

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

IA No.4225 (PB) 2021

IN

CP No.360/2016

*Under section 54(1) of the Insolvency and Bankruptcy Code, 2016 read
with regulation 44(1) of the Insolvency and Bankruptcy Board of India
(Liquidation Process) Regulations, 2016.*

In the matter of

Manoj Kulshrestha

Liquidator of Luxury Train Pvt. Ltd

...Applicant

And

In the matter of

Maharastra Tourism Development Corporation

...Petitioner

V/S

Luxury Train Pvt. Ltd.

... Corporate Debtor

Order pronounced on : 02.03.2023

Coram:

Chief Justice (Retd.) Ramalingam Sudhakar : Hon'ble President

Shri Avinash K. Srivastava : Hon'ble Member (Technical)

Appearances (through video conferencing):

For the Applicant : Mr. Amar Nath, Adv

Liquidator (In person) : Mr. Manoj Kulshrestha

ORDER

Per: Avinash Kumar Srivastava, Member (Technical)

1. This is an application filed on 06.12.2021 under section 54(1) of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Regulation 44 of the IBBI (Liquidation Process) Regulations, 2016

(“Liquidation Process Regulations”) by the Liquidator of Luxury Train Pvt. Ltd. (CIN: U93000DL2011PTC220381) (“Corporate Debtor”) praying for dissolution of the Corporate Debtor.

2. The present case was transferred from Hon’ble High Court of Delhi to this Tribunal in view of the Companies (Transfer of Pending Proceedings) Rules, 2016 and was dealt in accordance with Sec 7 of IBC, 2016.
3. It is a matter of record that this Adjudicating Authority *vide* order dated 11.12.2017 admitted the Corporate Debtor under CIRP and Mr. Manoj Kulshresth was appointed as the Interim Resolution Professional (“IRP”) who was later appointed as RP. Subsequently, an order of liquidation was passed and the applicant namely Mr. . Manoj Kulshresth was appointed as Liquidator *vide* order dated 08.10.2018.
4. It is further stated that the application was filed under Regulation 14 of Liquidation Regulations, 2016 for early dissolution of the Corporate Debtor. During hearing , this Adjudicating Authority *vide order* dated 12.03.2019 issued direction to the liquidator to get an investigation done as per the provisions of Section 35(1) of IBC 2016 by any Government agency as it was observed that as per the Forensic Report, there is siphoning of funds of the company.
5. It is further stated that the Liquidator approached SFIO (Serious Fraud Investigation Organization) for investigation of the matter but SFIO denied to take up the investigation stating that NCLT has no power to direct SFIO to order investigation. Then, another

order was issued by this Adjudicating Authority directing SFIO to investigate the matter to which SFIO filed an appeal before Hon'ble NCLAT against the order. NCLAT vide order dated 02.12.2019 issued further direction to MCA that they shall appoint one or two investigators/inspectors to take up the investigation.

6. Meanwhile on 25.07.2019 vide Notification No. IBBI/2019-20/GN/REG047 dated 25th July, 2019, the Regulation 44 (1) of the IBC (Liquidation Process), 2016 was amended which reads as follows :

44. Completion of liquidation.

(1) [The liquidator shall liquidate the corporate debtor within a period of one year from the liquidation commencement date, notwithstanding pendency of any application for avoidance of transactions under Chapter III of Part II of the Code, before the Adjudicating Authority or any action thereof:

Provided that where the sale is attempted under sub-regulation (1) of regulation 32A, the liquidation process may take an additional period up to ninety days.]

7. The Hon'ble NCLAT vide order dated 02.12.2019, disposed of the Appeal and referred the matter to the Central Government for investigation to find out whether there is any violation of section 70 of IBC, 2016 by Corporate Debtor or their promoter or employee. The matter was further referred to the Secretary, Ministry of Corporate Affairs to get the matter investigated by "Inspector or Inspectors" following the procedures in terms of section 213 of Companies Act, 2013 read with section 70 of IBC, 2016 and section 447 of Companies Act, 2013.

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8. It is further submitted that as the investigation is to be conducted/ concluded by MCA and it may take a long time, therefore, this application has been filed to issue orders for dissolution of Corporate Debtor as per Regulation 44(1) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and further to release the liquidator from the duties and responsibilities of the Liquidator.
9. In compliance of Regulation 15 of the Liquidation Process Regulations, 2016, the Liquidator has submitted the final report dated 20.01.2022 disclosing all the material facts and information with respect to the liquidation process of the Corporate. As per mandatory requirement under Regulation 45(3) of the Liquidation Process Regulations, 2016 the Liquidator has prepared a compliance certificate in the prescribed 'Form H' and submitted along with Final Report. The details of realization and distribution have been specifically mentioned in Form-H and Final Reports.
10. Further this Adjudicating Authority on 16.11.2022 has sought clarifications on certain points from the liquidator which are as follows :
- i. Under what provision the liquidator is praying for dissolution of the corporate debtor when the investigation against the company is still pending before MCA?
 - ii. If the dissolution order will be passed, what will be the effect on the investigation and how will it be pursued forward, if the company gets completely wound up?
 - iii. What is the stage of investigation before MCA and what amount is involved in investigation as per the forensic Audit Report?

- iv. Has any application for avoidance of transactions been filed by liquidator, based on forensic audit?
11. In answer to the above query , the liquidator has submitted his reply by way of supplementary affidavit in which it is stated that no assets and records are found in the name of the corporate debtor as both the directors are out of India , thus the liquidator has filed this application for dissolution of the corporate debtor.
12. It is further stated that in the event of company being completely wound up, then the investigation shall be carried out by MCA against the directors, officers and promoters of the company. Further the investigating agency has not updated the stage of investigation , as the liquidator has contacted the Secretary of MCA through email dated 02.11.2022 and 18.11.2022 but no response has been received by him . It is further stated that no avoidance application has been filed and Hon'ble NCLAT has directed MCA to investigate under Sec 70 IBC, 2016 and under Sec 213 of the companies Act.
13. Having satisfied to the full extent that the corporate debtor does not have any assets to be liquidated nor any records are available, therefore, there is no need to continue with Liquidation Process of the Corporate Debtor as the investigation can be carried out against the officers/ directors of the corporate debtor independently.
14. Further referring to Regulation 14 of Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 which read as follows:

Early dissolution:

Any time after the preparation of the Preliminary Report, if it appears to the liquidator that- (a) the realizable properties of the

corporate debtor are insufficient to cover the cost of the liquidation process; and (b) the affairs of the corporate debtor do not require any further investigation;

he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution.

And further in view of the amendment in Regulation 44 of Liquidation Regulations, 2016, this Authority in the exercise of the powers conferred under Section 54(2) of the IB Code, hereby orders the dissolution of the Corporate Debtor viz., M/s. Luxury Train Private Limited and from the date of this order the Corporate Debtor stands dissolved.

15. Consequently, the Liquidator Mr. Manoj Kulshrestha is discharged from his duties and responsibilities as the Liquidator of the Corporate Debtor subject to procedural compliances.
16. The Liquidator and the Registry are directed to send the copy of this order within 7 days from the date of this order to the Registrar of Companies, NCT of Delhi & Haryana along with all the books and files of the Corporate Debtor. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.
17. IA (IB) No. 4225(PB)/2021 and CP No. 360/2016 shall stand disposed of in accordance with the above directions.
18. All pending IAs shall stand closed.

IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

In Re dissolution Luxury Train Pvt. Ltd.
I.A.No.4225/2021 in C.P.No.360/2016

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19. A copy of this order shall also be forwarded to the IBBI, and concerned parties for their record.
20. File be consigned to the record.

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RAMALINGAM SUDHAKAR
PRESIDENT

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AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)