

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

I.A. (IB) No. 700/KB/2021

In

C.P. (IB) No. 1617/KB/2019

In the matter of:

An application under section 33(2) of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Air Com Travels Private Limited

... Operational Creditor

Versus

Mohan Motors Udyog Private Limited

...Corporate Debtor

And

In the matter of:

Surendra Kumar Agarwal

(RP of Mohan Motors Udyog Private Limited)

...Applicant

Coram:

Shri Rajasekhar V.K. : Member (Judicial)

Shri Harish Chander Suri : Member (Technical)

Appearances (through video conference):

For Applicant	:	1. Mr. Vikram Wadehra, Advocate
		2. Ms. Vidushi Chokhani, Advocate
		3. Mr. Soumava Ghosh, Advocate
		4. Mr. Surendra Kumar Agarwal, Resolution Professional

Date of hearing:	30.08.2021
Date of pronouncement of Order:	08.10.2021

ORDER

Per: Harish Chander Suri, Member (Technical)

1. This court convened *via* video conferencing.
2. This is an application filed by the Resolution Professional upon the instructions of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, viz., Mohan Motors Udyog Private Limited [CIN: U50300WB1986PTC041458], on the ground that no resolution plan was approved by the Committee of Creditors ('CoC'). The Applicant has sought for the following reliefs:
 - a. *"Pass an order under section 33(2) of the Insolvency & Bankruptcy Code, 2016 for liquidation of the Corporate Debtor i.e. Mohan Motors Udyog Private Limited.*
 - b. *Pass an order for appointment of liquidator in respect of the Corporate Debtor;*
 - c. *Pass such further and other orders and directions as the nature and circumstances of the case may require and as this Hon'ble Tribunal may deem fit and proper."*
3. This Adjudicating Authority *vide* its order dated 17.03.2020 on a Petition filed by Air Com Travels Private Limited ('operational creditor') under section 9 of the Insolvency and Bankruptcy Code, 2016 ('the Code') directed initiation of the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and appointed Mr. Surendra Kumar Agarwal as the Interim Resolution Professional ('IRP'). The IRP was appointed as the Resolution Professional ('RP').
4. The Applicant submits that in terms of section 15 of the Code, public announcement was made on 19.03.2020, in Financial Express (English) and Aajkal (Bengali) (Kolkata edition) newspapers, fixing 31.03.2020 as the last date for submitting the claim. The public announcement was uploaded on the website of IBBI.

-
5. The Committee of Creditors ('CoC') was duly constituted with seven financial creditors and the Report certifying the constitution of the CoC dated 29.06.2020 was filed with the Adjudicating Authority.
 6. The first meeting of the CoC was held on 08.07.2020 wherein the CoC confirmed the appointment of the IRP as the RP. The Applicant states that the publication for invitation of EoIs in Form G was done on 23.09.2020 in Business Standard (English) and Aajkal (Bengali) (Kolkata edition) newspapers. The last date of submission of EOI was 13.10.2020.
 7. It is submitted that the RP received ten EOI's, but only two Prospective Resolution Applicants submitted the documents and made payment of Earnest Money Deposit. Only one Resolution Plan was received from Highpoint Vintrade Private Limited.
 8. The Resolution Plan received from Highpoint Vintrade Private Limited, which was presented and opened before the CoC in the 6th CoC meeting and was discussed from the 7th CoC meeting to 13th CoC meeting. The Resolution Plan was put up for e-voting on the 13th CoC meeting held on 15.06.2021.
 9. The Resolution Plan was not approved by the CoC. In the 15th CoC meeting held on 07.07.2021, the CoC resolved to liquidate the Corporate Debtor and the same was approved by 85.97% voting share¹.
 10. Hence, the RP has filed an application under section 33(2) of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor.
 11. It is further submitted that this Adjudicating Authority *vide* order dated 08.12.2020 excluded the period between 25.03.2020 to 13.09.2020 from the CIRP period and extended a period from 14.09.2020 till 05.03.2021 in the CIRP period in view of the Covid-19 pandemic.

¹ Page 140 of the I.A.

12. The Applicant/Resolution Professional, has not agreed to act as liquidator to carry on the process of liquidation.
13. We have considered the submission made by the learned Counsel on behalf of the Applicant/RP and perused the record.
14. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six percent of the voting share, to liquidate the Corporate Debtor. In the present case, the CoC has resolved by 85.97% voting share to liquidate the Corporate Debtor.
15. This Bench, therefore, hereby orders as follows: -
 - a. Prayers as sought for in I.A. (IB) No. 700/KB/2021 filed by Mr. Surendra Kumar Agarwal, RP of Mohan Motor Udyog Private Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;
 - b. **Mr. Abhit Kumar Singh, Regn. No. IBBI/IPA-001/IP-P02380/2021-2022/13564, email id. abhit1981@hotmail.com** is hereby appointed as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.
 - c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, *i.e.*, Financial Express (English) and Aajkal (Bengali) (Kolkata edition), stating that the Corporate Debtor is in liquidation.
- e. The Resolution Professional shall handover all the documents in relation to the Corporate Debtor and the CIRP period to the Liquidator within two weeks from the date of this order.
- f. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- g. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- h. On initiation of the liquidation process but 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, as provided in section 33(5) of the Code read with its proviso.
- i. In accordance with section 33(7) of the Code, 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.
- j. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re liquidation of Mohan Motors Udyog Private Limited
I.A. (IB) No. 700/KB/2021 in CP (IB) No. 1617/KB/2019

of this Order to the Registrar of Companies, West Bengal,
Kolkata.

16. The application bearing **IA (IB) No. 700/KB/2021** shall stand disposed of in accordance with the above directions.
17. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
18. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
19. List the main **CP (IB) No. 1617/KB/2019** for reporting progress on _____.____.2021.

[Harish Chander Suri]

Member [Technical]

[Rajasekhar V.K.]

Member [Judicial]

08.10.2021.

GGRB[LRA]