NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI NATIONAL COMPANY LAW TRIBUNAL, HELD ON 12-08-2021 AT 2.30 P.M THROUGH VIDEO CONFERENCING:

PRESENT: SMT. R. SUCHARITHA, MEMBER (JUDICIAL)
SHRI B. ANIL KUMAR, MEMBER (TECHNICAL)

APPLICATION NUMBER	: IA/673(CHE)/2021 IN
PETITION NUMBER	: IBA/901/2019
NAME OF THE PETITIONER	: A Mohankumar (RP) MPL Motors Pvt Ltd
NAME OF THE RESPONDENTS	:
UNDER SECTION	: Sec 33(2) of IBC, 2016

[IA/673(CHE)/2021 in IBA/901/2019]

ORDER

Ld. Counsel Mr. S. Sathiyanarayanan for the Applicant/RP is present. It is seen from the minutes of the 2ndCoC meeting which is annexed along with the typed set, that there is only one Financial Creditor. Further from the agenda items, it is seen that no Information whatsoever has been discussed about the steps undertaken by the IRP post initiation of the CIRP in relation to the Corporate Debtor. Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 mandates that the IRP shall within 7 days from his appointment, but not later than 47th day from the CIRP initiation date, has to appoint two registered valuers to determine the fair value and the Liquidation value in respect of the Corporate Debtor, which is not done by the RP in the present case.

2. Further, it is seen from the minutes of the meeting that the books of accounts of the Corporate Debtor are incomplete and that the RP is following with the Corporate Debtor for the completion of the same. However, without following the preliminary mandate as stipulated under the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 the agenda was put forth for passing an order of Liquidation of the Corporate Debtor. The said Item No. 4, which was discussed in the 2nd CoC meeting is extracted hereunder;

> The Resolution Professional informed that since no party submitted a Resolution Plan and considering the fact that the Corporate Debtor is not in a position to function in the near future, it is proposed to make an application to the Hon'ble National Company Law Tribunal, Chennai seeking relief for liquidation of the Corporate Debtor in terms and manners as laid down in the Code, 2016.
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> The Committee of Creditors after discussion passed the following resolutions unanimously;

"RESOLVED FURTHER THAT since no resolution plan was received in respect of the corporate debtor, the approval of the CoC be and is hereby granted for the liquidation of M/s. MPL Motors Private Limited."

3. It is vital to point out here that the CIRP in relation to the Corporate Debtor was initiated by this Tribunal on 20.11.2020 and the public announcement was caused by the IRP on 02.12.2020. The 1st meeting of CoC was held on 26.12.2020; however the minutes of the 1st meeting is not enclosed along with this Application. While this being the fact, the RP without even issuing any Expression of Interest, has informed the CoC that *"no party has submitted a Resolution Plan"* which statement we find that it amounts to gross professional misconduct and also a procedural violation in so far as conducting the process of Insolvency Resolution in respect of the Corporate Debtor. **We direct the IBBI to conduct an enquiry in this regard against the RP Mr. A. Mohan Kumar and forward its findings to this Tribunal, on or before the next date of hearing.**

4. We find it very strange on the part of the CoC to pass such a Resolution on a wrong notion that no Resolution Plan in respect of the Corporate Debtor was received, when at the first instance, there is not even a valuation being done by the Applicant in respect of the Corporate Debtor. It is very unfortunate to note that the RP is yet to even see the books of accounts of the Corporate Debtor, even before verifying books of accounts of the Corporate Debtor; even before a Registered valuer could be appointed; even before ascertaining the preliminary status of the Corporate Debtor, the sole Financial Creditor has passed a Resolution for Liquidation of the Corporate Debtor on the ground that it is not viable to spend money for the insolvency Resolution of the Corporate Debtor.

5. These kind of cases open up a new spectrum for the policy makers to think of various means to make IBC more viable for insolvency resolution and restructuring of the Corporate Debtor. The Supreme Court of India in a catena of judgments has held that insolvency resolution of the Corporate Debtor is the primary object of IBC and liquidation is always to be taken as its last resort. It is very unfortunate in the present case, to see that the sole member of the CoC, in the first instance without exploring the possibility of the insolvency resolution of the Corporate Debtor has directly pushed the Corporate Debtor into liquidation and the said act is being defended on the ground that the CoC has used their "commercial wisdom" in order to arrive at such a conclusion. Thus, a question arises for consideration before this Tribunal is that whether the Commercial Wisdom of the CoC can override the procedures enumerated under the IBBI Regulations. From the averments made in the Application and also from the submissions made, it emerges very clearly, that CoC has not taken any steps towards insolvency Resolution of the Corporate Debtor but to directly pushed the Corporate Debtor into liquidation.

6. We are of the considered view that, without even doing the preliminary work of finalizing the books of accounts and ascertaining the assets and liabilities of the Corporate Debtor, it is not proper on the part of the CoC to pass a Resolution for liquidation. With the above observations, we send this application back to the CoC for their consideration.

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CHENNAI
CHENNAI BENCH

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7. The IRP shall place these facts before the CoC and apprise the CoC of the provisions of IBC, 2016 and also the procedures to be followed as per the IBBI Regulations.

8. **The Registry** is directed to send a copy of this order to IBBI for its information and necessary actions, if any.

List this matter on **27.09.2021** for further hearing in this regard.

-sd-
IL KUMAR B)
MBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

sr

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Certified to be True Copy

18/8/

DEPUTY REGISTRAR
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