



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**I.A. (IB) No. 2195 of 2024**

**In**

**C.P. (IB) No. 76 of 2023**

***An application under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 11 of the National  
Company Law Tribunal Rules, 2016***

**IN THE MATTER OF:  
Ellenbarrie Exim Limited**

**... Corporate Debtor**

**And**

**IN THE MATTER OF:  
Mr. Vishal Shekhar**

**... Resolution Professional/Applicant**

**Date of Pronouncement: 26<sup>th</sup> of November 2024**

**CORAM:**

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)**

**SHRI. D. ARVIND, MEMBER (TECHNICAL)**

**APPEARANCE:**

**Mr. Shaunak Mitra, Adv  
Mr. Niraj Kumar, CS**

**] For the Resolution  
Professional**

**ORDER**

**Per: D. Arvind, Member (Technical):**

1. The Court congregated through hybrid mode.
2. Heard Ld. Counsels for the parties.
3. This application has been filed by Resolution Professional of the corporate debtor Ellenbarrie Exim Limited. The **Resolution Professional** (hereinafter referred as **"RP/Applicant"**) has filed this

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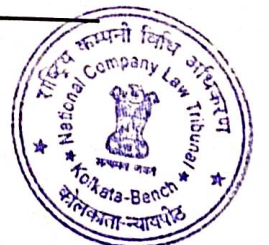
application seeking dissolution of the corporate debtor considering the facts and circumstances mentioned in this application.

**Brief facts of the case:**

4. Ellenbarrie Exim Limited was put into Corporate Insolvency Resolution Process pursuant to an Order dated 30.04.2024, passed by this Bench, consequent to which, the applicant was appointed as the Resolution Professional. In spite of publication of Form G twice, the corporate debtor did not receive any Expression of Interest (EoI). Given the fact that the corporate debtor is inoperative, no business and virtually no assets, it was decided by the CoC that there is no need for publishing Form G again but to liquidate the company.
5. Since the company did not have any assets, it was decided in the 5<sup>th</sup> CoC meeting held on 21.10.2024, that the corporate debtor can be directly dissolved without putting the corporate debtor into liquidation process.
6. The matter was discussed at length in the said 5<sup>th</sup> CoC meeting, post which, decision was taken by CoC members to directly dissolve this corporate debtor and hence this application has been filed.

**Analysis and findings:**

7. We find that the corporate debtor has stopped functioning from the financial year 2009 to 2010. The corporate debtor has not entered into any other business relationship. Corporate debtor does not have any fixed assets which can be considered for dissolution/liquidation.
8. The corporate debtor has only a bank account which has got balance of Rs. 89,081/- and the same has been marked as lien by Income Tax Authorities against their dues.





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9. Considering the fact that there is nothing to liquidate, liquidation is of no use. Additionally, there is no one to bear the liquidation cost. Since the realisable value of the corporate debtor is nil, there are no funds to meet the liquidation cost further, accordingly in 5 CoC meeting a resolution was passed to dissolve the corporate debtor without putting the corporate debtor into liquidation process.
10. On similar grounds, we have directed the corporate debtor to be dissolved without undergoing the liquidation process in **Bihar E-Governance Services & Technologies Limited And Kanchan Dutta, in I.A. (IB) (Liq) No. 32/KB/2024** dated 08.11.2024. In the said Judgement, we had recorded the decision of Hon'ble NCLAT rendering **Janak Jagjivan Shah (RP) V. CoC of Rainbow Infrabuild Pvt. Ltd. in Company Appeal (AT) (Insolvency) No. 1406 of 2024 reported in (2024) ibclaw.in 691 NCLAT**. The relevant para 15 of our Order capturing the said Judgment of Hon'ble NCLAT is reproduced as under:

*The Hon'ble NCLAT has observed that the CIRP having been unsuccessful, and no liquidation order having been passed, recourse to Section 54 for dissolution of the corporate debtor, could not have been taken by the RP. the Hon'ble NCLAT laid down that when the entity, who has initiated the CIRP is not ready to proceed any further and CIRP period having already come to an end, no further steps were required in the CIRP of the Corporate Debtor and RP could have closed the matter by intimating the Registrar of Companies for striking off the name of Company from the Register of the Companies. The exact dictum of the judgment reproduced hereunder:*

*"18. [...] In the present case, the Adjudicating Authority has not exercised its jurisdiction in allowing the application filed by the CD for dissolution referring to Section 54 of the IBC and Regulation 14 of the Liquidation Regulations. The scheme of the IBC clearly provides that dissolution is a step*





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subsequent to the Corporate Debtor having been completely liquidated. In the present case, the liquidation proceedings have not been undertaken and resorting to Section 54 could not have been taken as per the scheme of the IBC. The facts of the present case indicate that CIRP has been completed without any Plan having been received, in spite of Form G published twice. The Adjudicating Authority did not pass any order for liquidation, which could have been passed under Section 33, sub-section (1). Thus, the CIRP having been unsuccessful and no liquidation order having been passed, recourse to Section 54, could not have been taken by the RP. 19. Under the Companies Act, Chapter XVIII, containing the heading "Removal of names of companies from the Register of Companies", provides ample jurisdiction to Registrar of Companies to remove the name of a Company from Register of Companies. Section 240 empowers the Registrar, who on being satisfied by reasonable cause as mentioned in sub-clause (1) or as is covered by sub-clauses (c), (d) and (e), Registrar can strike off the name of the Company from the Register of Companies. In the present case, the RP could have intimated the Registrar of Companies for striking off the name of the Company. In the facts of the present case, where company is not carrying on any business and there are no assets of the Company, dissolution of the Company under Section 54, is a step, which could have been taken as per the statutory scheme of the IBC. This Tribunal's judgment in Shyson Thomas was a case where Adjudicating Authority exercising its jurisdiction has directed for dissolution by allowing the application. In the present case, the Adjudicating Authority had rejected the application, relying on the provisions of Section 54 of the IBC and Regulations 14 of the Liquidation Regulations. 20. We have noted above that CoC has decided not to make any contribution towards the liquidation process and liquidation, hence, was not directed. In the present case, CoC consisted of sole Financial Creditor, who had initiated the CIRP against the CD. **When the entity, who has initiated the CIRP is not ready to proceed any further and CIRP period having already come to an end, no further steps were required in the CIRP of the Corporate Debtor and RP could have closed the matter by intimating the Registrar of Companies for striking**





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**off the name of Company from the Register of the Companies.**

21. In view of our foregoing discussions and conclusions, we dispose of this Appeal with following direction:

(I) The impugned order dated 11.06.2024 directing for carrying out transaction audit, is set aside.

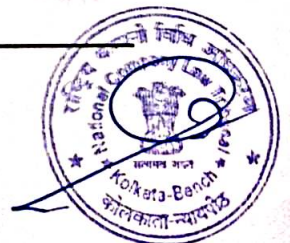
(II) The RP may send intimation to Registrar of Companies, giving the facts and details, praying that Company's name be struck off from the Register of Companies.

(III) The CIRP having come to an end and liquidation has not been ordered, no further steps are required to be taken by the RP. The CIRP proceedings may be treated to be closed."

**(Emphasis Added)**

11. In view of above, in exercise of power under Section 60(5) of Insolvency and Bankruptcy Code, read with Rule 11 of NCLT Rules, 2016 we **dispose of the present application** with the following directions:

- a) Delay is condoned.
- b) Balance lying in the bank account of the corporate debtor may be appropriated by Income Tax Department against the dues payable by the corporate debtor.
- c) The corporate debtor Ellenbarrie Exim Limited is ordered to be **dissolved** with an immediate effect after appropriating the fund available with the bank account as directed above.
- d) The Resolution Professional is directed to serve a copy of this order upon the Registrar of Companies, within whose jurisdiction the Corporate Debtor is registered with, within fourteen days of receipt of this order. The Registrar of



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Companies shall take further necessary action upon receipt of a copy of this order.

- e) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) and the Registrar of Companies, whose jurisdiction the Corporate Debtor is registered with for maintaining their own record.
- f) The Registry is further directed to communicate the order through email forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- g) However, at any event, the liability of the corporate or personal guarantors, if any, shall not be absolved by the virtue of this order for dissolution of the corporate debtor. Aggrieved party(ies) shall be at liberty to continue or take appropriate legal recourse against them before appropriate forum.
- h) No order as to costs.

12. In view above, the application being I.A. (IB) No. 2195 of 2024 along with the C.P. (IB) No. 76 of 2023 is disposed of.

13. Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

Sd/-  
D. Arvind  
Member (Technical)

Sd/-  
Bidisha Banerjee  
Member (Judicial)

Signed on this, the 26<sup>th</sup> day of November 2024.

PH/PSJ







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No. 1403/2024  
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of application for Copy 02/12/2024  
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Date of Deliver of Copy 05/12/2024

  
JR / DR / AR / Court Officer  
National Company Law Tribunal  
Kolkata Bench