(2020) 02 NCLT CK 0051

In the National Company Law Appellate Tribunal

Case No : Interlocutory Appeal No. 1288(PB) Of 2020 In Company Petition No. (IB)-15 (PB) Of 2017

In Re: Clutch Auto Limited (In Liquidation) Vs

Date of Decision : 25-02-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 60(5)
Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 — Regulation 44, 44(2)

Citation : (2020) 02 NCLT CK 0051

Hon'ble Judges : Dr. Deepti Mukesh, J;Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : P. Nagesh, Karan Kanwal, Karan Kohli, Sanjeev Bajaj, V.K. Mehta

Final Decision : Allowed

Judgement

Santanu Kumar Mohapatra, Member (T)

1. This is an application filed by the liquidator under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (herein after referred as 'the Code') read with regulation 44 of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 seeking exclusion of 16 months and 11 days' period in completion of liquidation process of the Corporate Debtor, M/s. Clutch Auto Limited.

2. It is placed during hearing that the stipulated two years period from the liquidation commencement date as per Regulation 44 of IBBI Regulation Liquidation Regulation 2016 read with circular of IBBI dated 26.08.2019 has come to an end on 14.02.2020. Accordingly, the present application has been filed for exclusion of period so that additional time beyond 14.02.2020 can be availed for completion of liquidation process of the Corporate Debtor.

3. It is appropriate to mention here that sub-clause (2) of Regulation 44 of the IBBI Liquidation Regulations mandates that:-

"(2) If the liquidator fails to liquidate the corporate debtor within (one year), he shall make an application to the Adjudicating Authority to continue such liquidation, along with a report explaining why the liquidation has not been completed and specifying the additional time that shall be required for liquidation."

4. The aforesaid amended period of 'one year' is not applicable to the present liquidation process, in view of the circular of IBBI dated 26.08.2019, in as much as the instant liquidation process has commenced before coming in to force of the amendment Regulations. Accordingly there is no dispute that in the present case stipulate two years liquidation period has expired on 14.02.2020.

5. In this regard, it has been inter alia stated in the application that substantial time has been lost in the liquidation process due to sealing of the Corporate Debtor's land situated at Faridabad by Municipal Corporation of Faridabad on 10.10.2017 during continuance of Moratorium. Consequently, the liquidator had filed CA-1433(PB)/2019 on 16.07.2019 for a direction on the Municipal Corporation of Faridabad to remove that lock and to de-seal the land of the Corporate Debtor situated at Plot No. 1, Sector - 27D (New No. 12/4), Mathura Road, Faridabad (Haryana) and to hand over the possession of the land to the liquidator of the Corporate Debtor. The aforesaid company application filed by the liquidator numbering CA-1433(PB)/2019 was disposed of on 06.01.2020 inter alia with direction on the Municipal Corporation to de-seal the property of the Corporate Debtor. Similarly, the liquidator has submitted that substantial time was lost in the liquidation process as the secured creditor took long time in electing its decision not to relinquish the security interest over the assets of the Corporate Debtor.

6. We have heard the submissions of the liquidator and perused the case records. Admittedly the liquidator could not deal with the asset of the Corporate Debtor till the de-sealing by the Municipal Corporation i.e. till January 2020. Similarly, there was delay in the decision of secured creditor in electing not to relinquish the security interest over the assets of Corporate Debtor. There are sufficient, convincing and adequate reasons in support of the contention that substantial time was lost in the liquidation process, which was beyond the control of the liquidator.

7. In the facts and in order to bring the liquidation process to its logical end, we direct for the continuance of the liquidation process of the Corporate Debtor and extend the liquidation period by further one year from the date of this order. The liquidator, however, is directed to take effective immediate steps in accordance with the provisions of the Code and Regulation for early liquidation of the Corporate Debtor.

CA-1288(PB)/2020 is allowed in the aforesaid terms.

Let copy of this order be served to the parties.