

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-V

IA 84/MB-V/2023

IN

CP (IB) 556/IBC/MB/2021

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

Mr. Brijendra Kumar Mishra

...Resolution Professional/Applicant

In the matter of

Union Bank of India

...Financial Creditor

Vs.

Pandhe Infracons Private Limited

...Corporate Debtor

Order delivered on: 11.08.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances :

For the Applicant : Adv. Umang Mehta i/b Dhruve Liladhar & Co.

ORDER

Per: Bench

1. The above application I.A. No. 84/2023 is filed by Resolution Professional, **Mr. Brijendra Kumar Mishra** (hereinafter referred to as the "**Applicant**") seeking liquidation of **Pandhe Infracons Private Limited**

(hereinafter referred to as the “**Corporate Debtor**”) under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “**the Code**”), praying for following reliefs:

- a) *That his Hon’ble Tribunal be pleased to pass appropriate orders for liquidation in respect of the Corporate Debtor under Section 33(1) (a) and Section 33 (2) of the Code;*
- b) *That this Hon’ble Tribunal be pleased to appoint Liquidator of the Corporate Debtor under Section 33(1) (a) and Section 33 (2) of the Code;*
- c) *That this Hon’ble Tribunal be pleased to appoint the Applicant as the Liquidator of the Corporate Debtor;*
- d) *That this Hon’ble Tribunal be pleased to pass such other and further orders as this Hon’ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case.*

2. The brief facts of the application are as follows:

- a) The Applicant mentions that this Tribunal vide its order dated 06.09.2021 in Company Petition No. 556/IBC/MB/2021 admitted the petition under Section 7 of the Code, filed by Union Bank of India (hereinafter referred to as the “**Financial Creditor**”) and Corporate Insolvency Resolution Process was initiated against the Pandhe Infracons Private Limited (hereinafter referred to as the “**Corporate Debtor**”). Mr. Brijendra Kumar Mishra (“**Applicant**”) was appointed as the Interim Resolution Professional of the Corporate Debtor by this Tribunal.

- b) In the 2nd CoC meeting held on 02.12.2021, the members of CoC approved the appointment of the Applicant as the Resolution Professional (“**RP**”) in the matter.
- c) Upon the receipt of the data from the Suspended Directors and the records of the Corporate Debtor, the Applicant on the basis of the same prepared the Information Memorandum and in or around 10th February 2022 circulated the same to the members of the CoC upon receiving appropriate confidentiality undertaking.
- d) The Applicant has also appointed two registered valuers namely a) Kanti Karamsey & Co. and b) Mr. Keshav Chikodi on 4th January 2022 for determining Fair Value and Liquidation Value of the assets of Corporate Debtor as on Insolvency Commencement Date i.e., 6th September 2021.
- e) The Applicant published Form G on 3rd March 2022, in Free-Press Journal (Maharashtra) being one English Newspaper and in Navshakti (Maharashtra) and in Lokmat (Solapur) being vernacular Newspapers as required under the provisions of the Code.
- f) It is submitted that the Corporate Insolvency Resolution Process (“CIRP”) for the Corporate Debtor commenced on 6th September 2021 and the period of 180 (one hundred eighty) days, in terms of Section 12 (1) of the Code expired on 5th March 2022. However, due to outbreak of the third wave of Covid-19, the CIRP could not be completed within a period of 180 days from the date of admission of CIRP. In view thereof, the Resolution Professional filed an Interlocutory Application No. 612 of 2022 before this Tribunal seeking

extension of period of 90 days from 5th March 2022 for completion of CIRP Process. This Tribunal vide an Order dated 11th March 2022, was pleased to grant an extension of 90 days to the Applicant for completion of CIRP.

- g) On 13th April 2022, the Applicant conducted 4th COC meeting wherein the Applicant appraised the COC about the receipt of Expression of Interest ("EOI") from Prospective Resolution Applicants pursuant to Extension Order and publication of Expression of Interest. The Applicant received the Expression of Interest from the following three companies as mentioned herein under:
- i. Kalyan Toll Infrastructure Limited
 - ii. Manorama Multi-State Co-operative Credit Society Limited
 - iii. Suyog Telematics Limited in consortium with Mr. Ankur Anil Pandhe.
- h) Upon receipt of EOI from Prospective Resolution Applicants, request for Resolution Plan documents along with Evaluation Matrix, and Information Memorandum ("Documents") to be shared with Prospective Resolution Applicants were put to vote.
- i) The Applicant received the last Resolution Plan on 1st June 2022, the Resolution Professional could have examined or sought an advice regarding the feasibility and compliance of the Resolution Plan in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and complete the entire process of CIRP on or before 9th June 2022. In light thereof, in the interest of the revival of the

Corporate Debtor, the Resolution Professional filed an Interlocutory Application bearing no. 1577 of 2022 seeking further exclusion of a period of 60 days from 11th June 2022. Due to paucity of time, the said Application could not be heard before this Tribunal. Therefore, the same is pending and sub-judice as on date. On the account of the pendency of the said Interlocutory Application the CIRP of the Corporate Debtor was at standstill. Hence, in the interest of revival of the Corporate Debtor, the Applicant proceeded with its duties as contemplated under the code.

- j) Thereafter, the Applicant conducted the 7th Meeting of the CoC as on 22nd July 2022 wherein the CoC deliberated and decided that, since Mr. Ankur Pandhe has been declared a willful defaulter, M/s. Suyog Telematics in consortium with Mr. Ankur Pandhe is disqualified to submit a Resolution Plan. In the said meeting, the Resolution Plan submitted by one Manorama Multistate Cooperative Credit Society Limited, was discussed and deliberated. In pursuance to the same, the CoC informed Manorama Multistate Cooperative Credit Society Limited to submit the revised Resolution Plan at the earliest.
- k) Thereafter, the Applicant conducted the 8th and 9th Meeting of the CoC as on 23rd August 2022 and 24th September 2022. In the said meetings, the Resolution Plan submitted by Manorama Multistate Cooperative Credit Society Limited was deliberated and discussed. In the 9th Meeting of the CoC held on 24th September 2022, the CoC called upon the Resolution Applicant to submit a revised Resolution Plan within a period of 3 days from the date of the said meeting.

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- iv. The Applicant conducted the 10th meeting of the CoC on 14th November 2022 and thereafter adjourned to 17th November 2022 wherein the Applicant apprised the members of the CoC that the only Resolution Applicant of the Corporate Debtor did not submit the Resolution Plan. It was further put to the attention of the CoC that the Applicant has taken out an Application for the extension of CIRP period by 60 days and the same is pending before this Tribunal. It was further apprised that the 330 days of CIRP of the Corporate Debtor has expired. The CoC discussed the matter in detail and with 76.58% voting has resolved to liquidate the Corporate Debtor. It was further resolved by the majority of the members of the CoC to appoint the Applicant as the Liquidator of the Corporate Debtor and to sell the Corporate Debtor as a going concern.
3. Heard the counsel appearing for the Resolution Professional and perused the record. The counsel for the Resolution Professional submits that no Resolution Plan has been received and there is no option except to put the Corporate Debtor Company into Liquidation as per the Code as well as also to protect the asset of the Corporate Debtor from further deterioration. The counsel appearing for the Applicant also filed consent letter to act as the liquidator. In view of the above facts, this Bench feels that this is a fit case for ordering Liquidation of the Corporate Debtor. Accordingly, the Interlocutory Application Number 84 of 2023 is allowed directing Liquidation of the Corporate Debtor. Accordingly, we pass the following:

ORDER

4. The above I.A. No. 84/MB-V/2023 is allowed and the Corporate Debtor **Pandhe Infracons Private Limited** is ordered to be liquidated.

- a. **Mr. Brijendra Kumar Mishra**, having Registration No. IBBI/IPA-002/IP-N00109/2017-2018/10257, 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. With the above directions, this application i.e. I.A. No. 84 of 2023 is hereby allowed and disposed of.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)