

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IBC) No. 392/KB/2022

In

C.P.(I.B.) No. 1096/KB/2018

***An Application filed under Section 54 of the Insolvency and Bankruptcy Code,
2016***

IN THE MATTER OF:

RELIGARE FINVEST LTD., a Company registered under the provision of Companies Act, 1956 having registered office at 2nd Floor, Rajlok Building, 24 Nehru Place, New Delhi, South Delhi, Pin Code: - 110019

... Financial Creditor/ Applicant

And

Ms. SONU JAIN, working for gain at Poddar Court, 18 Rabindra Sarani, Gate No. 2, 3rd Floor, Suite No. 327, Kolkata, Pin Code: - 700001, West Bengal, bearing IP Registration No. IBBI/IPA-001/IP-P00575/2017-2018/11016.

... Liquidator of the Corporate Debtor in this matter/ Applicant

Verses

VENKATESHWARA CAPITAL MANAGEMENT LTD., a Company incorporated under Companies Act, 1956 and having registered office at Marshall House No. 303, 1 N.S. Road, Kolkata, Pin Code: - 700001, West Bengal.

... Corporate Debtor

Date of Pronouncement: November 10, 2023

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI BALRAJ JOSHI, MEMBER (TECHNICAL)

Ld. Counsel Appeared Physically/ through Video Conferencing:

1. **Ms. Urmila Chakraborty**, Advocate for the Liquidator
2. **Ms. Sonu Jain**, Advocate and Liquidator

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ORDER

Per: Balraj Joshi, member (Technical)

1. This Court is congregated through hybrid mode.
2. This instant Petition is filed under Section 54 of the Insolvency and Bankruptcy Code, 2016 (for brevity "I&B Code") by the **Liquidator, Ms. Sonu Jain** of the Corporate Debtor, **Venkateshwara Capital Management Ltd** seeking for dissolution of the Corporate Debtor as there is no scope for realization from assets.
3. The brief facts of the case in a nutshell are as under:
 - i. The Financial Creditor, **Religare Finvest Limited** had filed an application under Section 7 of the I&B Code against the Corporate Debtor, **Venkateshwara Capital Management Ltd** and vide an order dated March 5, 2019, this Tribunal admitted this Company Petition being **C.P. (IB) No. 1096/KB/2018** and initiated Corporate Insolvency Resolution process against the Corporate Debtor and **Mr. Shashi Agarwal** was appointed as Resolution Professional.
 - ii. Thereafter, **Ms. Sonu Jain**, the Petitioner herein, was appointed as Liquidator vide an **Order dated November 29, 2019** to conduct the liquidation process as till that date, no Resolution Plan was received and a fresh moratorium under Section 33(5) of I&B Code was commenced. The relevant Para of the Order dated November 29, 2019 is reproduced verbatim as:

"3. During 270 days period of CIRP, CoC held four meetings. It was found by the CoC that the directors and officers of the Corporate Debtor had committed some fraudulent/under-valued transaction about the assets of the Corporate Debtor. Hence, IRP had filed application under Section 43, 66, 69 of IBC, 2016 against them. At this stage, we are not expressing any opinion about this aspect. Be that

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as it may. Fact remain on record is that for want of requisite information about the assets and liabilities of the Corporate Debtor, the RP Could not prepare information memorandum. Resultantly, the RP did not publish notice calling upon Expression of Interest/ resolution plans from perspective resolution applicants. It is seen from the record that from the above sequence, RP and CoC did not receive any resolution plan. CIRP period of 270 days completed today itself. We were told by the RP that last CoC meeting is being held today. We do not know whether CoC pass formal resolution recommending the Liquidation of the Corporate Debtor. We also found from the final report of the RP that CoC did not attend proposed meeting dated 23.09.2019. It appears to us that members of CoC was not interested to proceed with CIRP in an effective manner. Since, CIRP period of 270 days completing today, we do not have before us the resolution plan to resolve insolvency of the Corporate Debtor. Section 33(1) of IBC, 2016 provides that if Adjudicating Authority does not receive resolution plan under Section 30(6) of IBC, 2016, it shall pass order requiring the Corporate Debtor to be liquidated. We invoke in our jurisdiction under Section 33(1) of IBC and pass the Order of liquidation of the Corporate Debtor.”

- iii.** The Petitioner vide a written communication dated February 07, 2020 in connection with an application to initiate Liquidation process in respect of the Corporate Debtor agreed to accept the appointment as the Liquidator.
- iv.** Public announcement of commencement of liquidation was made in Form ‘B’ in “**Financial Express**” (English) and “**Aajkal**” (Bengali), (Kolkata Edition) on 08/02/2020, inviting proof of claims from the stakeholders of the Corporate Debtor in the specified forms and Form ‘B’ was also

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uploaded on the IBBI website. However, no claim was received by the liquidator.

- v. Further, vide an **Order dated March 18, 2021**, in **I.A. (IB) No. 22/KB/2021**, the period of liquidation was extended by 180 days from November 28, 2020 to May 26, 2021 as the Liquidator had submitted that the Corporate Debtor had investment in Godavari Commercial Services Pvt. Ltd. and Coastal Fertilisers Ltd. which were required to be liquidated prior to dissolution of the Corporate Debtor. The Liquidator further submits that the prospective buyer had offered to purchase the shares of Godavari Commercial Services Pvt. Ltd. & Coastal Fertilisers Ltd. as per value determined. Corona virus pandemic and nationwide lockdown caused extreme risk aversion in the financial market and affected share capital markets, so the Liquidator could not proceed for selling of securities in such volatile stock markets. In view of this she also further prays for extension of the period of liquidation by 180 days from 28th November 2020 to 26th May 2021.
- vi. Further, vide an **Order dated December 01, 2021**, in **I.A. (IB) No. 777/KB/2021**, this Tribunal directed Godavari Commercial Services Private Limited and Coastal Fertilisers Limited to be present on the next date of hearing on 25/01/2022, as it was submitted by the Liquidator, that on perusal of the Financial Statements of the Corporate Debtor, it was observed that the Corporate Debtor held investments in two unlisted private companies, viz.,
- Godavari Commercial Services Private Limited;
 - Coastal Fertilisers Limited.
- vii. The Ld. Counsel for the liquidator submits that the Liquidator sent emails to the director of suspended board on 09/02/2022, 12/02/2022, 14/02/2022,

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15/02/2022, 16/02/2022, 18/02/2022, 21/02/2022, 22/02/2022, 23/02/2022
to provide the documents.

- viii.** Further, it is stated that the shares of Godavari Commercial Services Private Limited and Coastal Fertilisers Limited had already been sold to Moonview Infra realtors Pvt. Ltd. to set off the liability against Moonview Infrealtors Pvt. Ltd. as on April 01, 2018 i.e., before the commencement of CIR process. As such there are no assets in Venateshwara Capital Management Ltd. for realization.
- ix.** Further vide an **Order dated March 11, 2022**, it is evident that one Mr. M.S. Tiwari, Ld. Counsel appeared for Godavari Commercial Services Private Limited and Coastal Fertilisers Limited submitted that he wanted to file reply affidavit for those companies and the Bench directed him to file reply affidavit within two weeks.
- x.** In pursuance to the said order dated March 11, 2022, the director of Godavari Commercial Services Private Limited had filed an affidavit dated March 28, 2022 before this tribunal stated that the Corporate Debtor is no longer a shareholder in Godavari Commercial Services Private Limited and that said shares have been transferred to another company namely Finnlines Promoting Private Limited. A Copy of the said Affidavit dated March 28, 2022 along with the audited balance sheet of Godavari Commercial Services Private Limited for the financial year 2018-19 is annexed as **Annexure “B”** of the Supplementary Affidavit dated January 06, 2023.
- xi.** Further, the director of Coastal Fertilisers Limited had also filed an Affidavit dated **March 28, 2022** stated that the Corporate Debtor is no longer shareholder in Coastal Fertilisers Limited and that said shares have been transferred to another company namely Finnlines Promoting Private Limited. A Copy of the said Affidavit dated March 28, 2022 along with the audited balance sheet of Coastal Fertilisers Limited for the financial year

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2018-19 is annexed as **Annexure “C”** of the Supplementary Affidavit, dated January 06, 2023.

xii. Further, it is submitted that from the last filed Audited Balance Sheet of the Corporate Debtor for financial year 2016-2018, it appears that Corporate Debtor has been a loss-making company and had no transactions and/or business since last several years. The revenue generated from operation is in the negative as would appear from the said Audited Balance Sheet. The Corporate Debtor has no employees and/or in this regard, the said audited balance sheet for the financial year 2016-2018 of the corporate debtor (in liquidation) is annexed as **Annexure “E”** of the Supplementary Affidavit.

xiii. The liquidator has averred at page 6 para (g) of the supplementary affidavit that *“I say that Corporate Debtor and that the same will appear from the provisional balance sheet as on 31.03.20 19 audited by the auditor. A copy of the said provisional balance sheet is annexed as **annexure “F”** of the Supplementary Affidavit. Further stated that the inventory of the corporate debtor is non reliable as the shares held in companies are at present impeded. The copies of inventory details together with listing states of the companies as obtained for the stock exchange and money control website are annexed as **Annexure “G”.**”*

4. Upon hearing the Ld. Counsel appeared for the Liquidator and perusing the documents annexed, we are in the view that

- a)** The whole thrust of the liquidator after spending a considerable period in carrying out the liquidation is to only state that the assets are not realisable and also by the quirk of fate the securities held by the corporate debtor have been sold surreptitiously. On this ground the winding up of the corporate debtor is being prayed for even as it is not clearly mentioned as to what was the subject matter of the liquidation and what was sold and what was left. There is no proper record of CoC and/or the SCC meetings

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from where the chain of events could be traced to draw some conclusions about the process integrity. In absence of the mandatory form 'H', the final progress report as required under Regulation 45(3) of the Liquidation process regulations, this Adjudicating Authority rejects this application as it does not comply with the requirements of Section 54 of IBC 2016 read with relevant IBBI regulations.

b) This Adjudicating Authority also recommends an investigation be carried out by the IBBI on the conduct of the liquidator in the present case.

5. Accordingly, **I.A. (IBC) No. 392/KB/2022 in C.P.(I.B.) No. 1096/KB/2018** stands **disposed of** in accordance with the above directions.
6. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
7. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
8. File be consigned to the record.
9. Post the main Company Petition on **20.12.2023** for further progress report.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 10th Day of November, 2023

Bose, R. K. [LRA]