NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

20. I.A. 220/2021

In

C.P.(IB)-1328(MB)/2019

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **25.01.2022**

NAME OF THE PARTIES: Shri Krishna Enterprises

Vs.

Paramount Wheels Pvt. Ltd.

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Counsel for the Applicant, Mr. Aaditya Gambhir a/w Mr. Aditya Wadhwa and Counsel for the Resolution Professional, Mr. Darryl Pereira are present through virtual hearing.

I.A. 220/2021

Heard counsel appearing for the Applicant. The above Application is allowed. Detailed order will follow.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Sd/-
H.V. SUBBA RAO
Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH COURT III

C.P.(IB)-1328/2019

IN

I.A. 220 OF 2021

Under Section 74 and Section 60(5) read with Section 33 of the Insolvency & Bankruptcy Code, 2016

Filed by
Mr. Guna Dhar Shah
Authorised Representative of:
State Bank of India

...Applicant

In the matter of
State Bank of India

Having its Corporate Centre at

Madam Cama Road,

State Bank Bhawan, Mumbai

And one of its branches at:

Stressed Assets Management Branch II

Raheja Chambers, B Wing, Ground Floor, Free Press Journal Marg,

Mumbai - 400021

...Applicant

Versus

1. **Mr. Rajeev Arora**
   Having its address at:
   M 2/9, DLF 2, Gurgaon,
   Haryana – 122001
   Successful Resolution Applicant
   Paramount Wheels Private Limited

...Respondent No. 1

And

2. Mr. Rajendra K Bhuta
Resolution Professional,
Paramount Wheels Private Limited
Having its Address at:
1201, Yogi Paradise, Yogi Nagar,
Borivali West,
Mumbai – 400092 MH

...Respondent No. 2

Order delivered on: 25.01.2022

Coram:
Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance:
For the Applicant: Mr. Aaditya Gambhir (Advocate) a/w Mr. Aditya Wadhwa (Advocate).
For the Resolution Professional: Mr. Darryl Pereira (Advocate).

1. The above application I.A. No. 220/2021 is filed by Authorised Representative of the Applicant, Mr. Guna Dhar Shah seeking liquidation of Paramount Wheels Private Limited (hereinafter referred as Corporate Debtor) under Section 74 and Section 60(5) read with Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:

   a. *This Tribunal be pleased to pass appropriate directions against the Resolution Applicant for non-performance, contravention and non-adherence to conditions in the order passed by this Tribunal;*

b. *This Tribunal be pleased to pass an order of Liquidation against the Corporate Debtor in consonance with Section 33 of the Code.*

2. The brief facts of the application are as follows:
   A. The applicant mentioned that an application for the initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as the "CIRP") C.P. (IB) No. 1328 of 2019 was filed by one of the Operational Creditor 'Shree Krishna Enterprises' against the Paramount Wheels Private Limited (hereinafter referred to as the "Corporate Debtor") on 22.05.2019. The Hon'ble Bench admitted the said application vide its order dated 29.05.2019 and by the same order Mr. Prakash Naringrekar was appointed as the Interim Resolution Professional.
   B. It is further stated that the Committee of Creditors (hereinafter referred to as the "CoC") on 28.07.2019 appointed Mr. Rajendra Bhuta (hereinafter referred to as the "Respondent No. 2") as the Resolution Professional for the CIRP of the Corporate Debtor. After the invitation for the potential Resolution Applicants, Mr. Rajiv Arora (hereinafter referred to as the "Respondent No. 1") submits the Resolution Plan to the Respondent No. 2 the Resolution Professional on 18.07.2020 for the CoC's consideration, after due consideration the same was voted in favour by the CoC on 08.08.2020.
   C. The Resolution Plan (Interlocutory Application No. 773 of 2020) was approved by this Hon'ble Tribunal on 09.09.2020. While allowing the same certain additional terms and conditions which are briefly reproduced as follows:

a. The Resolution Applicant was committed to provide 'Performance Guarantee' of Rs. 1,00,00,000/- (Indian Rupees One Crore Only) within 7 days of successful approval of the resolution plan by the CoC.
b. Payment towards personal guarantee shall be upfront over and above the Rs. 3.85 crore upfront payment within 90 days of receipt of certified copy of NCLT Order. Release of personal guarantees however shall be only once entire payment is done as per the repayment is done as per the repayment scheduled.
c. Following process should be completed within 90 days of receipt of certified copy of NCLT Order: a) Upfront Cash Payment, b) Standalone Capital Reduction, c) Issuance/ allotment of 100% and d) Equity Shares to the Resolution Applicant.

D. The Applicant further states that the Respondent No. 1 however failed to act on the Order passed by this Hon'ble Tribunal on 09.09.2020. The Respondent No. 1 failed to provide a Performance Guarantee of Rs. 1,00,00,000/- (Indian Rupees One Crore Only) within 7 days.
E. The Applicant states that the CoC met on two occasions which was on 15.09.2020 and 17.09.2020 to update the status of the compliance that were due and liable to be made by this Tribunal on 09.09.2020. Thereafter the CoC and the Respondent No. 2 on numerous occasions requested the Respondent No. 1 to provide the Performance Guarantee as was required for him to provide but he avoided the same.
F. The Applicant further submits that the Respondent No. 1 had also requested co-operation on the part of the CoC to allow

him to inspect the premises of the Corporate Debtor, the CoC directed the Respondent No. 2 to assist and allow the Respondent No. 1 to inspect, however despite full co-operation he failed to act on the same.

G. The Applicant finally submits that due to the acts of non-adherence, non-performance, contravening and in contempt, the resolution of the Corporate Debtor is on hold and remains unresolved and in dark. The premises in the possession and occupancy of the Corporate Debtor which is with the Respondent No. 2 is located at a prime location and is a leasehold premise, which is resulting into mounting expenses for the process of CIRP to a large extent which adversely effects the members of the CoC and the CoC has to bear and for no fault of theirs. Hence, this is liquidation application.

3. The above application is filed by State Bank of India who is one of the Financial Creditors of the Corporate Debtor for passing an order of liquidation on the ground that the Successful Resolution Applicant Mr. Rajeev Arora who is none other than the Ex-Promoter/Director of the Corporate Debtor failed to provide the performance guarantee within the stipulated time as directed by the CoC.

4. Heard Mr. Aaditya Gambhir (Advocate) Counsel for the Applicant and Mr. Darryl Pereira (Advocate) for Resolution Professional. After hearing the submissions and after perusing the record this bench notes that the Successful Resolution Applicant has deliberately failed to provide the performance guarantee and filed various Interlocutory Applications on flimsy and frivolous ground to justify his inaction in submitting the performance guarantee and subsequently withdrawn them. It is observed that the Successful

Resolution Applicant is trying hard to withdraw from the Resolution Plan which is impermissible as per the prevailing law laid down by the Hon'ble Supreme Court. Except the Resolution Plan submitted by the Resolution Applicant there are no other Resolution Plans available with the CoC. CIRP has been ordered in the above matter more than 2 years ago and therefore the Financial Creditor namely State Bank of India is justified in filing the above application for Liquidation. As the CoC has not suggested the name of the proposed liquidator to be appointed this Bench whereby appoints Mr. Mukesh Khathuria as liquidator from the panel of IBBI. As rightly contended by the counsel appearing for the Resolution Professional there is no option available to this Bench except ordering Liquidation, we hereby allow this Interlocutory Application bearing Number 220 of 2021 and passed the following:

ORDER

1. The above I.A. No. 220/2021 is allowed and the Corporate Debtor Paramount Wheels Private Limited is ordered to be liquidated.

    a. **Mr. Mukesh Khathuria**, having Registration No. IBBI/IPA-001/IP-P01216/2018-2019/11925, having Registered Email ID: khathuria@hotmail.com and Mobile No. (+91) 9769691105 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.

    b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.

c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

d. The Liquidator appointed under section 34(1) of the Code. Will have all powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.

e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.

f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.

g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

h. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.

i. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

With the above directions, this application i.e. I.A. No. 220 of 2021 is hereby allowed and disposed of.

Sd/-	Sd/-
Chandra Bhan Singh	**H.V. Subba Rao**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**