

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Company Application IA/478(KB)2021

in

Company Petition CP(IB) No. 1694/KB/2019

IN THE MATTER OF:

The Insolvency and Bankruptcy Code, 2016

-And-

IN THE MATTER OF:

Section 9 of the Insolvency and Bankruptcy Code, 2016
read with Rule 6 of the Insolvency and
Bankruptcy(Application to Adjudicating Authority),
Rules, 2016

- And -

In the matter of :

Application under Section 33(2) of the Insolvency &
Bankruptcy Code, 2016, read with Rule 11 of the NCLT
Rules, 2016

- And -

In the matter of :

Aircom Travels Private Limited, Office at 156A, Lenin
Sarani, Kamalaya Centre, Room No. 409, Kolkata – 700
013

.... Applicant/Operational Creditor

And

In the matter of :

Mohan Motor Distributors Private Limited, a company duly incorporated under the Companies Act, 1956 and having its registered office at 9, AJC Bose Road, Kolkata – 700 020

.... Respondent/Corporate Debtor

And

In the matter of :

Kamal Agarwal, the Resolution Professional in respect of the Corporate Debtor and having his Office t 487/27, School Road, Peeragarhi, New Delhi – 110 087

.....Applicant/Resolution Professional

Coram : Shri Rajasekhar VK, Member(Judicial)

Shri Harish Chander Suri, Member(Technical)

For the Petitioners :

Mr. Shaunak Mitra, Advocate - For the Resolution Professional
Mr. Kamal Agarwal, Resolution Professional

Date of Hearing : 26th July, 2021

Date of Pronouncement of the Order : 3rd August, 2021

Per Harish Chander Suri, Member(Technical)

O R D E R

1. This is a case in which Aircom Travels Private Limited, the Operational Creditor filed this Petition for initiating Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016 against Mohan Motor Distributors Pvt. Ltd., the Corporate Debtor.
2. The instant Petition had been admitted by the Adjudicating Authority vide Order of this Tribunal dated 24th February, 2020.
3. Upon admission of the Petition, the Adjudicating Authority, vide its said Order dated 24th February, 2020, appointed Mr. Sandip Kumar Kejriwal, as the Interim Resolution Professional and subsequently in the third meeting of the Committee of Creditors, held on 20th August, 2020, it was resolved by the CoC, with 88.35% voting shares, to replace the Interim Resolution Professional. Vide Order dated 23rd February, 2021, the Applicant herein, namely, Mr. Kamal Agarwal, was appointed as the Resolution Professional.
4. In absence of submission of any Resolution Plan, despite submission of the EMD amount of Rs. 5 lakh each, by the prospective Resolution Applicants after publication of expression of interest in Form G, and in view of the fact that the extended period of 270 days for completion of CIRP against the Corporate Debtor was to expire on 12th April, 2021, the Committee of Creditors, in its seventh meeting, held on 10th April, 2021, with 88.35% voting rights, resolved to liquidate the Corporate Debtor and requested the Resolution Professional to act as the Liquidator of the Corporate Debtor. In the said meeting, it approved the fee of the Liquidator, as per law, as is specified under Regulation 39D. At the same time, the CoC, with majority voting share of 88.35%, also resolved to sell the Corporate Debtor, as a going concern, as specified under Regulation 39C.

5. In terms of Regulation 3 of The Liquidation Process Regulation, 2016, read with Section 34 of the Insolvency & Bankruptcy Code, 2016, the Resolution Professional of the Corporate Debtor in CIRP, is eligible to be appointed as the Liquidator of the Corporate Debtor, if Order for Liquidation is passed by this Tribunal. The Resolution Professional has also submitted his consent to act as the Liquidator of the Corporate Debtor, if an Order for Liquidation is passed by this Tribunal under Section 33 of the Code.

6. The consent Form from the RP to act as the liquidator of the Corporate Debtor, along with certificate issued by the Insolvency and Bankruptcy Board of India, IIP of ICAI and Authorisation for Assignment certificate valid upto 27th December, 2021, are attached as Annexure D to the Application.

7. In view of the facts as stated above, the Applicant has prayed for passing an Order requiring the Corporate Debtor to be liquidated under Section 33(2), in the manner, as laid down under Chapter III of the Insolvency & Bankruptcy Code, 2016 and also to pass an Order under Section 34(1) of the Code, for appointment of the RP as the Liquidator of the Corporate Debtor.

8. The Resolution Professional, having not succeeded in getting any Resolution Plan for the revival of the Corporate Debtor, the Adjudicating Authority has no other alternative but to pass an Order, requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter-III, Section 33 of the Insolvency & Bankruptcy Code, 2016. Further, the Corporate Debtor, Mohan Motors Distributors Private Limited, is also not a going concern, with no employees, and huge accumulated losses.

9. Since there is no other option other than to pass an Order for liquidation of the Corporate Debtor, we are inclined to invoke Section 33 of Chapter-III of the Insolvency & Bankruptcy Code, 2016, ordering liquidation of the Corporate Debtor, namely, Mohan Motors Distributors Private Limited, as laid down in this Chapter.

10. The Application filed by Shri Kamal Agarwal, RP of Mohan Motor Distributors Pvt. Ltd. (the Corporate Debtor), is hereby allowed and the Corporate Debtor is ordered to be liquidated, amongst following Orders :

i) Shri Kamal Agarwal, Resolution Professional, IBBI/IPA-001/IP-P00868/2017-2018/11466, Mobile Number – 9811138823, e-mail ID : advocate.kamal.aggl@gmail.com is appointed as the Liquidator ;

ii) Shri Kamal Agarwal is directed to issue Public Announcement in terms of Regulation 12 of the IBBI(Liquidation Process) Regulations, 2016 ;

iii) The Order of moratorium passed under Section 14 of the Insolvency & Bankruptcy Code, 2016 shall cease to have effect and a fresh moratorium under Section 33(5) shall commence ;

iv) This Order is deemed to be a notice of discharge to the Officers, employees and the Workmen of the Corporate Debtor as per Section 33(7) of the Insolvency & Bankruptcy Code, 2016, except where the business of the Corporate Debtor is being continued as a going concern ;

v) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of the Insolvency & Bankruptcy Code, 2016.

vi) The Registry is directed to communicate this Order to the Registrar of Companies, West Bengal and the Insolvency and Bankruptcy Board of India

11. The copy of this Order be sent to the Liquidator for taking necessary steps.

12. List this matter on 29th October, 2021 for reporting progress.

13. Urgent certified copy of this Order, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Harish Chander Suri)
Member(Technical)

(Rajasekhar VK)
Member(Judicial)

Dated, the 3rd August, 2021

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