

(2022) 09 NCLT CK 0080

In the National Company Law Tribunal

Case No : IA(IBC)/134/KOB/2021 IN IBA/22/KOB/2020 & IBA/23/KOB/2020

M/s. Ambani Vittrified Private Limited & Another APPELLANT
Vs
M/s. Nassco Trading India Private Limited RESPONDENT

Date of Decision : 27-09-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9, 9(6), 13(1)(b), 54, 54(1)
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for
Corporate Persons) Regulations, 2016 — Regulation 6, 14
National Company Law Tribunal Rules, 2016 — Rule 11

Citation : (2022) 09 NCLT CK 0080

Hon'ble Judges : Dr. Deepti Mukesh, Member (J); Ajai Das Mehrotra, Member (T)

Bench : Division Bench

Advocate : M. Jithesh Menon, Hari Kumar G. Nair, Brijesh R., Mahesh Kumar P.G.

Final Decision : Allowed

Judgement

1. The present application is filed by Resolution Professional under Section 54(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking the dissolution of the Corporate Debtor.

2. The facts as narrated in the application are summarized hereunder:

i. IBA/22/KOB/2020 and IBA/23/KOB/2020 were filed by M/s. Ambani Vittrified Private Limited and M/s. Airson Ceramic Industries respectively against M/s. Nassco Trading India Private Limited under Section 9(6) of IBC, 2016. The Adjudicating Authority admitted these matters vide common order dated 23.03.2021 and appointed the Applicant as Interim Resolution Professional. The Applicant made a public announcement inviting claims in terms of Section 13(1)(b) and Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The State Bank of India submitted the claim of Rs. 18,55,96,207/- and later became the sole member of CoC. In the 1st CoC Meeting held on 27.04.2021, the Applicant was appointed as the Resolution Professional which was approved by this Adjudicating Authority vide order dated

23.06.2021 in IA(IBC)/90/KOB/2021.

ii. In the 3rd CoC meeting held on 04.06.2021, it was decided not to proceed further with the Resolution Process, since the State Bank of India had already filed proceedings before the Debts Recovery Tribunal in 2017 against the directors/ promoters alleging that there was misappropriation of stocks and movable assets of the company thereby leaving the company with no stocks or other current assets, and no other fixed assets like plant and machinery. The company does not have land and buildings or any such other assets.

iii. The statutory compliances for financial statements, reports, etc with the Registrar of Companies was complete only upto 31.03.2016 and hence it was also decided not to issue Form G, as the scope of the resolution of Corporate Debtor, appeared to be an impossibility. As per the Audited Balance Sheet of the year ending 31.03.2016 the major assets of the Corporate Debtor were vehicles and however, these vehicles were sold by the Corporate Debtor in the year 2017 and no vehicle was available in the name of the company. As per the MCA records as on 31.03.2016, the corporate debtor does not have any fixed asset/ land/building. The Operational Creditors who had filed the application under Section 9 of the Code have not submitted their claims before RP. It was deliberated by the sole CoC member that since no useful purpose would be served by initiating the liquidation process of the Corporate Debtor in absence of any assets available for disposal as per MCA records of the company, the CoC resolved that steps to dissolve the company needs to be initiated without any delay. Accordingly, the resolution was passed in the 4th CoC meeting with 100% voting.

3. It is submitted that there are no assets of the Corporate Debtor as the respective Secured Creditor had taken recourse to recover the debt from the assets of the Corporate Debtor which were mortgaged by the Corporate Debtor with Secured Creditor.

4. The Resolution Professional further submitted that since the SBI, the sole CoC member, has already proceeded against the Personal Guarantors it was resolved that no purpose would be served in proceeding with the CIRP of Corporate Debtor.

5. Heard submission and perused records. Before considering the merits of the matter, it is necessary to refer to relevant provisions and rules, as available under the Code and Rules which are as under: -

Section 54 of IBC, 2016: Dissolution of corporate debtor.

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 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.

Regulation 14 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016:

Early dissolution.

Any time after the preparation of the Preliminary Report, if it appears to the liquidator that-

(a) the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and

(b) the affairs of the corporate debtor do not require any further investigation;

he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution.

6. The ultimate objective of the Code is either to resolve by way of a Resolution Plan or to liquidate the Corporate Debtor, as expeditiously as possible. The facts and circumstances of present case justifies that no purpose would be served to keep the Corporate Debtor under CIRP and/ or under Liquidation Proceedings. The Adjudicating Authority is vested with inherent powers under Rule 11 of NCLT Rules, 2016 conferred under the Act, to pass appropriate order(s) in the interests of speedy justice.

7. In the above facts and circumstances of the case it would justify that no useful purpose would be served by placing the Corporate Debtor under the Liquidation Process which will increase the cost without any fruitful result. The State Bank of India, the sole CoC member has already proceeded against the Corporate Debtor by approaching DRT and by taking possession. The Liquidation Process under the provisions of the Code can be considered to have been carried forward and thus it would be just and proper for the Adjudicating Authority to dissolve the Company, as proposed by the Resolution Professional, moreover when the sole CoC member in its commercial wisdom has passed a resolution seeking dissolution of the Corporate Debtor. The instant application is filed by Resolution Professional on the direction of the CoC. In 4th meeting of CoC held on 08.07.2021, Resolution No. 7 was passed to dissolve the Corporate Debtor with 100% voting share. The extract of the discussion from the minutes of the said meeting of CoC is reproduced hereunder: -

"COC decided not to proceed further with Resolution Process under CIRP. COC opined that it is clearly evident from the case filed against the Director promoters (Case filed by the lending Bank -SBI in 2017) regarding the misappropriation of stock and movable assets of the company that the promoters intended to defraud the stakeholders of the company. Directors being respondents to the CIRP petition have not appeared in NCLT irrespective of several notices during

the admission process of CIRP, further, they are absconding and have not attended any of the COC meetings and not taking any efforts and measures to adhere to their statutory duties to manage/revive the company. The business of the Corporate Debtor is into retail trade of Vitrified tiles and Granites and it is not functioning for the past 5 to 6 years. No financials are updated; ROC compliances and other statutory compliances are pending for the past several years. Considering all the above facts, COC is of the opinion not to Issue FORM G (EOI inviting Resolution applicant) as the scope for the resolution process is nearly impossible and recommends for Liquidation of the company.

Further, it was decided to finalize the liquidation after the Visit of the registered office of the CD by RP as decided in the second COC (On lifting the Lockdown) and which was carried out on 1st July 2021.

As per the visit report, on verification of the records and as per the information from public domain almost all the vehicles owned by the company as per the Audited Financial Statements 2016, have been sold off in the year 2017 and only remaining tangible asset of the company found is a few furniture and fixtures and generator/available stock which has only scrap value.

COC suggested that since the company has no tangible asset worthy of sale/invite EOI] and the uncertainty in realizing any receivables/intangible asset of the company as it stopped operation since 2017 onwards it is not worth continuing with the CIRP/Liquidation process and requested RP to file for early dissolution of the company under section 54 based on the judgment CP(IB) NO-96/BB/2020 U/S 10 of [BC 2016 W Rule 7 of 1&8 (AAA) Rules 2016 IA/NO 435/2020 US/54/ R/W SEC 60(5) OF 18C 2016 in the matter of SYNEW STEEL PVT LTD.”

Resolution: -

CoC with 100% voting resolved not to issue Form G/ File for liquidation and recommended to file for early dissolution of the company under Section 54 based on the judgment in the capacity of RP itself.

8. In the aforesaid circumstances we are satisfied that this is a fit case for dissolving the Corporate Debtor without undergoing the liquidation process.

9. By exercising powers conferred on this Adjudicating Authority under Section 54(1) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 14 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 along with Rule 11 of NCLT Rules, 2016 invoking inherent powers of Adjudicating Authority and other relevant provisions of the Code and the Rules made thereunder, IA(IBC)/134/KOB/2021 is allowed with the following orders:

i. The Corporate Debtor, M/s. Nassco Trading India Private Limited is ordered to be dissolved with immediate effect.

ii. The Registry is directed to forward a copy of this Order to the Registrar of

Companies, Kerala within two weeks from the date of this Order.

iii. The Resolution Professional is also directed to forward copies of this Order to all other Statutory Authorities including IBBI, connected with the affairs of the Company.

iv. Personal liability/Guarantee of any Director/Promoter of the Corporate Debtor, if any, would not absolve them of their liability by virtue of this Order.

v. Resolution Professional shall stand discharged from his duties with effect from the date of this Order.