(2023) 05 NCLT CK 0092

In the National Company Law Tribunal

Case No : IA No. 175/2020 In CP (IB) No. 10/Chd/Hry/2017

Sameer Rastogi Liquidator of SRS Modern Sales Limited Vs

Date of Decision : 31-05-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 43, 45, 50, 53, 53(1)(b)(ii), 54, 54(1), 66
Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 — Regulation 33(1), 34, 35, 44A, 44(1), 45(3)(b)

Citation : (2023) 05 NCLT CK 0092

Hon'ble Judges : Harnam Singh Thakur, Member (J);Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : G.S. Sarin

Final Decision : Dismissed

Judgement

Subrata Kumar Dash, Member (Technical)

IA No. 175/2020

1. The present application has been filed by Mr. Sameer Rastogi, the Liquidator for the dissolution of the Corporate Debtor i.e. SRS Modern Sales Limited under Section 54(1) of Insolvency and Bankruptcy Code, 2016 read with Regulations 44(1) and 45(3)(b) of IBBI (Liquidation Process) Regulation, 2016 after the completion of the liquidation process.

2. The applicant has prayed to pass an order for the dissolution of the Corporate Debtor and to direct the Financial Creditor to continue CA No. 802/2019 filed by the Liquidator.

3. It is stated in the application that the CIRP commenced on 01.04.2017 and the applicant was appointed as IRP, and was later confirmed as RP. Subsequently, the liquidation commenced by order dated 26.02.2018 in case of the Corporate Debtor. After the verification of the claims, the liquidator prepared the list of stakeholders and the preliminary report was filed on 14.05.2018. The liquidator

has taken possession of the assets i.e. Motor Vehicle Cars of the Corporate Debtor from the directors and the concerned bank. The Financial Creditor has also relinquished the security interest as per Section 53(1)(b)(ii) of IBC. Thereafter, the liquidator has prepared an asset memorandum as per Regulation 34 of IBBI (Liquidation Process) Regulation, 2016.

4. As per Regulation 35 of IBBI (Liquidation Process) Regulation, 2016, the Liquidator has appointed two valuers for the valuation of assets and based on the valuation report the liquidator has conducted e-auctions for the sale of assets as prescribed in Regulation 33(1) of IBBI (Liquidation Process) Regulation, 2016. After the sale of assets, the liquidator has received a total sum of Rs. 26,20,000/- (Rupees Twenty Six Lakhs Twenty Thousand only). The possession of the assets sold is also given to the successful bidders. Afterward, the liquidator has realized the proceeds received from the sale of assets and distributed the same in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016. The liquidator had also appointed Mr. Ashish Gautam to audit the receipt and payment during the liquidation process and three audited accounts i.e. from 26.02.2018 to 31.03.2018, 2018-19 and 01.04.2019 to 25.02.2019 have been submitted.

5. It is further submitted that the liquidator has also filed a complaint before the Central Bureau of Investigation (CBI), EOW, Faridabad, and Serious Fraud Investigation Officer (SFIO) to investigate into the affairs of Corporate Debtor. The said complaints were also filed with the Adjudicating Authority by Diary No. 4091 dated 22.10.2018.

6. The liquidator had also appointed the Forensic Auditor and on the basis of the report dated 25.01.2019, the liquidator filed an application bearing CA No. 802/2019 on 08.08.2019 under Section 43 and 66 of IBC seeking directions regarding preferential and fraudulent transactions. It is stated by the applicant that the estimated expenses of Rs. 2.5 lakhs may be incurred till the disposal of the aforesaid application. The liquidator had distributed the amount except the estimated cost of Rs. 2.5 lakhs.

7. By our order dated 23.02.2023, necessary directions were issued to the applicant regarding the pursuance of applications filed under Sections 43, 45, 50 and 66 of the Code. The applicant has filed a compliance affidavit by Diary No. 02107/2 dated 11.04.2023 wherein, it is submitted that the members of SCC have decided to find potential buyer to take up PUFE transactions application and have proceeded with the process of publishing a notice of e-auction in the two newspapers to find the prospective bidder. It is further submitted that no other litigation is pending against the Corproate Debtor.

8. We have heard the Authorized Representative of the Liquidator and have pursued the records carefully.

9. As per 44A of IBBI (Liquidation Process) Regulation, 2016, talks about the treatment of applications filed for avoidance of transaction which is reproduced

below:

"44A. Treatment of avoidance of transaction.

The liquidator shall, on the advice of the consultation committee, provide in the application along with the final report filed under regulation 45 for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the dissolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed."

10. It is noted that the liquidator has nowhere stated in the application about the pursuance of applications filed under Sections 43 and 66 of IBC. An opportunity has also been granted to the applicant to file an affidavit in this regard, however, the said affidavit does not state about the manner in which the proceedings of avoidance transactions will be pursued.

11. In view of the above, the said dissolution application filed under Section 54 of IBC does not comply with the provisions of IBC and Regulation 44A of IBBI (Liquidation Process) Regulation, 2016. The application bearing CA No. 802/2019 filed under Sections 43 and 66 of IBC is pending and there is no clarity as to who will pursue the aforesaid application after the dissolution of the Corporate Debtor and the manner of distribution of proceedings. The liquidator had to make necessary compliance of Regulation 44A before the present IA for dissolution can be considered.

12. In the result, IA No. 175/2020 is dismissed with the liberty to the applicant to approach this bench again after making all necessary compliance under the code.