of dissolution of the Corporate Debtor. This application is supported by an affidavit duly affirmed by the Liquidator.

3. **Brief Facts of the Case**

- 4. This Adjudicating authority *vide* its order dated 29/06/2022 in IA(IBC) 377/KB/2021 had ordered Liquidation process of the Corporate Debtor and appointing **Mr. Suman Kumar Agarwal** as the Liquidator.
- 5. In terms of Section 33 of the Code and Regulation 12 of the Liquidation Regulations, the Applicant published public announcement in two newspapers namely, "Dainik Statesman" in Bengali and "Financial Express" in English in Form B on March 17, 2019, *inter alia*, inviting claims from the stakeholder of the Corporate Debtor.
- 6. Pursuant to such public announcement, the only claim that was received by the Applicant was from Oriental Bank of Commerce (now Punjab National Bank) for an amount of Rs. 24,57,73,317.32 towards money lent by them to the Corporate Debtor on account of term loan/ working capital finance on April 24, 2019. A list of stakeholders was prepared and filed by the Applicant before this Tribunal on May 28, 2019.

- 7. The Applicant had approached the directors of the erstwhile management for extending assistance and cooperation to the Applicant for completing the liquidation process of the Corporate Debtor expeditiously. However, no cooperation was extended by the directors.
- 8. Therefore, in the aforementioned circumstance, in September, 2019, an application under Section 19(2) read with Section 34(3) of the Code and Regulation 9 of the IBBI (Liquidation Process) Regulations, 2016, being M.A No. 1444/KB/2020, was filed by the Applicant before this Hon'ble Tribunal, *inter alia*, seeking directions from this Tribunal upon the erstwhile management to extend all cooperation to the Applicant.
- 9. It is submitted that thereafter, the entire country was affected by the COVID-19 pandemic and the Government of India by a notification dated March 24, 2020 had implemented a complete lockdown on the entire country. The lockdown was extended from time to time by various notifications by Government of India. As a result, substantial time was lost.
- 10. It is stated that pursuant to the filing of the application being M.A No. 1444/KB/2020, as already mentioned hereinabove, several orders have been passed by this Tribunal in the said application and by an order dated 17th December, 2021, this Tribunal, *inter alia*, directed the applicant to take complete possession of the properties of the Corporate Debtor including the property at Chamrail and the property at Pagladanga Road and directed the erstwhile management to furnish all documents.
- 11. It is stated that pursuant to the said order dated 17th December, 2021, the applicant had taken possession of the Property at Pagladanga Road on 27th January, 2021. It is pertinent to mention that the land at the Pagladanga Road

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belonged to one Nampa Steel and Power (India) Private Limited (hereinafter referred to as "Nampa") whereas the scrap and factory shed belonged to the Corporate Debtor. Nampa is the corporate guarantor in respect of the loan facility availed by corporate debtor from the bank, being the sole stakeholder and has mortgaged the said land in favour of the Bank by way of deposit of the original title documents. Furthermore, the Corporate debtor had hypothecated its assets at the Pagladanga Road in favour of the sole stake holder (now the Punjab National Bank) to secure the loan facility availed by the corporate debtor.

- 12. It is submitted that in the aforesaid circumstances, the sole stakeholder had informed the liquidator that the sole stakeholder has security interest over both land and the factory shed and that the factory shed made of aluminum sheets would fetch a far higher price if sold along with the land and that otherwise the factory shed will only fetch scrap value. Thus, the sole stakeholder agreed to give its rights of sale of the land to the liquidator upon approval of this Tribunal. In view of the same the applicant had filed an application being I.A No. 393/KB/2022, *inter alia*, praying for orders allowing the liquidator to jointly sell the land along with the factory shed and boundary located at the Pangladanga Road, within such time and such manner as this Tribunal may deem fit.
- 13. It is stated that however, with respect to the Chamrail Property, it had come to the knowledge of the applicant that Bank of Baroda (formerly Dena Bank prior to merger) had already sold the entire property owned by one Nampa Steel and Power (India) Private Limited, including the movables lying there at belonging to the corporate debtor. Challenging such sale an application was filed by the applicant before this Tribunal being I.A No. 377/KB/2022.

- 14. Both the aforementioned applications being I.A No. 393/KB/2022 and I.A No. 377/KB/2022, were heard and reserved for order on 6th May, 2022. Thereafter by an order dated 29th June, 2022, this Tribunal, inter alia, allowed the application being I.A No. 393/KB/2022. By the said order dated 29th June, 2022, this Tribunal also with respect to I.A No. 377/KB/2022, inter alia, directed the Managing Director of the Bank of Baroda to quantify the amount of materials such as machineries, scrap, iron etc. that were lying in the Chamrail property and deposit the evaluated sum of such materials with the Liquidator.
- 15. It is pertinent to mention that after passing of the order dated 29th June, 2022, the applicant had put the immovable property on sale through E-Auction and the said immovable property was successfully sold for Rs. 533 Lakhs in favour of M/s Caltradeco Steel Pvt. Ltd., Smt. Kusum Goyal, Mrs. Naina Jain and Mrs. Khushboo Jain. The Applicant has also successfully sold the scrap such as Iron scrap/condemned material to M/s Bengal Steel Sales and industries for Rs. 15 Lakhs.
- 16. An appeal was filed by the Bank of Baroda against the order dated 29th June, 2022 passed in I.A No. 377/KB/2022 before the Hon'ble National Company Law Appellate Tribunal. By an order dated 20th March, 2023, the said appeal was disposed of and the Hon'ble NCLAT, *inter alia*, directed Bank of Baroda to assess the value of the scraps and deposit the evaluated sum of such material with Liquidator.
- 17. Pursuant to the order passed by the Hon'ble NCLAT, the Bank of Baroda has remitted a sum of Rs.3,97,000/- along with valuation report.

- 18. It is stated that several orders have been passed by this Tribunal in M.A No. 1444/KB/2020, inter alia, to ensure the presence and/or co-operation of the erstwhile director of the Corporate Debtor, especially Mr. Manoj Kumar Singh. However, Mr. Manoj Kumar Singh, has been acting in complete non-compliance and disregard to the orders of this Tribunal. In fact, non-bailable warrants have also been issued twice, pursuant to orders dated 31st March, 2023 and 25th April, 2023. Despite several orders passed by this Tribunal, Manoj Kumar Singh has been absconding and avoiding the proceedings before this Tribunal. He was brought to the court upon issuance of NBW against him when he stated that he does not have any details pertaining to the operation of the company.
- 19. The applicant submits that the liquidation with respect to the Corporate Debtor commenced on 12th March, 2019, more than four years back. Applications have been filed before this Tribunal from time to time, inter alia, for extension of the period of liquidation and accordingly extensions have been granted. As such, the liquidation period expires on 12th December, 2023. Due to absolute non-cooperation from the suspended Board of Directors, the entire liquidation period has been delayed and the applicant could prepare the asset memorandum only on the basis of information available with the applicant. An application under Section 70 was also preferred by this applicant on which this Adjudicating Authority passed orders for establishing special court vide order dated 8/12/2023 passed in IA (IB) No. 1502/KB/2023.
- 20. In view of the above, the applicant has now successfully liquidated all the assets as mentioned in the asset memorandum and the particulars of which were available to the applicant.

- 21. The applicant submits that the Applicant has complied with all requisite formalities in accordance with the provisions of the Code and Liquidation Regulations and has submitted its Quarterly Progress Reports before this Tribunal from time to time, duly stating the abovementioned facts.
- The Applicant states that the application being M.A No. 1444/KB/2020 is 22. still pending. However, on 17th April, 2023 a meeting of Stakeholder was called wherein the Sole Stake Holder, inter alia, informed the liquidator that since they have moved against the directors of the Corporate Debtor under DRT, no further purpose is being served by keeping the case open. Further fixed assets known to Bank and mortgaged / hypothecated has been realized. Stakeholders are of the opinion that deferring dissolution will entail cost only and yield nothing and the same will jeopardize the concept of value maximization of stakeholders. Therefore, the Stakeholder requested the liquidator to file dissolution petition before this Adjudicating Authority. The Liquidator further informed the Stakeholders that since this Adjudicating Authority has issued Non Bailable warrants against the Director of the company, it will not be feasible to file for final closure at this stage. Therefore, Sole Stakeholder was of the opinion that dissolution petition can be filed before this Adjudicating Authority, pending 19(2) application. And that this Adjudicating Authority can decide in the said matter suitably.
- 23. It is submitted that on 18th June, 2024, this Adjudicating Authority issued a clarification order wherein this Adjudicating Authority held as under:-
 - " 3. Regulation 42 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 requires the Liquidator to distribute the proceeds from realization within ninety days from the receipt of the amount to the stakeholders. However,

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upon perusing through the records, it is seen that an amount of Rs. 25,00,000/- still remains in the liquidation account set up by the Liquidator for the Corporate Debtor.

- 4. Let a clarification be filed as to why the provisions of Regulation 42 (supra) are not being complied."
- 24. It is stated that pursuant to the said order dated 18th June 2024, the Liquidator has filed supplementary affidavit where in he has stated that the Liquidator has distributed the remaining sum of Rs. 25 Lakhs to the Punjab National Bank being the sole stakeholder and the bank account has been made zero. Copy of documents evidencing the same are annexed as **Annexure B** to the supplementary affidavit.
- 25. The Applicant has prepared his Final Report and the Compliance Certificate in terms of regulation 45 of the Liquidation Regulation on 28th October, 2020. The Final Report and the Compliance Certificate are annexed as Annexure E & F respectively.
- Upon hearing the Ld. Counsel appearing for the Liquidator and perusing the documents annexed to the application, it appears that affairs of the Corporate Debtor were completely liquidated after realising the assets and distributing the amount to the stakeholders after complying with the provisions of section 53 of the Code in the order of priority as mandated under the IBC, 2016. The Liquidation Account in terms of regulation 45(1) of the Liquidation Process Regulations and details thereof have been attached along with Bank Statement showing "Zero" balance in the Liquidation Account.
- 27. The Liquidator is further directed to serve a copy of this order upon the Registrar of Companies, West Bengal, immediately and, in any case, within **fourteen days** of receipt of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order. The Successful auction purchaser shall make the requisite filings with the RoC.

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28. In view of the above, it is seen that all the compliances as required under law in this regard have been made and there is no impediment in dissolving the

corporate debtor. We order accordingly.

29. The Liquidator shall stand discharged from his responsibilities, subject to all

procedural compliances.

30. <u>IA(IBC)(DIS.)/1187(KB)2023</u> is allowed with the above directions are

hereby disposed of accordingly.

31. The Registry is directed to send e-mail copies of the order forthwith to all the

parties and their Ld. Counsel for information and for taking necessary steps.

32. Certified Copy of this order may be issued, if applied for, upon compliance

of all requisite formalities.

33. **CP(IB)/145(KB)2018** along with all connected IAs is **disposed of** accordingly.

34. File be consigned to records.

Balraj Joshi Member (Technical) Bidisha Banerjee Member (Judicial)

Signed on this, the 5th day of November, 2024.

РJ