

307

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA/1366/IB/2020 in CP/1362/IB/2018

(Under Rule 11 of NCLT Rules, 2016)

Along with

IA/1367/IB/2020 in CP/1362/IB/2018

(Under Section 22 and 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)

Along with

MA/31/CHE/2021 in CP/1362/IB/2018

(Under Section 33(1) of the Insolvency and Bankruptcy Code, 2016)

Along with

MA/113/CHE/2021 in CP/1362/IB/2018

(Under Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016)

In the matter of **MPL Automobiles Agency Private Limited**

Usha Balasubramanian,

*Interim Resolution Professional of
MPL Automobiles Agency Private Limited
6/4 Ram Swathi Towers, 5&7
Dr. Durgabai Deshmukh Road,
R.A. Puram,
Chennai – 600 028*

... Applicant

-Vs-

ICICI Bank Limited

*ICICI Bank Towers, DSMG – BLG,
Arihant Insight,
Plot No.24, Block No.1,
Ambattur Industrial Estate,
Ambattur, Chennai – 600 058*

Axis Bank Limited

Arcot Plaza, 4th Floor, New No.38, Old No.165,

Arcot Road, Kodambakkam,
Chennai – 600 024

... Respondents

Order Pronounced on 7th January 2022

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : Usha Balasubramanian, IRP
For Respondent : V.V. Shivakumar, Advocate for R2

COMMON ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

IA/1366/IB/2020 is an urgent Application filed under Rule 11 of NCLT Rules, 2016 seeking urgent listing of IA/1367/IB/2020. Since the IA/1367/IB/2020 is taken up for hearing along with other connected Applications, the prayer as sought for in IA/1366/IB/2020 has become infructuous and accordingly, IA/1366/IB/2020 stands **closed**.

2. IA/1367/IB/2020 is an Application filed by the Interim Resolution Professional of the Corporate Debtor viz. MPL Automobiles Agency Private Limited under Section 22 of IBC, 2016 seeking direction discharging the IRP from her duties and to appoint some other person as RP in respect of the Corporate Debtor. Further, direction is also sought for payments to be made to the IRP.

3. MA/113/CHE/2021 is an Application filed by the IRP of the Corporate Debtor under Regulation 40C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to exclude the period of lockdown from 25.03.2020 till 31.12.2020 from the CIRP period.

4. MA/31/CHE/2021 is an Application filed by the IRP under Section 33(1) of IBC, 2016 seeking Liquidation of the Corporate Debtor and to appoint some other person as the Liquidation in respect of the Corporate Debtor.

BRIEF FACTS OF THE CASE ARE AS FOLLOWS;

5. The CIRP in respect of the Corporate Debtor was initiated by this Tribunal vide its order dated 24.10.2019 passed in CP/1362/IB/2018 and the Applicant herein was appointed as the Interim Resolution Professional. Thereafter, the 1st meeting of the CoC was held on 22.11.2019 no decision was taken by the members of the CoC to approve / replace the IRP to RP. It is seen that even in the 2nd CoC meeting which was held on 22.01.2020 and adjourned to 04.02.2020, also there was no resolution passed by the CoC either to approve the present IRP to continue as the RP nor to replace the IRP with some other RP. It is also seen that the CoC did not approve the remuneration

and reimbursement of expenses incurred by the IRP during the interregnum period.

6. While this being the fact, the RP has filed IA/1367/2020 before this Tribunal on 29.07.2020 to discharge her from the duties as IRP. The 180 day period of CIRP in relation to the Corporate Debtor came to an end on 21.04.2020. It is averred in the Application that the Corporate Debtor does not have any operations and there are no realizable assets available as per the audited financial statements for the Financial Year 31st March 2018 and for the provisions Financial Statement as on 24.10.2019 and also the CoC has not taken any decisions with regard to the appointment of registered valuer and also for issuance of invitation of expression of interest.

7. The Learned IRP submitted that since the 180 day period of CIRP in respect of the Corporate Debtor came to an end on 21.04.2020 and also due to the lockdown imposed by the State / Central Government on account of Covid – 19 pandemic, the IRP has moved MA/113/CHE/2021 before this Tribunal seeking exclusion of the lockdown period from 25.03.2020 till 31.12.2020. For the reasons stated in the Application and also in terms of Regulation 40C of the IBBI (Insolvency Resolution



Process for Corporate Persons) Regulations, 2016 the MA/113/CHE/2021 stands **allowed**.

8. The Applicant in MA/31/CHE/2021 has averred that the CoC did not approve the following resolutions which were put to vote:-

- a. Approval of the CIRP expenses and contribution by members towards CIRP expenses
(CoC member with 37.84% voting share voted **against** the Resolution and CoC member with 62.16% **abstained** from voting)
- b. Approval of liquidation of Corporate Debtor pursuant to Section 33(2) of the Code
(CoC member with 37.84% voting share voted **against** the Resolution and CoC member with 62.16% **abstained** from voting)
- c. Approval of Liquidation costs
(CoC member with 37.84% voting share voted **against** the Resolution and CoC member with 62.16% **abstained** from voting)
- d. Exclusion of lockdown period from CIRP period
(CoC member with 37.84% voting share voted **in favour** of the Resolution and CoC member with 62.16% **abstained** from voting)

9. Thus, it was submitted that the CoC members having voting share of 37.84% did not approve for the Resolution for Liquidation of the Corporate Debtor and also the CoC member with 62.16% have abstained from voting. It was submitted by



the Learned IRP that the IRP has informed the CoC that due to her medical condition, she does not wish to be appointed as the Liquidator.

10. In so far as the Liquidation of the Corporate Debtor is concerned, from the facts narrated above, it is seen that the 180 day period of CIRP in relation to the Corporate Debtor has already ended even after excluding the period from 25.03.2020 till 31.12.2020. Further, the Corporate Debtor did not receive any Resolution Plan within the stipulated time period and also the CoC has not moved any Application through RP seeking extension of CIRP period. At this juncture, it is relevant to refer to Section 33(1)(a) of IBC, 2016, which is extracted hereunder;

33 (1) Where the Adjudicating Authority, -

- (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or
- (b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall -
 - (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
 - (ii) issue a public announcement stating that the corporate debtor is in liquidation; and

- (iii) require such order to be sent to the authority with which the corporate debtor is registered.

11. Section 33(1) of IBC, 2016 contemplates that this Tribunal can pass an order of Liquidation of the Corporate Debtor if the maximum period permitted for the completion of the CIRP is over. Admittedly, in the present case, the 180 days CIRP period has already ended and no Application for extension of CIRP period was filed and as such by operation of Section 33(1)(a) of IBC, 2016, the Corporate Debtor is necessarily required to be ordered for liquidation as stipulated under 33(1)(b)(i) of IBC, 2016.

12. Since the Applicant has not given her consent to act as the Liquidator in respect of the Corporate Debtor, from the latest list furnished by IBBI for the period from January 2022 – June 2022 we hereby appoint **Mr. C Prabakaran**, with Reg. No. *IBBI/IPA-001/IP-P01596/2018-2019/12444*, email id: *gkecpn@gmail.com* as the Liquidator in respect of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions.

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and



Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.

- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.
- d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;
- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.



- f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.
- j) Copy of this order be sent to the Financial creditors, Corporate Debtor and the Liquidator for

taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

13. Accordingly, IA/1367/IB/2020 and MA/31/CHE/2021 stands **disposed of**.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

Raymond