

(2022) 07 NCLT CK 0060

In the National Company Law Tribunal

Case No : IA(IBC)433(KB)2022 In CP(IB)/642(KB)2018

Eastern Electrodes & Coke Private Limited

APPELLANT

Vs

Maa Sherawali Ispat Private Limited

RESPONDENT

Date of Decision : 29-07-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 40, 53, 54

Citation : (2022) 07 NCLT CK 0060

Hon'ble Judges : Rohit Kapoor, Member (J); Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Rajarshi Banerjee, Savita Agarwal,

Final Decision : Disposed Of

Judgement

Rohit Kapoor, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. IA(IBC)/433(KB)2022 is an application filed under section 54 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called the "Code") read with regulation 45(3)(b) of the IBBI (Liquidation Process) Regulations, 2016 (hereinafter called the "Liquidation Process Regulations") and rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter called the "Rules") by the Liquidator of Maa Sherawali Ispat Private Limited (CIN: U27100WB2006PTC109996) (hereinafter called the "Corporate Debtor") praying for dissolution of the Corporate Debtor.
3. Vide order of this Adjudicating Authority dated 03/08/2018, the Corporate Debtor was admitted under CIRP appointing the applicant as Interim Resolution Professional (IRP). Subsequently, her appointment was neither confirmed by the Committee of Creditors (CoC) as Resolution Professional nor the CoC had suggested name of any other Insolvency Professional to be appointed as Resolution Professional.
4. IRP tried to trace out the assets and books of accounts of the Corporate

Debtor and found that the Corporate Debtor did not have its Registered Office at the given address. IRP also found that most of the fixed assets of the Corporate Debtor are in possession of one of the Financial Creditor, West Bengal Financial Corporation, by way of mortgage. Meanwhile, CIRP period of 180 days was over on 29/01/2019. IRP had brought to the notice of the Adjudicating Authority that CoC did not pass any resolution for extension of the CIRP period.

5. In the aforesaid circumstances, this Adjudicating Authority had no option other than to pass an order for liquidation of the Corporate Debtor. Therefore, this Adjudicating Authority vide order Annexure "A-1" at pages 47 to 53 of the application dated 01/03/2019 ordered liquidation of the Corporate Debtor appointing Ms. Savita Agarwal as the Liquidator.

6. Public announcement Annexure "A-1" at pages 54 to 55 of the application of commencement of liquidation was made in Form –"B" in "Financial Express" (English) and "Ekdin" (Bengali) on 05/03/2019 inviting proof of claims from the stakeholders of the Corporate Debtor in the specified forms.

7. The Liquidator has opened a new bank account on 22/05/2019 being A/c. No. 50200039905917 in the name of Corporate Debtor as per regulation 41 of the Liquidation Process Regulations, with HDFC Bank, Constantia Bldg., 11, Dr. U. N. Brahmachari Street, Kolkata, West Bengal.

8. Vide orders Annexure "A-2" (collectively) at pages 56 to 61 of the application dated 03/08/2021, 01/10/2021 and 17/02/2022 exclusion (122 days), extension (180 days) and further extension (120 days) were granted respectively.

9. The Liquidator had received claims from the stakeholders and submitted the Revised List of Stakeholders Annexure "A-3" at pages 62 to 65 of the application, (category-wise) before the Adjudicating Authority vide letter dated 16/07/2019 as per regulation 31 of the Liquidation Process Regulations as well as per section 40 of the Code.

10. The Liquidator thereafter filed Preliminary Report as per regulation 13 of the Liquidation Process Regulations as well as Asset Memorandum as per regulation 34(4) of the Liquidation Process Regulations on 07/08/2019.

11. The applicant/Liquidator conducted multiple e-auctions on 23/08/2019, 20/09/2019, 04/12/2019, 24/01/2020 and 24/08/2020. Despite five e-auctions held by the applicant, not a single bid was received from any prospective bidder. Therefore, an application being IA(IBC)/189(KB)2021 has been filed by the applicant/Liquidator for granting sanction for private sale of all the assets of the

Corporate Debtor at a price below the reserved price in an earlier failed public e-auction to a private purchaser. Vide order dated 01/10/2021 passed in IA(IBC)/189(KB)2021, this Adjudicating Authority had laid down detailed specially ordered auction of all the assets of the Corporate Debtor. In compliance of the said order dated 01/10/2021 the applicant could ultimately obtain one successful auction purchaser, Shree Ramdoot Ferro Pvt. Ltd. The Liquidator has

sold the assets and properties of the Corporate Debtor to Shree Ramdoot Ferro Pvt. Ltd. through auction process conducted pursuant to the order of this Adjudicating Authority dated 01/10/2021 for an amount of Rs.10,75,00,000/-.

12. In compliance of regulation 15 of the Liquidation Process Regulations, the Liquidator had filed Twelve Progress Reports from time to time before the Adjudicating Authority. The Final Report Annexure "A-26" at pages 382 to 406 of the application with compliance certificate in Form – H has been filed along with the dissolution application disclosing all the material facts and information with respect to the liquidation process of the Corporate Debtor. As per mandatory requirement under regulation 45(3) of the Liquidation Process Regulations, the Liquidator has prepared a compliance certificate under prescribed 'Form H' and filed with the application.

13. In compliance of regulation 41 of the Liquidation Process Regulations, the Liquidator had filed copy of all the bank statements Annexure "A-25" at pages 368 to 381 pertaining to the liquidation bank account, opened by her in the name of the Corporate Debtor.

14. The Liquidator has submitted a supplementary affidavit annexing the following documents :-

(a) Final bank statement showing the final distribution of the remaining portion of the sale proceeds in favour of, inter alia, the said three secured creditors and the letter dated 06/07/2022 addressed to the HDFC Bank for closure of said liquidation account (Annexure "A-3" at pages 18 to 18A of the supplementary affidavit);

(b) A true copy of statements clarifying/summarising the Bank Statement showing final distribution to stakeholders (Annexure "A-4" at page 19 of the Supplementary Affidavit); and

(c) Intimation letter dated 04/05-07-2022 addressed to the three secured creditors intimating full and final distribution of the proceeds from the realisation of the liquidation assets as per the provisions of section 53 of the Code (Annexure "A-5" at pages 20 to 32 of the Supplementary Affidavit).

15. The affairs of the Corporate Debtor were completely liquidated after realising the assets and distributing the amount to the stakeholders after complying with the provision of section 53 of the Code in the order of priority as mandated under the Code. Details of realisation and distribution have been specifically mentioned in Annexure – "A-5" to the supplementary affidavit. 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 (Annexure "A-3" to the supplementary affidavit).

16. Upon hearing the Ld. Counsel appearing for the Liquidator and perusing the documents annexed to the application and the supplementary affidavit, it appears that affairs of the Corporate Debtor have been completely wound up and

its assets have been completely liquidated. The bank account has also been closed and no liabilities of the stakeholders have been left unsatisfied.

17. In view of the above facts and circumstances, there is no impediment to the Corporate Debtor being dissolved, and it is ordered accordingly.

18. 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.

19. IA(IBC)433(KB)2022 and shall stand disposed of in accordance with the above directions.

20. 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.

21. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

22. File be consigned to the record.