



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT – VI

ITEM NO. 5

IA No- 5285/ND/2021

IN

(IB) – 659/ND/2019

IN THE MATTER OF:

Mr. Kamal Agarwal V/s. Mr. Utkarsh Jain and Ors.

Order under Rule 11 of NCLT Rules 2016.

Order delivered on 26.09.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS,
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR,
HON'BLE MEMBER (TECHNICAL)**

ORDER

Order pronounced in open Court vide separate sheets.

IA No- 5285/ND/2021 IN (IB) – 659/ND/2019 stands dismissed.

SD/-

**(Rahul Bhatnagar)
Member Technical**

SD/-

**(Bachu Venkat Balaram Das)
Member Judicial**



THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

IA No- 5285/ND/2021

IN

Company Petition No. (IB) – 659/ND/2019

*Under Section 68, 70, 71, 72 & 236(2) of the Insolvency
and Bankruptcy Code, 2016 r/w Rule 11 of NCLT
Rules 2016.*

In the matter of:

M/s Volkswagen Finance Private Limited

.... Petitioner/Financial Creditor

VERSUS

M/s UNJ Import Private Limited

..... Respondent/Corporate Debtor

And in the matter of:

Kamal Agarwal

Liquidator of the Corporate Debtor

.... Applicant/Liquidator

VERSUS

Utkarsh Jain

Ex Director of the Corporate Debtor

...Respondent 1

Nishkarsh Jain

Ex Director of the Corporate Debtor

...Respondent 2



Pavitra Singh

Key Managerial person of the Corporate Debtor)

...Respondent 3

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

For the Applicant: Kamal Agarwal, Liquidator in person

For the Respondents: Mr. Geetesh Meena, Adv. for R1 and R3.

ORDER

**PER- BACHU VENKAT BALARAM DAS, MEMBER
(JUDICIAL)**

Order Pronounced on: 26.09.2023

1. This is an application filed under Section 68 70, 71, 72 & 236(2) of IBC 2016 read with Rule 11 of NCLT Rule, 2016 to refer the matter to the Board (Insolvency & Bankruptcy Board of India) for filing complaint in the Special Court established under chapter XXVIII of the Companies Act, 2013. The petitioner in the petition has made the following averments:



- i. That there is total non-cooperation by the suspended Board of Directors (Respondent no 1 & 2 herein) led by their father Mr Pavitra Singh (Respondent no 3).
- ii. The IRP had filed an application under section 19(2) of the Code on 18.04.2020 which was first listed on 06.07.2020 vide IA 2207 of 2020.
- iii. Thereafter the aforesaid application was listed on several dates. However, on one pretext or the other the respondents continued to evade providing all the necessary information/ records and the limited information/ records provided by them cannot be relied upon for the reason that these records are fake and manufactured.
- iv. Vide order dated 13.04.2021 passed by this Tribunal, the following directions were given to the respondents/suspended directors. Para 9 of the order is reproduced below: -

“9. In view of the above discussion following directions are hereby issued:

a. The suspended directors are directed to provide audited financials of the CD pertaining to previous years as demanded by applicant along with provisional financial statement till insolvency commencement date.



b The suspended directors are also directed to provide details of all bank account of CD, list of assets and handover the remaining assets of CD to the applicant.

c. The suspended directors are also directed to cooperate with the applicant and provide all other required information, if any, on demand of the applicant without any inordinate delay.”

- v. It is brought to the notice of this Tribunal that there is complete disregard of the order dated 13.04.2021 of this Tribunal in IA 2207 of 2020 and despite specific directions of this Tribunal, the suspended Directors have not provided a single document/ records as required post 13.04.2021 despite various emails and reminders.
- vi. It is further relevant to mention that along with the suspended directors, Mr. Pavitra Singh is also arrayed as Respondent no 3 in the present application as he is the father of the Respondent no 1 and Respondent no 2 as well as the key managerial person of the Corporate Debtor upon whose instructions and directions, the Board are accustomed to act and is a deemed officer of the corporate debtor within the meaning of section 68, 70,71 &,72 of the Code.



vii. That all the respondents jointly and in connivance have collectively committed the offence of:

- a. Concealment of property as is defined under section 68 of the Code, particularly subclause (a), (b), (c), (d), (e) (g) of clause (i) and clause (ii) of section 68 of the Code; and
- b. Caused misconduct in course of CIRP as defined under section 70 of the Code
- c. Falsified the books of the corporate debtor and committed an offence under section 71 of the Code; and
- d. done willful and material omissions from statements relating to affairs of the corporate debtor as is defined under section 72 of the Code.

viii. Therefore, all the Respondents are jointly and severally liable to be tried and punished under the offences.

ix. In view of the above, the Liquidator prays for the following relief(s): -

1. Refer the matter to the Board (Insolvency & Bankruptcy Board of India -IBBI) for filing complaint under section 68, 70, 71 & 72 read with section 236 of IBC, 2016 with the special court established under chapter XXVIII of the Companies Act, 2013.



2. Pass any further order(s)/ direction(s) as this Hon'ble Bench may deem fit and proper.

2. In reply to the application filed by the applicant, the following averments were made by Respondents: -

- i. That the Liquidator has preferred the present application just to harass the ex-management and linger on the Liquidation process of the corporate debtor.
- ii. That present application is filed without bringing on record the true facts about the cooperation and full support extended by the ex-management in the whole CIRP process.
- iii. That the CIRP was commenced on 03.02.2020 against the corporate debtor and the ex-management since the very first meeting on 24.02.2020 started cooperating with RP. The ex-management immediately provided the balance sheets, profit and loss financial accounts of the corporate debtor on 25.02.2020 vide email communication and simultaneously provided the complete detail about the Statutory Auditor of the Corporate debtor.



iv. That the liquidator Mr. Kamal Agrawal in connivance with the officers of the Financial Creditor (Volkswagen Finance Pvt. Ltd.) was only interested in taking the Movable assets, cars (i.e. Audi A6 Car, Honda City Car) from the ex-management of corporate debtor and had taken the custody of both cars on 30.07.2020. The possession of Audi A6 car was taken by Volkswagen Finance Pvt. Ltd. by breaching the rules and regulations of the CIRP process. The applicant is taking advantage of his position as a Liquidator of the corporate debtor. The Liquidator did not act bonafidely in managing the affairs of the corporate debtor as a going concern and did not plan for the resolution of the Corporate Debtor.

v. That the ex-management provided information vide email to the RP regarding the details of secured creditors, details of the outstanding and the demands letters of the banks, list of financial creditors are provided to the liquidator again vide email dated 06.08.2020 and 17.08.2020.

vi. That the Liquidator has taken possession of the Registered office of the corporate debtor with his team and changed



the locks, keys of the doors and taken the custody of all the records, electronic software, computers, printers etc. of the corporate debtor on 07.12.2020 and the ex-management of the corporate debtor was not allowed to enter the office of the corporate debtor.

vii. That in utter violation of moratorium order dated 13.04.2021, the HDB financial Services Ltd. (Financial creditor) on 14.01.2022 took the physical possession of the office of corporate debtor, by obtaining an order against the Corporate Debtor from Chief Metropolitan Magistrate court, Saket, Delhi in Ct. Case No. /2021. That the said fact was immediately brought into the knowledge of the liquidator (Mr. Kamal Agarwal) vide email letter dated 28.12.2021 along with the court order dated 24.12.2021, But the liquidator chose to remain silent and did not protect the assets of the corporate debtor.

viii. That Liquidator sold the Cars i.e., Audi A6 and Honda City of corporate debtor at very low price to extend illegal benefit to his known persons and deposited the sale proceeds into his personal bank account with State



Bank of India, as Fixed Deposit, without depositing the sale proceeds into separate bank account for liquidation

ix. That the ex-management of the corporate debtor handed over the balance sheets and profit and loss accounts along with auditors report of last years to the liquidator and also informed that the corporate debtor is not having any immovable assets but only having few movable assets which are presently with the corporate debtor and also provided the Income Tax and GST details of the corporate debtor and further stated regarding their full cooperation in that smooth CIRP process in the best interest of Corporate Debtor vide email dated 05.11.2020.

x. That it is submitted that the ex-management were never informed about the e-auction price and the number of bidders involved in the bidding and money received in the e-auction to the liquidator. The liquidator did not disclose before this Tribunal regarding the same. That till date the liquidator has not even opened a separate bank account for depositing the liquidation proceeds of



the corporate debtor, but utilizing the sale proceeds as the way he deems suitable for him.

xi. That the application is filed in utter violation of Section 23, 24, 28, 29, 35, 36 and 39 of the I&B Code, 2016 read with regulations 5, 6, 15, 23, 30, 31, 33, 39, 41, 18 and 19 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and hence same is not maintainable and liable to be dismissed on this ground with heavy cost.

3. We have heard the submissions made by the applicant and respondents and have gone through the petition at length.

4. Upon plain reading of the application and the reply filed by the Respondents, it is observed that both sides are making allegations against each other. The ex-management is expected to furnish information and assist the RP in managing the affairs of the Corporate Debtor to enable the RP/Liquidator to complete the CIRP/Liquidation process in a time-bound manner. The Ex-management has stated that they have provided information as available to them and have also annexed the email communications.



5. It is not the case that ex-management is not co-operating completely with the Liquidator or threatening the Liquidator. Hence, we do not find that it is a fit case to refer the matter to IBBI to initiate proceedings against the Respondents.

6. It is observed that this Tribunal, vide order dated 02.03.2023 in IA 3547/2022 has given a stern warning to the Liquidator to be more careful and diligent in fulfilling his duties under the IBC, 2016. Further this Tribunal vide order dated 07.06.2023 IA/3141/2023 observed as under: -

“This application has been filed by the Liquidator seeking extension of liquidation period from 13.04.2023 till 31.10.2023. It is submitted by Liquidator in person that liquidation period was over on 12.04.2022 and he has filed this application on 05.06.2023. It was further submitted by the Liquidator that due to non-co-operation by the Suspended Board of Director several applications have been filed by the IRP and pending these applications he could not file an application seeking extension of time. We are not satisfied with the explanation given by the Liquidator for delay in filing of application seeking extension of time. However, in the interest of justice, Liquidator is directed to complete the liquidation process. We deem it appropriate to extend the liquidation period up to 31.10.2023. We further direct the Liquidator to be more diligent and careful in future.”

Accordingly, we again direct the Liquidator to complete the Liquidation Process within time.



7. In view of the above, we hereby **dismiss** the application filed by the Liquidator.

SD/-
(Rahul Bhatnagar)
Member (Technical)

SD/-
(Bachu Venkat Balaram Das)
Member (Judicial)