
(2022) 09 NCLT CK 0046

In the National Company Law Tribunal

Case No : IA (IB) No. 611/KB/2022 in CP (IB) No. 1685/KB/2019

Paragon Finance Limited

APPELLANT

Vs

Mohan Motor Dealers Private Limited

RESPONDENT

Date of Decision : 14-09-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7, 19(2), 19(3), 33(1)(b)(iii), 33(2), 33(7), 34(2), 34(5), 43, 45, 52, 66

Citation : (2022) 09 NCLT CK 0046

Hon'ble Judges : Rohit Kapoor, Member (J); Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Rishav Banerjee, Yashraj Agarwalla, Arun Kumar Khandelja,

Final Decision : Disposed Of

Judgement

Balraj Joshi, Member (Technical)

1. This court was convened via video conferencing.
2. This is an application filed by the Resolution Professional with the approval of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, viz., Mohan Motor Dealers Private Limited [CIN: U50103WB2006PTC109383], on the ground that the Committee of Creditors ('CoC') has decided to liquidate the Corporate Debtor by 100 % votes. The Applicant has sought for the following reliefs:
 - a. To pass order for Liquidation of the Corporate Debtor;
 - b. To appoint any insolvency professional as the Liquidator of the Corporate Debtor;
 - c. To pass such further order/orders as this Tribunal may deem fit and proper in the circumstances.
3. This Adjudicating Authority vide its order dated 3rd August 2021 on a Petition

filed by Paragon Finance Limited ('financial creditor') under section 7 of the Insolvency and Bankruptcy Code, 2016 ('the Code') directed initiation of the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and appointed Arun Kumar Khandelwa (the applicant) as the Interim Resolution Professional ('IRP'). The applicant was appointed as the Resolution Professional ('RP') on 15th September 2021.

4. The Applicant submits that several requisitions were made by the Applicant to the suspended directors of the Corporate Debtor to provide all the information/ documents/ data related to the Corporate Debtor for conducting the Corporate Insolvency Resolution Process smoothly. In spite of that, the suspended directors of the Corporate Debtor never cooperated with the Applicant.

5. As such, on 23rd August, 2021, the Applicant was compelled to file an Application under Section 19(2) & (3) of the Code, seeking directions against the Suspended Directors of the Corporate Debtor to Cooperate with the Applicant. On 10th November, 2021 the Adjudicating Authority, directed the Suspended Directors to provide all the relevant documents /information/data to the Applicant within 48 hours from the conclusion of the hearing. Despite the directions of the Adjudicating Authority, the suspended directors failed to provide the relevant documents /information/data to the Applicant.

6. On 20th December, 2021, upon hearing the matter, the Adjudicating Authority, directed the Suspended Directors to be personally present before the bench on 22nd December 2021.

7. Thereafter, on 23rd December, 2021, subsequent to the strict directions given by the Hon'ble Bench on 22nd December, 2021, the suspended directors provided a copy of Tally Data pertaining to Financial Year 2018-2019, 2019-2020 & 2020-2021 (Till July 2021).

8. After perusal and on detailed analysis of the aforesaid Tally Data certain unwarranted and related party transactions were noticed and determined by the Applicant.

9. Thereafter, on 3rd January 2022, the fifth CoC meeting was convened by the Applicant. During this meeting, the CoC members were informed about the status of the CIRP. The Applicant also presented the abovementioned findings/ observations before the CoC members. Thereafter, Forensic Auditor was appointed for conducting the Forensic Audit of the Corporate Debtor.

10. On 11th March, 2022, the Forensic Audit Report was received from M/s P S Roy & Associates. The Forensic Auditor in its report opined that there were certain Preferential, Undervalued & Fraudulent Transactions undertaken by the Corporate Debtor in the past two years immediately before the commencement of CIRP

11. After due analysis, an independent opinion was formed by the Applicant and thereafter an application under section 43, 45 & 66 of the Code was filed with the

Adjudicating Authority on 17th April, 2022. Further, clarification w.r.t several things & current assets were sought from the suspended directors of the Corporate Debtor but no response has been received from till date

12. Thereafter, on 30th May, 2022, Seventh Meeting of the CoC was convened and it was unanimously resolved by the Members of the Committee of Creditors present in the said meeting to go for liquidation. The CoC, by 96.6% votes decided to go for liquidation as there is no asset in the company as on date, until the outcome of the Application filed under section 43, 45 and 66 of the Code.

13. The Applicant further submitted that no information memorandum could be prepared by the Applicant Resolution Professional due to non-cooperation on part of the suspended board of directors for which the Applicant could not even publish any Form- G.

14. The 180 days of CIRP after all exclusion orders, has expired on 30th May, 2022 and the COC has not extended the CIRP period by 90 more days and the COC has not taken resolution to that effect, thereby compelling the applicant to file the instant application.

15. It is further subrnitted that a show cause notice was issued by the Insolvency & Bankmptcy Board of India (IBBI) against the Applicant on 9th April, 2022 in relation to one of the previous assignments. On 30th May, 2022 e-hearing w.r.t. to the said rnatter took place with the representatives of IBBI and on 3'd Jnne, 2022 order was pronounced by IBBI.

16. At this juncture the Applicant herein, in line with the order of IBBI, will not be able to take any new assignment for a period of 12 rnonths and hence won't be able to act as Liquidator of the Corporate Debtor. Since there is no Asset, the Applicant is not in a position to make determination with regard to the Liquidation Cost. Further, the CoC has not recommended the name of any Insolvency Professional to act as Liquidator in the matter.

17. Hence, the RP has filed the instant application under section 33(2) of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor on expiry of the CIRP period.

18. We have considered the submission made by the learned Counsel on behalf of the Applicant/RP and perused the record.

19. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the Resolution Professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six percent of voting share to liquidate the corporate debtor

20. This Bench, therefore, hereby orders as follows: -

a. Prayers as sought for in I.A. (IB) No. 125/KB/2021 filed by Mr. Arun Kumar

Khandelia, Resolution Professional of Mohan Motors Private Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code;

b. Mr. Vaibhav Khandelwal [Reg. No. IBBI/IPA-001/IP-P02157/2020-2021/13348], email id-vaaibhavkkahndelwal@gmail.com, is hereby appointed as Liquidator as provided under section 34(5) of the Code.

c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., Financial Express (English)(Kolkata Edition) and Aajkal (Kolkata Edition) (Bengali) , stating that the Corporate Debtor is in liquidation.

e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.

f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

g. On initiation of the liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.

h. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.

21. The application bearing IA (IB) No. 611/KB/2022 shall stand disposed of in accordance with the above directions.

22. 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.

23. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

24. List the main CP (IB) No. 1685/KB/2019 for reporting progress on 15/11/2022.