

(2021) 08 NCLT CK 0001
In the National Company Law Tribunal
Case No : IA 2343 of 2020 In CP 415 of 2019

Om Traders

APPELLANT

Vs

Saru Agro Foods Ltd

RESPONDENT

Date of Decision : 03-08-2021

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9, 54, 54(2), 60(5)
National Company Law Tribunal Rules, 2016 — Rule 11
Insolvency and Bankruptcy Board of India (Liquidation Process Regulations, 2017 — Regulation 14

Citation : (2021) 08 NCLT CK 0001

Hon'ble Judges : Suchitra Kanuparthi, Member (J); Chandra Bhan Singh, Member (T)

Bench : Division Bench

Advocate : Durgaprasad Halwai, From Jayesh Desai & Co

Final Decision : Allowed

Judgement

Chandra Bhan Singh, Member (Technical)

1. This an Application submitted by the liquidator dated 12.10.2020 seeking an order U/s 54 of the Insolvency code for granting Dissolution of

the Corporate Debtor to be read with Regulation 14 Early Dissolution of the Corporate Debtor.

2. As a First step, on receiving Form No. 5 from the Operational Creditor viz. Om Traders against the Corporate Debtor Saru Agro Foods

Limited, an order was passed on 14.11.2019 admitting the Petition u/s 9 of I&B Code by appointing an Interim Resolution Professional Mr. Atul

Babulal Shah. As a consequence, clauses of Sec. 14 of the Code i.e., pronouncement of Moratorium was also directed to be applicable during

the CIRP period.

3. The applicant submits that he has made public announcement on 18.02.2020 which was published on 19.02.2020 for calling upon the stakeholders to submit their claims as required.

4. On 03.03.2020 a claim received from the lone Financial Creditor (M/s. Loyal Enterprises) raising a claim of Rs. 21,60,000/- and admitted provisionally Rs. 20,00,000/- and filed its report before the Tribunal. The last available audited balance sheet of the Corporate Debtor is stated to be for the year 2018-2019, stated to be last balance sheet, is reproduced below to demonstrate the position of the assets of the Corporate Debtor company: -

5. First CoC meeting was held on 17.03.2020 and the applicant was appointed as the Resolution professional.

6. The Applicant submits that due to Covid-19 restrictions the meeting was conducted via video conferencing on Google meet on 06.10.2020 to discuss and vote on dissolution of Corporate Debtor.

7. The applicant submits that the Directors of the Corporate Debtor are not at all co-operating and the assets are not known. Also, the stock being food items are perishable, therefore do not have any value at present. The Corporate Debtor does not have any employee. The Promoters are not traceable, and the Corporate Debtor was operating from a rented premise and there is no business activity and the CoC is aware of the fact that Corporate Debtor is non-operational. Further there being no assets and Promoter Director is absconding and it is not possible to prepare Information memorandum and invite expression of interest for the resolution of the Corporate Debtor. The Financial Creditors are not willing to pay the cost as they are individuals who have lost their money.

8. The CoC in its third CoC meeting was held on 06.10.2020 and passed Resolution for Dissolution of the Corporate Debtor.

â??RESOLVED THAT as there is no business activity and as also the fact that there is no assets of the Company, and for the admitted liability of Financial Creditors and Operational Creditors there is no assets, the promoter director is absconding and there is no person in the company to provide the information, it is important to move ahead in any manner and to have any resolution plan of the Corporate Debtor and to invite expression of interest in Form-G.

RESOLVED FURTHER THAT CoC hereby decides to approach the Honâ??ble NCLT

through resolution professional with a request for dissolution of the Corporate Debtor under Section 54 and relevant provisions of IBC, 2016.

RESOLVED FURTHER THAT Mr. Dilip Natvarlal Jagad, RP be and is hereby authorized to take all necessary steps to deal with all matters connected, consequential and incidental to request for dissolution of Corporate Debtor and in particular for â?

â?¢ Filing of application with the concerned NCLT or such other competent authority.

â?¢ For such above purposes to engage advocates and if considered necessary, also engaged services of Counsel(s), solicitors, chartered accountants and other professional and declare and file all pleadings, report signed and execute Vakalatnama whenever necessary.

â?¢ To sign all applications, Petitioner, documents, sanction, to request for dissolution or delegate such authority to other person by a valid power of attorneys;

and to do all acts and things as may be considered necessary and expedient in relation thereto.â??

9. As per the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016, vide Regulation No. 14 it is prescribed as under: -

â??14. 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

dissolutionâ??.

10. For the purpose of pronouncement of Dissolution of a Corporate Debtor Section 54 of The Code reads as under: -

â??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 subsection (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.â??

11. In the light of above it is noticed that the Application is moved for the â?? Dissolution of the Corporate Debtorâ?. This Section is to be read

along with Regulation 14 of IBBI (Liquidation Process)

Regulations 2016 which says that any time after the preparation of a Preliminary Report if it appears to the Liquidator that the realizable properties

of the Corporate Debtor are insufficient to cover the cost of Liquidation process, and the affairs of the Debtor do not require further investigation may

apply to NCLT for early dissolution of the Corporate Debtor.

12. In this connection it is also worth to refer Section 59, Sub-Section 7 of IBC. Although this Section is in respect of Voluntary Liquidation of a

Corporate Person, however, according to which where the affairs of the Corporate Person have been completely wound up, and its assets completely

liquidated, the Liquidator shall make an Application to Adjudicating Authority for the Dissolution of such Corporate person. This Sub-Section is simply

referred for the reason that in all such situation an Application is to be moved for seeking an Order of â??Dissolution of a Corporate Personâ??.

13. Even the Companies Act 2013 has made a provision u/s. 273 describing Powers of Tribunal which states that the Tribunal may on receipt of a

Petition for winding up u/s. 272 pass an Order viz. appointing a Provisional Liquidator till winding up Order and on just and equitable ground

wound up a Company. However, at this juncture, it is important to mention that so far Section 273 has not been enforced by due Notification. It

appears that this section has not been notified because of the reason that the parallel and almost identical provisions are incorporated under I&B Code

and also in operation, therefore, to avoid duplicity not notified.

14. The bench notes that CP 415 of 2019 was filed by an Operational Creditor against Agro Foods Ltd. for a total amount of Rs. 11,99,138/-. This

Petition was admitted by an Order dated 14.11.2019. We also note that no claims have been received from any Operational Creditor including the

Operational Creditor at whose behest CIRP had commenced in this matter. The

RP mentions that he has received only one claim from Financial Creditor, i.e., M/s. Loyal Enterprises and total admitted amount is Rs.20 lakhs. Further, the firm does not have any workmen and employees. The bench notes that there is no asset in the Company and as per the audited financials as on 31.03.2019 the balance sheet the Company has fixed assets of about Rs.13.79 lakhs which is not there in the Company physically, therefore, can not be valued. Similarly, there is Stock in Trade as per the books of account of about Rs.27.93 lakhs which were primarily perishable food items and cannot be valued at present. In view of this the RP mentions that no Information Memorandum (IM) has been prepared and no expression of interest could be invited. The bench also notes that the sole creditor in the Company which is the Financial Creditor, in the CoC meeting held on 06.10.2020, recommended for direct dissolution of the Company rather than as per Section 54 of the Code first applying for liquidation before the Adjudicating Authority and thereafter going in for dissolution. The Applicant mentions that there has been a precedence where keeping in view that there is no realizable asset in the Corporate Debtor Company, NCLT Chennai in MA 540/2019 in CP 490/2018 filed u/s 54 of the Code had allowed the direct dissolution of the applicant Company u/s.54(2) of the Code by passing the process of liquidation of the Corporate Debtor with the following observation.:-

17. The Resolution Professional filed a supplementary Affidavit dated 08.07.2019, in which he has stated that after perusing and verifying the books of accounts, he has arrived at a conclusion that the Corporate Debtor has not maintained proper books of accounts post April, 2017 and there are no assets available with the Corporate Debtor and the liabilities declared by the Corporate Debtor are not supported by any claim from any creditor except the claim from operational creditor, under the said circumstances, Resolution Professional prayed to dissolve the Corporate Debtor.

18 In view of the above and the details such as there are no physical assets available for sale, this authority in exercise of the powers conferred under subsection (2) of Section 54 of I&B Code, 2016, hereby orders the dissolution of Suttur Sri Ganga Chit Funds Private Limited from the date of this order, and the Corporate Debtor stands dissolved. Consequently, the Resolution Professional stands relieved.

15. The bench notes that in this case also, there is no asset in the Company and the lone CoC member has recommended direct dissolution of the

Company as no purpose would be served by first going in for liquidation (since no assts are there in the Company and no claim has been filed). The

lone Financial Creditor is reconciled to the fact that he will not get anything by liquidation, therefore, has recommended in the CoC meeting dated

06.10.2020, for a direct dissolution.

16. In view of the above circumstances and in light of a similar Judgment in MA/540/2019 in CP/490/IB/2018 passed by Chennai bench of NCLT,

the Bench through this Order declares that it would be just and equitable to go in for dissolution of the Company u/s 54 of the Code.

17. The IA No. 2343 of 2020 is â??Allowedâ?? and the Corporate Debtor Company stands dissolved from the date of this Order.

18. Since the Debtor Company stood Dissolved vide this order and no proceedings are now pending, therefore the Registry is directed that the case

file be consigned to records.

19. Copy of this Order shall be forwarded within 7 (seven) days to the concerned authorities and the Registrar of Companies having jurisdiction, for

further necessary action as prescribed under Law.