

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - IV

ITEM No.501

IA/2598/ND/2022 IN IB/862/ND/2020

IN THE MATTER OF:

Shoes on Loose Pvt Ltd

...

Applicant

Order under Section 10 of IBC, 2016.

Order pronounced on 30.10.2023

Coram:

**Mr. P.S.N. PRASAD,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :

For the Respondent :

ORDER

IA/2598/ND/2022 IN IB/862/ND/2020 stands allowed.

Sd/-

**DR. BINOD KUMAR SINHA,
MEMBER (TECHNICAL)**

Sd/-

**P.S.N. PRASAD,
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

I.A./2598/ND/2022

IN

Company Petition No. (IB)-862/ND/2020

(Under Rule 11 of the National Company Law Tribunal Rules, 2016 read with Section 54 of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

Mr. Madan Mohar Dhupar

.... Applicant

AND IN THE MATTER OF:

M/s. Shoes on Loose Private Limited

.... Corporate Debtor

CORAM:

SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Dated :30.10.2023

ORDER

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

The instant application is filed on behalf of Mr. Madan Mohar Dhupar, Resolution Professional ('applicant') of M/s. Shoes on Loose Private Limited ('Corporate Debtor') under Rule 11 of National Company Law Tribunal Rules, 2016, r/w Section 54 of the IB Code, 2016, inter alia, seeking direct dissolution of the Corporate Debtor without going through the liquidation process along with the following relief(s):-

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- a) allow the present Application;
- b) allow the Applicant/Resolution Professional to distribute the proceeds amongst the stakeholders of the Corporate Debtor in terms of Section 53 of the Code;
- c) allow the dissolution of the Corporate Debtor in terms of Section 54 of the Code as approved by the COC in the 04th COC meeting held on 18.05 2022;
- d) pass such other necessary order(s) direction(s) as this Hon'ble Tribunal may deem fit and proper.

2. The brief facts of the case leading to filing of this application as averred by the applicant are as follows:

- a) The Corporate Insolvency Resolution Process ('CIRP') was initiated against M/s. Shoes on Loose Private Limited ('Corporate Debtor') vide this Hon'ble Adjudicating Authority order dated 30.11.2021 in C.P.(IB)/862/2020, an application filed under Section 10 of the Code, 2016 and Mr. Madan Mohan Dhupar was appointed as Interim Resolution Professional, which was later confirmed as the Resolution Professional of the Corporate Debtor.
- b) The public announcement of commencement of CIRP and invitation for filing of claims against the Corporate Debtor was published in prescribed FORM A on 05.12.2021 in two newspapers namely Jansatta (Hindi) (Delhi Edition) and Financial Express (English) (Delhi Edition) having wide circulation at the location of the registered office. Pursuant to the publication, the Applicant had received claims from three claimants (Financial Creditors) which were collated, verified and provisionally admitted on 15.01.2022, since one of the claimant was a related financial creditor therefore the Committee of Creditors was constituted with only two unrelated financial creditors. Also, an Application bearing IA No. 468/2022 for the constitution of COC was filed with this Hon'ble Adjudicating Authority on 17.01.2022 and taken on record vide order dated 31.01.2022.
- c) The 'FORM G' inviting expression of Interest (EOIs) from the Prospective Resolution Applicants ("PRAS") for submitting resolution plans for Corporate

Debtor was published on 12.02.2022 in Financial Express (English) (Delhi Edition) and on 13.02.2022 in Jansatta (Hindi) (Delhi Edition). Pursuant to which EOI was received only from 1(one) Prospective Resolution Applicant ('PRA'), however, the Applicant did not receive Resolution Plan from the PRA up to 14.04.2022 i.e., the last date of receipt of Resolution Plan.

- d) The Applicant in the 3rd COC meeting dated 11.05.2022 had informed the members of the COC about the two available options prescribed in the Code i.e. either (i) publication of fresh Form G or (ii) approval of Resolution for Liquidation of the Corporate Debtor. In the light of non-receipt of resolution plan and complete shut-down of the business of tour and travels of the Corporate Debtor as a result of pandemic, the members of the COC unanimously decided not to publish fresh Form G. Further, the members of the COC deferred to take any decision on the resolution of Liquidation of Corporate Debtor and requested the Applicant to convene the next COC meeting to discuss the way forward
- e) Further, the CoC in its 3rd Meeting was apprised about the abject condition of the 23 mobile phones and 26 old laptops ('other assets') being the only tangible asset available with the Corporate Debtor and the CoC had unanimously approved the sale of assets of the Corporate Debtor as per Regulation 29 of CIRP Regulations, 2016. Pursuant to CoC's approval for the sale of other assets of the Corporate Debtor the Applicant had received bid from three bidders which were duly compared with the average value of the Fair and Liquidation value of the assets. The Applicant on 16.05.2022 had duly confirmed the sale of other assets to Mr. Sushil Kumar, H1 Bidder, for a consideration of Rs. 60,000/-which is over and above the average of the fair and liquidation value.
- f) The COC in its 04th CoC meeting dated 18.05.2022 had discussed the fate of the CIRP of the Corporate Debtor. During the meeting, the Applicant informed the members of the COC about the bleak chances of any further recovery from the debtors in the light of either outright denial of outstanding debt or unavailability of reconciled statements. In view of the same, the members of the COC unanimously opined to directly dissolve the Corporate Debtor and distribute the available funds in accordance with the provisions of Section 53 of the Code as the continuation of CIRP/ commencement of Liquidation would only escalate the

CIRP cost/liquidation cost without causing any substantial appreciation in the value of assets of the Corporate Debtor.

- g) The members of the COC had unanimously disapproved the Resolution for the liquidation of the Corporate Debtor vide Agenda Item No. C-1 (a) and unanimously approved the direct dissolution of the Corporate Debtor vide Agenda Item No. C-1 (b) by way of e-voting on 21.05.2022.

3. We have heard the Learned Counsel for the applicant, meticulously perused the averments and submissions made in the present application.

4. This Adjudicating Authority vide order dated 29.08.2023 had directed the Applicant to submit the clarification affidavit with regard to the following: -

I) Updated list of the Creditors with the amount admitted.

II) Table showing tentative distribution of the proceedings amongst the stakeholders of the Corporate Debtor in terms of Section 53 of the Code, 2016.

III) Compliance of Regulation 29 (1) provision of the IBBI (Insolvency Resolution Process for Corporate Person Regulations), 2016.

5. The Applicant in compliance of this Adjudicating Authority's order dated 29.08.2023, had submitted the affidavit dated 04.09.2023, wherein following clarifications are provided: -

- I) The summary of the updated list of Creditors of the Corporate Debtor along with admitted claims is extracted overleaf: -

SHOES ON LOOSE PRIVATE LIMITED

SUMMARY OF CLAIMS AS ON 31ST AUGUST, 2023

S. No.	Category of Creditor	Summary of Claims Received		Summary of Claims Admitted		Amount of contingent claims	Amount of Claims Not Admitted
		No. of Claims Received	Amount (Rs.)	No. of Claims Admitted	Amount of Claims Admitted (Rs.)		
1	Secured Financial Creditors belonging to any Class of Creditors	-	-	-	-	-	-
2	Unsecured Financial Creditors belonging to any Class of Creditors	-	-	-	-	-	-
3	Secured Financial Creditors (other than Financial Creditors belonging to any Class of Creditors)	-	-	-	-	-	-
4	Unsecured Financial Creditors (other than Financial Creditors belonging to any Class of Creditors) - a) Unrelated Unsecured Financial Creditors	2	10,19,299	2	7,85,942	-	2,33,357
	b) Related Unsecured Financial Creditors*	3	13,85,993	3	10,78,912	-	3,07,081
5	Operational Creditors (Workmen)	-	-	-	-	-	-
6	Operational Creditors (Employees)	-	-	-	-	-	-
7	Operational Creditors (Government Dues)	2	1,89,727	-	-	0	1,89,727
8	Operational Creditors (other than Workmen and Employees and Government Dues)*	15	21,17,367	15	19,21,483	-	1,95,884
9	Other creditors, if any, (other than financial creditors and operational creditors)	-	-	-	-	-	-
Total		22	47,12,386	20	37,86,337		9,26,049

II) The Table showing tentative distribution of the proceedings amongst the stakeholders of the Corporate Debtor in terms of Section 53 of the Code, 2016 is extracted below:-.

(Rs. In INR)	
Available Balance in CD	32,78,970.58
Estimated CIRP Cost & Dissolution Expenses	
Estimated Auditing & Filing Fees for FY 2022-23	64,000.00
RP fees Lumpsum	5,00,000.00
Estimated Legal Fees	50,000.00
Refund of Amount deposited by Applicant	2,00,000.00
Sub-Total of estimated cost	8,14,000.00
Estimated Residual amount available for distribution	24,64,970.58

Proposed Distribution as per Section 53 of IBC	Amount of Claim	Proposed Amount	Percentage of Proposed Payout
(a) - Workmen Dues for 24 months	0.00	0	NA
(b) - Secured financial creditors	0.00	0	NA
(c) - Employees due for 12 months	0.00	0	NA
(d) - Unsecured financial creditors	18,64,854.00	18,64,854.00	100.00
(e) - Operational Creditors			
(i) - Govt. Dues	0.00	0	NA
(ii) - Other Creditors	19,21,483.00	6,00,116.58	31.23
	37,86,337.00	24,64,970.58	65.10

III) The Applicant submitted that the Average Fair Value of the only tangible assets of the Corporate Debtor was Rs.55,299/- and the amount of total claims admitted as on 11.05.2022 aggregate to Rs. 37,86,337/-. Accordingly, the Book value of all the assets of the Corporate Debtor sold during the CIRP does not exceed ten percent of the total claims admitted by the Applicant. Further, the Assets of the Corporate Debtor are the assets other than in the ordinary course of business.

6. This Adjudicating Authority had perused the Affidavit dated 04.09.2023 and the same is taken on record.

7. The CoC in its 4th CoC Meeting dated 18.05.2022 had unanimously resolved to directly dissolve the Corporate Debtor and distribute the available funds in accordance with the provisions of Section 53 of the Code. The relevant extract of the Agenda Item No. C(1) (b) is reproduced hereunder.

"RESOLVED THAT approval of Committee of Creditors of Shoes on Loose Private Limited, Corporate Debtor, be and is hereby accorded for straightway dissolution of the Corporate Debtor without following the liquidation process due to non-availability of any realisable assets:

RESOLVED FURTHER THAT the Resolution Professional be and is authorised to file necessary application with the Hon'ble NCLT seeking dissolution of the Corporate Debtor and thereafter distribute the available funds in accordance with the provisions of Section 53 of the Insolvency and Bankruptcy Code, 2016 and complete the process of dissolution of Shoes on Loose Private Limited, Corporate Debtor."

8. Coming to the factual matrix of the present case as averred by the Applicant, the Corporate Debtor was engaged in the business of tour and tourism, however, post the outbreak of Covid-19, the business of the Corporate Debtor ceased to exist. The Corporate Debtor had no core assets,

however, the Corporate Debtor was in possession of 23 Mobile Phones and 26 old laptops, being the only tangible assets of the Corporate Debtor. The CoC in its 3rd CoC Meeting conducted on 11.05.2022 taking into consideration the deteriorating value of the only tangible assets of the Corporate Debtor had with 100% voting in favor had resolved to sale the assets of the Corporate Debtor, pursuant to Regulation 29 of the CIRP Regulations, 2016. The said asset was sold to Mr. Sushil Kumar Successful Bidder for Rs. 60,000/- and a sale certificate was issued on 20.05.2022. In other words, there are no assets of the Corporate Debtor to be liquidated.

9. In a similar case, NCLT Bengaluru Bench had allowed direct dissolution of the Corporate Debtor on an application made by the Resolution Professional as directed by the Committee of Creditors in C.P.(IB)/96/BB/2020 and I.A/No. 435/2020 under Section 54 of Code, 2016 read with Section 60(5) of the Code, 2016 filed by Mr. Mandar Shrikant Wagh, IRP of M/s. Synew Steel Private Limited on the ground that no useful purpose will be served by placing the Corporate Debtor under Liquidation, as all the assets available with the Corporate Debtor were already realized, the Liquidation process under the provisions of the Code, 2016 is deemed to have been completed and therefore, it would be just and proper to dissolve the Company.

10. Further, in the case of M/s. Air Pegasus Private Limited [I.A. No. 198/2020 in C.P.(IB) No. 180/BB/2018], the NCLT, Bengaluru Bench approved direct dissolution of the Corporate Debtor without going through the Liquidation Process on similar reasoning. On an appeal by the Managing Director of the Corporate Debtor, the Hon'ble NCLAT, Chennai in **Shyson Thomas vs. Mr. Madhugiri Venkatarayappa Sudarshan [T.A(AT)No.8 of 2021 in C.A(AT)(CH)(INS)/925/2020; order dated 01.06.2023]** had upheld the National Company Law Tribunal, Bengaluru Bench's order dated

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24.06.2020 of passing an `Order of Dissolution` of the `Corporate Debtor` / `Company` (M/s. Air Pegasus Private Limited), with immediate effect. While upholding the order of direct dissolution passed by the Adjudicating Authority, Hon`ble NCLAT, Chennai had observed as follows-

“43. It cannot be lost sight off that the `Corporate Debtor`, had `No Realisable Financial Assets`, and the only `Valuable Asset`, was of `Intangible` in nature of the `Air Operator Permit`, a `License`, issued by the `DGCA` and the `Validity` of the said `License`, had lapsed on 23.03.2020.

44. It cannot be brushed aside that the `Dissolution` of the `Corporate Debtor`, was approved by the `Financial Creditor` with `100% Voting Rights`, and in IA No. 198 of 2020, filed by the 1st Respondent / Resolution Professional (under Section 54 of the I & B Code, 2016), an `Order`, dissolving the `Corporate Debtor` / `M/s. Air Pegasus Private Limited` (Applicant Company), was passed with an immediate effect, etc.

45. At this juncture, this `Tribunal`, pertinently points out that there is no fetter that the `Corporate Debtor`, cannot be `Dissolved`, without undergoing the `Process of Liquidation`.

53. Suffice it for this `Tribunal`, to make a pertinent mention that in the absence of any `Asset(s)` / the `Resolution Plan(s)`, the Resolution Professional, had no other go, but to pray for an `Order of Dissolution`, to be passed by the `Adjudicating Authority`. After all, the end of `Liquidation`, requires complete `Dissolution` of an `Entity`.”

11. The discussion and reasoning in the aforesaid judgement lead us to the view that the ultimate objective of Code is either to resolve the insolvency by way of Resolution Plan or to dissolve the Corporate Debtor, as expeditiously as possible so as to maximize the value of the assets. If the facts and circumstances of a case justify that it would not serve any useful purpose to keep the Corporate Debtor under regular CIRP proceedings, and thereafter under Liquidation proceedings under the provisions of Code, on a resolution made by requisite majority for direct dissolution of the Corporate Debtor, the Adjudicating Authority, by exercising its inherent powers conferred under the Code read with Rule 11 of the NCLT, Rules, 2016, may pass appropriate order(s) in the interest of speedy justice.
12. In view of the judicial guidance available in Hon'ble NCLAT's Judgement, *supra*, this Adjudicating Authority is of the considered view that the circumstances of the present case also fully justified, that no useful purpose would be served by placing the Corporate Debtor under the Liquidation process, as provided in Chapter III of Part II of the Code. Since no more realizable assets exist in the Corporate Debtor as declared by the Resolution Professional, the liquidation process under the provisions of Code, is deemed to have been completed under Chapter III of Part II of Code, and thus it would be just and proper for this Adjudicating Authority to dissolve the Corporate Debtor as prayed by the Resolution Professional.
13. Since, the instant application has been filed by the Resolution Professional on the directions of the CoC based on unanimous resolution declaring that all tangible assets have already been realized and no useful purpose would be served by placing the Corporate Debtor under Liquidation Process, following the judicial guidance in Hon'ble NCLAT's judgement *supra* and in exercise of inherent powers under Rule 11 of NCLT, Rules, 2016 read with Section 54 of the Code, 2016, the present Interlocutory Application **i.e.,**

I.A./2598/2022 stands allowed and M/s. Shoes on Loose Private Limited ('Corporate Debtor') stand dissolved with immediate effect.

14. It is hereby clarified that dissolution of the Corporate Debtor would not automatically or in any way absolve the Promoters/Directors of the Corporate Debtor from any personal liability or guarantee given in respect of the Corporate Debtor, under any law for the time being in force.
15. The Applicant is directed to file a compliance affidavit confirming the distribution of the proceeds amongst the stakeholders of the Corporate Debtor strictly in terms of Section 53 of the Code, within a period of 5 days from pronouncement of this Order.
16. The Applicant is directed to send the copy of the order to the concerned Registrar of Companies and Insolvency and Bankruptcy Board of India, New Delhi for their information and record.
17. Accordingly, **IA No. 2598/ND/ 2022 in. CP (IB)-862/ND/2020 stands allowed.**

Sd/-

**(DR. BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(SH. P.S.N PRASAD)
MEMBER (J)**