



### **I.A. 452/2022**

The above application filed by the Bank of Baroda for seeking following reliefs:

- a. *That this Hon'ble Tribunal may be pleased to declare that the payments of the minimum amounts as prescribed under Section 30(2)(b) of the Insolvency and Bankruptcy Code, 2016 to the dissenting financial creditors is mandatory and cannot be modified by the committee of creditors of Mercator Limited;*
- b. *That this Tribunal be pleased to declare that the resolution proposed at the thirteenth meeting of the committee of creditors of Mercator Limited as it reduces the minimum amount guaranteed to the dissenting financial creditors as prescribed under Section 30 (2)(b) of the Insolvency and Bankruptcy Code 2016 is bad in law and five other consequential reliefs.*

In view of passing liquidation order in I.A. 959/2022, the above Interlocutory Application becomes **infructuous and stands disposed of**.

### **I.A. 1274/2021**

The above application filed by the applicant Mr. Harish Kumar Mittal and Mrs. Archana Mittal for seeking following reliefs:

- a. *Declare that the Respondent is in breach of the moratorium under Section 14 of the IBC and its order dated 8 February 2021;*
- b. *Injunct the respondent from proceeding with the arbitration under the Facility Agreement and the Guarantees and five other consequential reliefs.*

In view of passing liquidation order in I.A. 959/2022, the above Interlocutory Application becomes **infructuous and stands disposed of**.

### **I.A. 523/2022**

Hard copy of the above Interlocutory Application is not available with this Bench.

Applicant, Registry and Court Officer shall ensure availability of hard copy of the above application to the Respondent as well as to this Bench before the next date of hearing.

**I.A. 3419/2022 I.A. 1544/2022**

RP shall file reply in the above applications within two weeks from today by serving an advance copy on the other side, failing which their right to file reply shall stand forfeited.

**I.A. 2713/2022**

None appeared for the applicant. List this matter on **20.04.2023** appearance of the applicant/dismissal of the above Interlocutory Application.

List this matter on **20.04.2023**.

Sd/-  
MADHU SINHA  
Member (Technical)  
//SKS//

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

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

**I.A. 959 of 2022**

Under Section 33(1)(a)(i) of Insolvency &  
Bankruptcy Code, 2016

Filed by

**Mr. Girish S. Juneja**

Having office at 22 Dignity Apartments,  
Bon Lane, 7 Bungalows, Versova, Andheri  
(W) Mumbai: 400 053.

**...Resolution Professional/Applicant**

In the matter of

**CP (IB) No. 4404 of 2019**

ICICI Bank Limited

...Financial Creditor/Petitioner

Versus

Mercator Limited

...Corporate Debtor

Order Delivered On: 21.02.2023

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

**Appearance:**

For the Applicant: Ms. Ami Jain, Advocate.

**ORDER**

1. The above application is filed by Mr. Girish S. Juneja, Resolution Professional, (hereinafter referred to as the "**Applicant**") seeking Liquidation of Mercator Limited (hereinafter referred to as the "**Corporate Debtor**") under Section 33(1)(a)(i) of the Insolvency and

Bankruptcy Code, 2016 (hereinafter called as “**Code**”), praying for following reliefs:

- a. *consider passing appropriate orders u/s 33(1)(a)(i), (ii) and (iii) of the IBC, 2016;*
- b. *consider allowing the liquidator to sell the corporate debtor as a going concern;*
- c. *consider directing that the personnel of the corporate debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the corporate debtor.*
- d. *consider declaring that subject to Section 52 of the IBC, 2016, no suit or other legal proceedings shall be initiated by or against the corporate debtor except in relation to the transaction as may be notified by the Central Government provided that a suit or other legal proceedings may be instituted by the Liquidator, on behalf of the corporate debtor with prior approval of the Hon’ble NCLT;*
- e. *consider declaring that the order for liquidation u/s 33 shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator;*
- f. *consider declaring moratorium u/s 14(1) of the IBC, 2016,*
- g. *consider declaring that Mr. Girish S. Juneja (Regn No: IPA-001/IP-P00999/ 2017-2018/ 11646) shall act as liquidator for the purpose of liquidation of the corporate debtor;*

- h. consider allowing the declaring the delisting of the corporate debtor from the stock exchange;*
- i. pass such further and/or other order(s) and/ or direction(s) as the facts and circumstances of the matter may warrant, for which act of kindness the applicant herein shall be ever grateful.*

**2. The brief facts of the Application are as follows:**

- A. That this Tribunal vide order dated 08.02.2021 in Company Petition No. 4404 of 2019 admitted the Petition under Section 7 of the Code, filed by **ICICI Bank Limited** (hereinafter referred to as the “**Financial Creditor**”) and Corporate Insolvency Resolution Process (hereinafter referred to as the “**CIRP**”) was initiated against **Mercator Limited** (hereinafter referred to as the “**Corporate Debtor**”). In terms of the said order, the Applicant was appointed as the Interim Resolution Professional, (hereinafter referred to as the “**IRP**”) of the Corporate Debtor.
- B. The Applicant submits that the Public Announcement was published in Form A in terms of Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"), intimating public at large regarding the initiation of Corporate Insolvency Resolution Process (CIRP) with respect to the Corporate Debtor and seeking claims from the creditors of the Corporate Debtor. Thereafter, during the 1<sup>st</sup> COC Meeting held on 10.03.20221, the Committee of creditors confirmed the Applicant as the Resolution Professional.
- C. The Applicant submits that the following actions were taken by him pursuant to his appointment as IRP under provisions of the Code:

<b>Date</b>	<b>EVENT</b>
22.03.2021	RP / applicant appointed chartered accountants for carrying out the transaction audit
24.04.2021	Publication of Form G by the Resolution Professional in terms of Regulation 36A of CIRP Regulations, inviting interested Prospective Resolution Applicants (PRAs) to participate in the CIRP of the Corporate Debtor.
28.04.2021	RP / applicant published / circulated the Information Memorandum
18.05.2021	Re-Publication of Form G by RP to facilitate wider response from PRAs
12.06.2021	Circulation of Provisional List of PRAs to the members of COC and PRAs by RP in terms of Regulation 36A(10) of CIRP Regulations
17.06.2021	Circulation of Request for Resolution Plan document to PRAs by RP
01.07.2021	Circulation of Amended Provisional List of PRAs
07.07.2021	Circulation of Final List of PRAs by R in terms of Regulation 36A(12) of CIRP) Regulations
09.08.2021	Hon'ble AA allowed exclusion of 88 days from the overall CIRP period
06.09.2021	The RP received resolution plans from three PRAs
07.09.2021	RP opened the resolutions before COC members for the first time at the seventh COC meeting
24.09.2021	Resolution Plans discussed by COC members, who advised the RP to inform the RAs that the plans submitted by them need to be revised upwards significantly

25.09.2021	RP informed all PRAs vide his email to improve their commercial offers and submit revised offers by 01.10.2021, which was thereafter extended to 05.10.2021 at the PRAs behest
29.09.2021	Discussion with PRAs on legal and commercial aspects of their plan
11.11.2021	Hon'ble Adjudicating Authority allowed I.A No. 2613/2021, granting extension of 90 days to the CIRP period, which will now end on 01.02.2022
06.01.2022	RP received final resolution plans from three resolution applicants.
22.03.2022	None of the Resolution Plans secured the requisite voting majority
29.03.2022 & 01.02.2022	The Plan with the highest voting was put for re-voting in accordance with Regulations 39(3B) of CIRP Regulation, which is scheduled to end on 05.02.2022

D. The Applicant submits that on 01.02.2022 the 270-day CIRP period ended which is pursuant to the exclusion of 88 days (04.04.2021 to 30.06.2021) allowed by the Hon'ble Tribunal vide its order dated 09.08.2021 and extension of 90 days granted by the Hon'ble Tribunal vide its order dated 11.11.2021 (w.e.f 04.11.2021)

E. Further, the Applicant after the authorisation by the COC members on 19.01.2022, filed an Interlocutory Application bearing no. No.238 of 2022 under Section 60(5) of IBC, 2016, read with Regulation 40C of the CIRP Regulations, 2016, seeking exclusion of five weeks from 28.12.2022 to 31.01.2022, on the ground of third wave of Covid-19. The Applicant requested for an exclusion as this would enable the COC members adequate time to vote upon the said plans. The said IA No.238/2022 was listed for hearing on 07.02.2022, which was

subsequently declared a public holiday by the state government, with the hearing adjourned to 14.03.2022.

F. In the interim, at the 12<sup>th</sup> adjourned meeting of the CoC held on 08.02.2022, the CoC members decided to extend the voting time by 15 days and accordingly authorized the Applicant to seek additional exclusion / extension of CIRP period from the Hon'ble Adjudicating Authority. The resolution to this effect was approved by financial creditors representing 96.60% of the voting share.

G. The said I.A. No. 638/2022 was listed for hearing on 14.03.2022 along with I.A. No.238/2022. However, all IAs were adjourned to 04.05.2022. The Applicant submits that he had forwarded / submitted three resolution plans received from Deep Industries Ltd, Paramone Concepts Ltd and Castle Ships Pvt Ltd to the COC for their consideration and voting. The e-voting in respect of the same was concluded on 22.03.2022 at 8:00 p.m. and the results were circulated to the members of the COC on 23.03.2022. The voting results with respect to the Resolution Plans is as under:

MERCATOR LIMITED - Under CIRP					
Voting Results of the Eleventh Meeting of Committee of Creditors held on , 19 January 2022					
E-voting Conclusion Date & Time: 22 March 2022 at 08:00 PM					
Sr. No.	Name of Financial Creditor	Voting Share (%)	Resolution Plan submitted by		
			Castle	Deep	Paramone
1	UTI Structured Debt Opportunities Fund I	21.28%	Against	For	Against
2	Axis Bank Limited	18.67%	Against	Against	Against
3	ICICI Bank Limited	15.83%	Against	Against	Against
4	State Bank of India	15.45%	Against	Against	Against
5	Aion Direct Private Limited	9.27%	For	For	For
6	Bank of Baroda	9.22%	Against	Against	Against
7	Export Import Bank of India	4.75%	Against	For	Against
8	Yes Bank Limited	1.95%	Against	Against	Against
9	DBS Bank India Limited	1.65%	For	For	For
10	Anand Rathi Global Finance Ltd	1.45%	Abstained	Abstained	Abstained
11	Sunidhi Capital Private Limited	0.48%	Against	For	For
<b>TOTAL VOTES</b>					
Total % Voting FOR the Resolution(s)			10.92%	37.43%	11.40%
Total % Voting AGAINST the Resolution(s)			87.63%	61.12%	87.15%
Total % ABSTAINED from Voting on the Resolution(s)			1.45%	1.45%	1.45%
<b>Results</b>					

The Applicant states that as it is evident from the above, none of the resolution plans received plans adequate voting share. Accordingly, in terms of the second proviso to Regulation 39(3B) of the CIRP

Regulations, the plan which received the highest voting share was put for re-voting, as discussed at the 14<sup>th</sup> CoC meeting held on 29.03.2022 and 01.04.2022. Section 39(3B) is reproduced hereunder for ease of reference:

*"(3B) Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved:*

*Provided that where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before voting:*

*Provided further that where the resolution plans receives requisite votes, the committee shall again vote on the resolution plan that received the highest votes, subject to the timelines under the Code.*

H. The Applicant further submits that the e-voting with respect to the aforementioned resolution ended at 8 p.m. on 05.04.2022. The COC members once again failed to approve the resolution plan of (Deep Industries Ltd) with the requisite majority of 66% voting share. The e-voting results is extracted below for ready reference:

<b>Voting Results of the Fourteenth Meeting of Committee of Creditors held on 29 March 2022, adjourned to 1 April 2022</b>					
<b>E-voting Conclusion Date &amp; Time: 05 April 2022 at 08:00 PM</b>					
<b>Agenda Item Number (See Notes Below)</b>					
SI. No.	Name of Financial Creditor	Voting Share (%)	Item B-1A	Item B-1D	Item B-2:
1	UTI Structured Debt Opportunities Fund I	21.28%	For	For	For
2	Axis Bank Limited	18.67%	Against	For	For
3	ICICI Bank Limited	15.83%	Against	For	For
4	State Bank of India	15.45%	Against	For	For
5	Aion Direct Private Limited	9.27%	For	For	For
6	Bank of Baroda	9.22%	Against	Against	For
7	Export Import Bank of India	4.75%	For	For	For
8	Yes Bank Limited	1.95%	Against	Abstained	Abstained
9	DBS Bank India Limited	1.65%	For	For	For
10	Anand Rathi Global Finance Ltd	1.45%	Abstained	Abstained	Abstained
11	Sunidhi Capital Private Limited	0.48%	For	For	For
Total Percentage Voting <b>FOR</b> the Resolution(s)		100.0%	37.43%	87.38%	96.60%
Total Percentage Voting <b>AGAINST</b> the Resolution(s)			61.12%	9.22%	0.00%
Total Percentage <b>ABSTAINED</b> from Voting on the			1.45%	3.40%	3.40%
		<b>Results</b>	<b>Not Passed</b>	<b>Carried</b>	<b>Carried</b>
<b>Item B-1A</b>	To re-vote upon the Resolution Plan submitted by the Deep Industries Limited in terms of regulation 39(3B)				
<b>Item B-1D</b>	To Discuss and Approve the Appointment & Fee of the Liquidator				
<b>Item B-2:</b>	To Discuss and Ratify the Payments made or to be made by the RP				

- I. That in view of the above, the Resolution Professional submits that since no Resolution Plan has been approved by the COC within the Corporate Insolvency Resolution Process period, he is constrained to approach the Hon'ble Adjudicating Authority for appropriate directions/ orders under the provisions of the Code, seeking Liquidation of the Corporate Debtor and, hence, this application.
- J. Heard the counsel appearing for the Resolution Professional and perused the record. Considering the above facts and circumstances, the COC rejected the Resolution Plan which was put to re-vote in the 14<sup>th</sup> COC meeting held on 29.03.2022 and no other Resolution Plan was approved with the requisite majority of voting share, also the substantial time for the CIRP has exhausted including all the extension period granted by this Tribunal to the Applicant at various stages of the CIRP. Therefore, this Bench feels there is no option except to put the Corporate Debtor Company into Liquidation as a going concern as per the Code as well as also to protect the asset of the Corporate Debtor from further deterioration. Since, no Resolution Plan has been approved by the COC with a requisite majority as envisaged under the Code, this Tribunal has very limited judicial review in such matters of commercial wisdom. In view of the above facts, this Bench feels that this is a fit case for ordering Liquidation as a going concern of the Corporate Debtor. The Counsel appearing for the Applicant also prayed to appoint **Mr. Girish S. Juneja (Regn No: IPA-001/IP-P00999/ 2017-2018/11646)**, Resolution Professional, to act as the Liquidator.
- K. Accordingly, the Interlocutory Application Number 959 of 2022 is allowed directing Liquidation of the Corporate Debtor as a going concern. Accordingly, we pass the following:

**ORDER**

The above I.A. No. 959 of 2022 is **allowed** and the Corporate Debtor, Mercator Limited is ordered to be liquidated as a going concern.

- a. **Mr. Girish S. Juneja (Regn No: IPA-001/IP-P00999/ 2017-2018/11646)** and having office at 22 Dignity Apartments, Bon Lane, 7 Bungalows, Versova, Andheri (W) Mumbai: 400 053 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.
  
- j. The Registry is directed to communicate this order to the Liquidator

With the above directions, this application i.e. I.A. No. 959 of 2022 is hereby allowed and disposed of.

**SD/-**

**MADHU SINHA  
MEMBER (TECHNICAL)**

**SD/-**

**H.V. SUBBA RAO  
MEMBER (JUDICIAL)**