



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH COURT III**

**I.A. 1864/2020**

**In**

**C.P. No. (IB)1076/MB/2017**

Under Section 54(1) of the Insolvency and Bankruptcy Code, 2016  
read with Regulation 14 of Insolvency and Bankruptcy Board of India  
(Liquidation Process) Regulations, 2016.

**Rajeev Mannadiar**

Having address at:  
33, Kamer Building, 5<sup>th</sup> Floor,  
38, Cawasji Patel Street,  
Fort, Mumbai- 400 001.

**...Liquidator/Applicant**

**IN THE MATTER OF**

**HDFC Bank Limited**

**...Financial Creditor**

**Vs**

**Esskay Motors Private Limited.**

**...Corporate Debtor**

**Order pronounced on: 13.11.2024**

**Coram:**

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati Member (Technical)

**Appearances:**

For the Applicant: Adv. Narpat Singh and Adv. Shradha Patil i/b Indialaw LLP

For the Respondents: Mr. C.K. Paruash (Ex. Chairman and Managing  
Director)

**Per: Sh. Charanjeet Singh Gulati, Member (Technical)**

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## **ORDER**

1. This application has been filed under Section 54 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) by the Liquidator seeking the following reliefs:
  - a) *That this Hon’ble Tribunal may be pleased to pass an order for dissolution of the Corporate Debtor under Section 54 of Insolvency and Bankruptcy Code, 2016 read with Regulation 14 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*
  - b) *For such further and other reliefs as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”*

### **Relevant facts as averred in the Petition**

#### **Commencement of CIRP**

2. The Operational Creditor, HDFC Bank filed the Company Petition No. 1076 of 2017 under Section 7 of the Code before this Tribunal. Vide Order dated 29.06.2017 the Corporate Debtor, Esskay Motors Private Limited was admitted into Corporate Insolvency Resolution Process, and Mr. Rajeev Mannadiar was appointed as the Interim Resolution Professional. Pursuant to the CIRP, in the 1<sup>st</sup> Meeting of CoC (Committee of Creditors) the members unanimously approved the appointment of the Applicant as the Resolution Professional.

#### **Initiation of Liquidation Process**

3. In the 4<sup>th</sup> CoC Meeting which was held on 02.11.2017, the CoC members unanimously approved that the Corporate Debtor shall be liquidated. Therefore, the Miscellaneous Application No. 1076 of 2017 was filed.



Vide an order dated 08.01.2018, Liquidation proceedings commenced and the Applicant was appointed as the Liquidator of the Corporate Debtor.

4. Pursuant to the Liquidation process, the Applicant made a public announcement in Form B as per Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 (**Liquidation Regulations**) in two newspapers namely Business Standard (English) on 20.01.2018 and Navshakti (Regional Language) on 21.01.2018.
5. The Applicant collected and collated the claims received from the Operational and Financial Creditors and filed Stakeholders Reports before this Tribunal on 26.03.2018. The said list was announced to the public in Navshakti Newspaper (Regional Language) and Business Standard Newspaper (English Language) on 27.03.2018 as per Regulation 12(3) of the Liquidation Regulations.

**List of Stakeholders**

6. The list of stakeholders of the Corporate Debtor has been reproduced below:

<b>Financial Creditors</b>				
Sr. No.	Name of the Stakeholder	Claim Amount	Amount Admitted	Amount Rejected
1.	HDFC Bank Ltd.	1,89,61,222.44	1,89,61,222.44	
2.	Central Bank of India	13,40,39,662	13,21,64,883.15	18,74,778.85
Total (A)		15,30,00,884.44	15,11,26,105.59	18,74,778.85

<b>Operational Creditors</b>				
Sr. No.	Name of the Stakeholder	Claim Amount	Amount Admitted	Amount Rejected
1.	Motilal Oswal	5,48,32,281	5,48,32,281	-



	Financial Services Ltd. (MOFSL)			
2.	Motilal Oswal Services Ltd. (MOSL)	4,80,38,960	4,80,38,960	-
3.	3S Integrated Facility M Service	10,06,800	10,06,800	-
4.	TRIG Guard Force Ltd.	17,49,140	17,49,140	-
5.	Wuerth India Pvt. Ltd.	2,88,162	1,67,536	1,20,626
6. *	Income Tax Office (TDS)	68,040	68,040	-
7. *	Sales Tax Officer (MUM-VAT-C-909)	22,46,747	22,46,747	-
Total (B)		10,82,30,130	10,81,09,504	1,20,626
<b>Total (A+B)</b>		<b>26,12,31,014.44</b>	<b>25,92,35,609.59</b>	<b>19,95,404.85</b>

**Note:** \*These claims have been lodged after the due date as per liquidation public announcement. The claim has been accepted/rejected based on the documents submitted but admission of these claims received after due date remains subject to approval from Hon'ble NCLT for modification in list of stakeholders.

7. The Applicant submitted the Preliminary Report dated 02.04.2018 and the Asset Memorandum Report dated 03.04.2018 as required under Regulation 13 & 34(4) as Liquidation Regulations. The Applicant submitted that although the records of the Preliminary Report show that the Books of Accounts of Corporate Debtor were available, the same were not reliable since all the liabilities were not reflected in the Books of Accounts and that the entries had been passed without proper narration and supporting documents. The amounts and values of the fixed assets had been inflated due to the capitalization of various expenditures. It was also noted by the Applicant that the Corporate Debtor had stopped claiming depreciation in their books over the years.



Therefore, as per Regulation 13(b) of the Liquidation Regulations, the Applicant intended to make inquiries into the conduct of Corporate Debtor's Business, particularly with respect to the addition and change in fixed assets, for which a Forensic Auditor was crucial. Accordingly, Chartered Accountant Megha Mitesh Bidawatka bearing membership no. 143140 was appointed as the Forensic Auditor.

8. As per Regulation 36 of the Liquidation Regulations, the Applicant filed the Asset Sale Report on 15.01.2019 and 16.04.2019. All the assets in the E-auction were purchased by M/s. Motilal Oswal Financial Services Limited. Since all the assets were sold, the rented/leased premises had been handed over to the landlord. Information with regards to the realised value of the assets of the Corporate Debtor has been tabulated as follows: -

<b>Asset</b>	<b>Mode of sale</b>	<b>Date of sale</b>	<b>Amount (Rs.)</b>
Furniture, Fixtures, Electronics and Utilities at Ground Floor, Motilal Oswal Tower, Junction of Gokhale & Sayani Road, Prabhadevi, Mumbai – 400025.	E-auction	31.10.2018	13,50,000
Computers and Printers	E-auction	30.11.2018	75,000
Furniture, Fixtures, Electronics and Utilities at Ground Floor, Motilal Oswal Tower, Junction of Gokhale & Sayani Road, Prabhadevi, Mumbai – 400025.	E-auction	27.02.2019	99,652
Scrap Sale	-	-	2,350
<b>Total</b>			<b>15,27,002</b>

9. The details of the assets as per Asset Memorandum and Final Sale



Report are as under: -

Assets	Mode of Sale	Estimated Liquidation Value	Realization Amount (Rs.)	Date of Transfer to Liquidation Account
Sale of Furniture and Fixtures, Computers, Miscellaneous Items	Auction	Average Fair Value as per report filed – Rs. <b>15,63,204/-</b> (including owner's property) Average Fair Value – Rs. <b>14,33,149/-</b> , Average Liquidation Value – Rs. <b>9,15,000/-</b> (after returning owners property based on CA Certificate)	15,27,002/-	FY 2018-2109

10. The Summary Report on the value of Total Assets as per Valuation Report:

Sr. No.	Name of Valuers	Fair Market Value (A) (Rs.)	Value of Assets Handed over to Suspended Director as included in valuers report (B) (Rs.)	Net Value (A-B) (Rs.)	Liquidation Value (Rs.)
1.	VK & Associates	17,83,000	3,41,750	14,41,250	9,27,000



2.	Delta Valuers & Appraisers LLP	18,06,785	3,48,737	14,58,048	9,03,000
<b>Average FMV</b>				<b>14,33,149</b>	-
<b>Total Sales Value Realized</b>				<b>15,27,002</b>	-

11. The two-year period for completing the Liquidation process expired on 07.01.2020. The Applicant filed an application seeking extension to complete the Liquidation process, because an application under Section 66 of the Code was pending. The desired extension was granted by the Tribunal for 6 months beginning from 08.01.2020.
12. The Estimated Liquidation Cost was Rs. 10,00,000/-. The details of the Liquidation Cost submitted by the Liquidator are as follows: -

<b>Particulars</b>	<b>Amount</b>
CIRP Cost	2,68,000.00
Liquidation Cost as on 15.12.2023	9,27,002.00
<b>Total</b>	<b>11,95,002</b>

13. Subsequent to the above averments, the Applicant filed a revised Final Report dated 15.12.2023 in accordance with Regulation 45 of the Liquidation Regulations, along with the Compliance Certificate in FORM H.
14. After perusing the 'Statement of Receipts and Payments' for the period from 08.01.2018 to 15.12.2023 it is evident that the CIRP Cost of Rs. 2,68,000 and Liquidation Expenses of Rs. 9,27,002 were completely distributed. Rs. 3,32,000/- was distributed to Central Bank of India towards their claim of Rs. 13,21,64,883.15. However, the Total Amount Distributed was incorrectly mentioned as Rs. 6,00,000 in the Compliance Certificate filed in Form H by the Applicant instead of Rs. 15,27,002.



15. The Liquidator distributed the proceeds of Rs. 15,27,002 realized from the sale of assets of the Corporate Debtor, in accordance with Section 53 of the Code. The following table elaborates the proceeds distributed as per the waterfall mechanism: -

S. 53(1)	Stakeholders under Section 53(1)	Amount Claimed (Rs.)	Amount Admitted (Rs.)	Amount Distributed (Rs.)	%
(a)	CIRP Costs	2,68,000.00	2,68,000.00	2,68,000.00	100
(a)	Liquidation Costs	9,27,002.00	9,27,002.00	9,27,002.00	100
(b)(i)	Workmen Dues	0	0	0	-
(b)(ii)	Secured Creditor	15,30,00,884.44	15,11,26,105.60	3,32,000.00	.22
(c)	Employees Dues	0	0	0	-
(d)	Unsecured Financial Creditors	0	0	0	-
(e)(i)	Government Dues	23,14,787.00	23,14,787.00	0	-
(e)(ii)	Other Financial Creditors	0	0	0	-
(f)	Operational Creditors	10,59,15,343.00	10,57,94,717.00	0	-
(g)	Preferential Shareholders	0	0	0	-
(h)	Equity Shareholders	0	0	0	-
<b>Total</b>		<b>26,24,26,016.44</b>	<b>26,04,30,611.59</b>	<b>15,27,002.00</b>	<b>.22</b>

16. As per Regulation 15 of the Liquidation regulations, the applicant filed the following Progress Reports: -

<b>Progress Report</b>	<b>Date of filing</b>
4 <sup>th</sup> Quarter	13.04.2018



(January 2018 – March 2018)	
1 <sup>st</sup> Quarter (April 2018 – March 2018)	10.07.2018
2 <sup>nd</sup> Quarter (July 2018 – September 2018)	15.10.2018
3 <sup>rd</sup> Quarter (October 2018 – December 2018)	15.01.2019
4 <sup>th</sup> Quarter (January 2019 – March 2019)	16.04.2019
1 <sup>st</sup> Quarter (April 2019 – June 2019)	08.07.2019
2 <sup>nd</sup> Quarter (July 2019 – September 2019)	12.10.2019
3 <sup>rd</sup> Quarter (October 2019 – December 2019)	10.01.2020
4 <sup>th</sup> Quarter (January 2020 – March 2020)	Emailed to the Registry
1 <sup>st</sup> Quarter (April 2020 – June 2020)	Emailed to the Registry
2 <sup>nd</sup> Quarter (July 2020 – September 2020)	Emailed to the Registry
3 <sup>rd</sup> Quarter (October 2020 – December 2020)	Emailed to the Registry
4 <sup>th</sup> Quarter (January 2021 – March 2021)	Emailed to the Registry
1 <sup>st</sup> Quarter (April 2021 – June 2021)	Emailed to the Registry
2 <sup>nd</sup> Quarter (July 2021 – September 2021)	Emailed to the Registry
3 <sup>rd</sup> Quarter (October 2021 – December 2021)	Emailed to the Registry on 14.01.2022
4 <sup>th</sup> Quarter	Emailed to the Registry on



(January 2022 – March 2022)	13.04.2022
1st Quarter (April 2022 – June 2022)	Emailed to the Registry on 05.07.2022
2nd Quarter (July 2022 – September 2022)	E-filed on 14.10.2022
3 <sup>rd</sup> Quarter (October 2022 – December 2022)	E-filed on 09.01.2023
4 <sup>th</sup> Quarter (January 2023 – March 2023)	E-filed on 12.04.2023
1st Quarter (April 2022 – June 2022)	E-filed on 11.07.2023
2nd Quarter (July 2022 – September 2022)	E-filed on 13.10.2023

17. As per Daily Order dated 18.02.2023: -

*“The Counsel appearing for the Applicant submits that the entire assets of the Company had been sold and the realized amount has already been distributed to the stakeholders in accordance with the provision of 53 of the IBC. He further submits that an another I.A. 938/2018 filed under Section 66 of the Code for fraudulent transaction. During the course of the submissions, he is willing to call SCC meeting to consider the right to prosecute these I.A. and may be assigned to the Financial Creditor or another party. Let the same be done within two weeks and file appropriate application in this regard. List this matter on 22.11.2023.”*

18. Pursuant to the Order dated 18.10.2023, the 3<sup>rd</sup> SCC (Stakeholders Consultation Committee) which was conducted on 10.11.2023, the Liquidator informed the stakeholders that the current assets of the Corporate Debtor had been sold and amount realized under such sale has been distributed and only the benefits arising from the I.A.



938/2018 filed by the Liquidator would accrue to the stakeholders. to discuss the possibility of assigning the right to prosecute the I.A. 938/2018 to the Financial Creditor or another party. The relevant extract of the resolution placed before the SCC has been reproduced below: -

*“...The Stakeholder from the Central Bank opined that as a secured Stakeholder they would rather not spent more money on the evaluation of the PUFEE transaction and putting it up for auction and further informed that they are ready to carry forward the litigation, spend on the litigation expenses and whatever is recovered is ready to pay first the Liquidator’s Fees as per the regulation 4 after the deduction of the Liquidation Cost and if any excess is recovered after the adjustment of their dues, pay the balance amount to the Unsecured Lender viz HDFC Bank Ltd. as per the waterfall mechanism.*

*...The Stakeholder from HDFC bank concurred with the above view and also informed that they were ready to share their part of the legal expenses if nay as mentioned by the member from Central Bank they felt that it is the best approach.”*

19. The Central Bank of India and HDFC Bank Stated their “No Objection” in FORM A. Central Bank of India gave their consent to take over the litigation with liability and recovery as per their respective shares. Motilal Oswal Financial Services Limited, a stakeholder of the Corporate Debtor also provided their consent in the pending litigation taken over by Central Bank of India. The Applicant also received “No Objection” from Stakeholders with respect to the litigation assigned to Central Bank of India.
20. As per Tribunal’s Order dated 05.02.2024 this Bench was seeking clarification after perusing the FORM H because “No data of



Registration” was mentioned against the Income Tax Number and GST Number. Through the Additional Affidavit dated 03.04.2024, the Applicant stated that, the Corporate Debtor was registered under GST Portal from 01.07.2017 bearing GST No. 27AACCE9030H1ZQ but as seen from the GST Portal, no information was available because data migration was not done. Furthermore, the Corporate Debtor had no liability of GST since they had no turnover in the year 2017, which was further verified by perusing the Profit & Loss Statement of the Corporate Debtor for FY 2016-2017. The relevant extract of the GST Portal has been annexed in the Additional Affidavit.

21. The Applicant informed the Deputy Commissioner of Income Tax about the commencement of Liquidation Proceedings of the Corporate Debtor vide email dated 25.02.2019. The Income Tax Department had filed their claim under FORM C dated 13.03.2019 for Rs. 68,040 which was admitted by the Applicant. However, as per the waterfall mechanism under Section 53 of the Code the proceeds were completely distributed.
22. The 4<sup>th</sup> SCC Meeting, was held on 21.08.2024 for discussing if Central Bank of India should enter into a Deed of Assignment for taking up the PUFEE I.A. 938 of 2018 as a lead member i.e., Central Bank of India, the secured Financial Creditor and other creditors. Also Vide Tribunal’s order dated 04.10.2024, the Assignment Deed, assigning the avoidance application in favor of Central Bank of India was asked to be furnished.
23. Pursuant to the 4<sup>th</sup> SCC Meeting, M/s. Esskay Motors Private Limited, Central Bank of India, HDFC Bank Ltd., Motilal Oswal Financial Services Limited executed a Deed of Assignment dated 09.10.2024, wherein Central Bank of India was assigned the ‘Not Readily Realizable Assets’ of the Corporate Debtor and the benefits from the Application filed under Section 43 & 66 of the Code being IA No. 938 of 2018. The relevant extract of the resolution placed before the SCC is reproduced below: -



The Following resolution was passed.

***“RESOLVED THAT Stakeholders having 97.97% of the voting power hereby approve of Central Bank of India taking up the PUFÉ IA No. 938 of 2018 as lead member on behalf of other stakeholders’ by entering into an Assignment Deed.”***

Further, the Liquidator filed an Additional Affidavit on 14.10.2024, and placed on record the Deed of Assignment dated 09.10.2024.

24. Thus, the ‘Not Readily Realizable Assets’ of the Corporate Debtor were assigned to Central Bank of India who was deemed to be the full and absolute legal owner, and the only person entitled to the ‘Not Readily Realizable Assets, debts and liabilities of the Corporate Debtor or any part thereof and was entitled to recover and receive all amounts due.

25. We, vide Order dated 14.10.2024, had noted as under:

*“...From the Receipts and payment statement, we note that an amount of Rs. 2,28,455.80/- was lying in the bank account as on 30.09.2020. By way of an additional affidavit dated 06.02.2024 the Liquidator has placed on record a closure report dated 23<sup>rd</sup> January 2024. However, distribution of Rs. 2,28,455.80/- has not been explained by the Liquidator. Let the explanation be tendered by way of additional affidavit. List for further consideration on 30.10.2024.”*

26. Pursuant to the Order dated 14.10.2024, the Applicant filed an Additional Affidavit clarifying the disbursement of Rs. 2,28,455.80/- which can be seen in the Statement of Receipts and Payments at Page No. 50 of the Dissolution Application. Through their Additional Affidavit dated 18.10.2024, the applicant submitted that the amount was used in making payments towards Legal Expenses, paying CA Fees and Miscellaneous Expenses. The Applicant has annexed a copy of the



Ledger Statement and Bank Statement reflecting the aforementioned disbursement.

27. The Applicant sent a letter dated 15.12.2023 to the Central Bank of India regarding closure of Corporate Debtor's Current Account to which, Central Bank of India provided the statement of accounts as on 15.12.2023 showing Nil balance in the Liquidation Account. The Central Bank of India issued an account closure certificate dated 23.01.2024 that the account bearing number 3669751558 had been closed on 19.01.2024.
28. From the perusal of the Application along with the Final Report and the Compliance Certificate filed in Form – H by the Liquidator, we have observed that the Corporate Debtor has been completely liquidated and no asset is available as reported by the Liquidator. Accordingly, this Tribunal is of the considered view that as no assets are left with the Corporate Debtor which are required to be disposed of or realized, in view thereof, we are inclined to allow the present application to dissolve the Corporate Debtor under Section 54 of the Code.
29. Accordingly, we hereby order for the dissolution of the Corporate Debtor, **Esskay Motors Private Limited** with the following directions:
  - i. The **Corporate Debtor stands dissolved** from the date of this order.
  - ii. The I.A. No. 938 of 2018 for PUFÉ Transaction filed as per Section 45 and 66 shall be litigated by the Stakeholder i.e., Central Bank of India as per the terms executed in the Deed of Assignment dated 09.10.2024.
  - iii. The Liquidator, Mr. Rajeev Mannadiar, is discharged from his duties and responsibilities as the Liquidator of the Corporate Debtor.



- iv. The Liquidator and the Registry are directed to forward a copy of this Order to the concerned authorities and the Registrar of Companies, Mumbai and to the Insolvency and Bankruptcy Board of India, within 7 days from the date of receipt of this order, for further necessary action as prescribed by the Code.
31. In the result, I.A. No. 1864 of 2020 is hereby **allowed and disposed of**.

**Sd/-**

**CHARANJEET SINGH GULATI**  
**MEMBER (TECHNICAL)**

Vaishnavi, LRA

**Sd/-**

**LAKSHMI GURUNG**  
**MEMBER (JUDICIAL)**