(2022) 04 NCLT CK 0029

In the National Company Law Tribunal

Case No : IA(IBC)/121 Of 2022 in CP (IB) No.176/9/11DB/2019

M/s Serwel Electronics Private Limited Vs

Date of Decision : 13-04-2022

Acts Referred:
Insolvency and Bankruptcy Code, 2016 — Section 9, 54(1), 54(2)

Citation : (2022) 04 NCLT CK 0029

Hon'ble Judges : Dr. Venkata Ramakrishna Badarinath Nandula, Member (J);Dr Binod Kumar Sinha, Member (T)

Bench : Division Bench

Advocate : Pavan Kankani

Final Decision : Disposed Of

Judgement

1) The Present Application bearing IA No.121/2022 in CP (TB)o.9/HDB/2019 is filed by the Liquidator seeking following prayers:-

a. To issue an order under the Powers vested with this Honble Tribunal under Section 54(1) of the Insolvency and Bankruptcy code, 2016 for dissolution of the Corporate Debtor Company.

b. Dispose the pending interlocutory applications IA No.894 of 2020 & IA No.661 of 2021 mentioned in the application pending disposal of the present Dissolution Application.

2) Brief facts of the present case as stated by the learned counsel for the Applicant are as follows:-

a) That this Adjudicating Authority vide its order dated 07.01.2020, admitted the Application filed by M/ s. Deccan Switchgears (Operational Creditor) under section 9 of the IBC, 2016, for initiation of CIRP against the Corporate Debtor (M/s. Serwel Electronics Private Limited) and appointed Mr. Pavan Kankani as Interim Resolution Professional (IRP). Later he was confirmed as Resolution Professional (RP) by CoC in their first CoC. Thereafter, due to completion of maximumperiod permitted for completion of CIRP this Adjudicating Authority ordered for liquidation basing on the application filed by the applicant herein.

b) That after his appointment as Liquidator, the applicant carried out paper publication under Regulation 12 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The Sole Secured Financial Creditor had submitted its claim before the last date of receipt of claims and in that claim form they mentioned that, they are not ready to relinquish the security interest in favour of the Liquidation Estate and hence the said assets are not covered in the Asset Memorandum filed preliminary Report. Other than the assets securitized with the sola secured financial creditor there is no asset available with the corporate debtor.

c) That the books of accounts of the Corporate Debtor available with the applicant herein is updated only up to the year 2017 and thereafter the applicant made several requests to the sole secured financial creditor to release the amount for appointment of professional for auditing and accounting the books, however, the creditor has not taken any decision against the said proposals and hence the books of accounts were not updated. Thus, there are no physical assets in the corporate debtor company and receivables appearing in the books of Corporate Debtor are for the year 2017 and the same is not updated and there is no clarity on the receivables.

d) That the applicant believes that there is no point to continue the liquidation process of the corporate debtor due to the reason that there are no assets available with corporate debtor to realize and share the proceeds with the stakeholders. That the applicant herein continuing the present assignment only for the benefit of stakeholders of the corporate debtor and had intended to share the proceeds out of realization of the assets of the corporate debtor with the stakeholders, but the sole secured creditor did not relinquish the security interest on the assets of the CD hence there is no point to continue the present liquidation proceedings.

e) That from the date of Liquidation order issued by this Adjudicating Authority the Applicant/Liquidator has complied all the provisions and regulations under Insolvency 86 Bankruptcy Code, 2016 from time to time manner. The Applicant liquidator filed his Preliminary Report within the period specified in statute and the first and final report had alreadyfiled in the form of a Memo. During the CIRP period one application was field by M/s Servomax Limited IA No. 894 of 2020 for directions to the RP and Sole Secured Financial Creditor to register the property in their name which was acquired by them under SARFAESI from the sole secured Financial Creditor. It is stated that the sale was conducted by the Secured Financial Creditor under SARFAESI before initiation of CIRP. Since Liquidation was ordered by this Adjudicating Authority and the secured creditor did not relinquish the security interest in liquidation estate the said application is infructuous and hence the same may be disposed. Since there is nothing to realize in the corporate debtor and the present application is filed under section 54(1) of IBC, 2016 for dissolution, the said application may be disposed-off.

f) That under Section 54 of the I as B Code under 'Dissolution of the Corporate Debtor" -

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.

g) Reiterating the above, the Applicant/Liquidator prayed to allow the instant Application as sought for.

3) Heard. Perused record.

4) In the instant case, it is submitted that since there is nothing recoverable or realizable in the corporate debtor, the applicant is of the opinion that there is no use of continuing the present proceedings for liquidation of Corporate Debtor and hence he decided to move the present application for dissolution of the Corporate Debtor including all transaction and event in liquidation of the corporate debtor for its dissolution.

5) It is a fact on record that there are no realizable assets held by the Corporate Debtor so as to form a Liquidation Estate and to distribute the proceeds thereof. The only immovable asset remained with the sole Secured Financial Creditor, who did not relinquish his right in favour of the Liquidation Estate. Accordingly, this Adjudicating Authority in exercise of the powers conferred under Section 54(2) of the I&B Code, 2016, deems it proper to pass an order of the dissolution of the Corporate Debtor. Thus Corporate Debtor herein i.e., M/s. Serwel Electronics Private Limited stands dissolved from the date of this order. Liquidator also stands relieved.

6) Upon dissolution, Liquidator shall hand over the record of the Company to IBBI and file confirmation thereof to this Adjudicating Authority.

7) Further, Liquidator is directed to communicate a copy of this order to the Authority with which the Corporate Debtor is registered, within 7 days from the date of receipt of copy of this order.

8) It is also seen that the Applications bearing IA No. 661 of 2021 and IA No. 894/2020 have already been disposed by this Adjudicating Authority vide orders dated 24.02.2022 and_12.04.2022 respectively. Hence no orders are required in relation to the same.

9) With the above, IA No.121/2022 stands disposed of.

