

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V
(Part Heard Bench)

Item No.-206

IB-728/ND/2021

Intervention Petition/31/2023, IA/992/2023

IN THE MATTER OF:

Eicher Polaris Pvt. Ltd.

....Applicant

SECTION

U/s 59 IBC

Order delivered on 16.10.2023

CORAM:

**SHRI P.S.N PRASAD,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :
For the Respondent :
For the Liquidator : Mr.SumantBatra, Mr. VarunKalra, Mr. Nikunj
Mahajan, Advs.

ORDER

The Intervention Petition No. 31 of 2023 filed in this CP (IB) No. 728/2021 stands allowed vide separate order. Therefore, the Applicant is directed to make necessary amendments in the Memo of Parties, and implead the intervener in C. P. (IB) No. 728/ND/2021. In light of the above, C. P. (IB) No. 728/ND/2021, stands de-reserved. The Registry is directed to list the matter for hearing before Regular Bench.

List the matter on before the Regular Bench on **26.10.2023**.

S/d-
(DR. BINOD KUMAR SINHA)
MEMBER (T)

S/d-
(P.S.N PRASAD)
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
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Item No.-206
IB-728/ND/2021
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IN THE MATTER OF:

Eicher Polaris Pvt. Ltd.

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SECTION

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Order delivered on 16.10.2023

CORAM:

**SHRI P.S.N PRASAD,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IA/992/2023 in IB-728/ND/2021 is **allowed**.

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(P.S.N PRASAD)
MEMBER (J)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-V
I.A./992/2023
IN
COMPANY PETITION NO. (IB)-728/ND/2021

Application under section 35(1)(n) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rule, 2016.

IN THE MATTER OF:

EICHER POLARIS PRIVATE LIMITED

CIN: U34300DL2012PTC243453
Address: 3rd Floor, Select Catwalk,
A-3 District Centre, Saket, New
Delhi- 110017.

... Corporate Person

AND

IN THE MATTER OF:

MR. HITESH GOEL

(Erstwhile) Liquidator of the
Corporate Person.

...Applicant/(Erstwhile) Liquidator

Versus

**REGISTRAR OF COMPANIES, NEW DELHI
& OTHER**

Address: 4th Floor, IFCI Tower, 61,
Nehru Place, New Delhi- 110019

....Respondent

IN THE MATTER OF:

MR. AMIT JAIN

The Liquidator for the Corporate Person.
KPMG Restructuring Services LLP,
Address: Building 10, Tower B,
8th Floor, DLF Cyber City Phase II
Gurugram- 122002

... Applicant/Liquidator

Versus

**REGISTRAR OF COMPANIES, NEW DELHI
& OTHER**

Address: 4th Floor, IFCI Tower, 61,
Nehru Place, New Delhi- 110019

....Respondent

Order Pronounced on: 16.10.2023

CORAM

SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Applicant : Adv. Sumant Batra,
Adv. Mr Shahan Vela
For the RoC : Adv. Ms. Shankari Mishra,
Adv. Ms. Niharika Tanwar
For the Respondent :

ORDER

PER: SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

1. This IA/992/2023 has been filed by the Liquidator on behalf of the Corporate Person under section 35(1)(n) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rule, 2016 with the following prayers;
 - i. To place the additional facts and documents on Record.
 - ii. To pass any other order as deem fit.

Averment by the Applicant

2. It was averred in the Application that the Liquidator has complied with the Order dated 13.10.2022 and 05.12.2022 of this Adjudicating authority , whereby this Adjudicating authority allowed the I.A No. 4772 of 2022 filed by the Corporate Person and directed the Office of Collector of Stamp, Revenue Department, Government of NCT of Delhi (“Revenue Department”) to adjudicate the amount of stamp duty payable by the Corporate Person to the Revenue Department, and accordingly issue the requisite challans.

3. The Applicant further submitted that, in compliance of abovesaid Orders the Revenue Department has adjudicated the stamp duty and issued the challans for all five (5) share certificates as per attached Annexure A-1 (Colly). The Applicant further contented that pursuant to Revenue Department's adjudication, the Corporate Person through the Liquidator has paid complete amount of stamp duty along with the late penalty imposed by the Revenue Department as shown below:

Date of Allotment	No. of shares	Face Value	Stamp duty alongwith late penalty paid by the Corporate Person
21-Sep-17	2,30,00,000	23,00,00,000/-	6,60,000
08-May-18	1,00,00,000	10,00,00,000/-	1,80,000
18-Jun-18	1,00,00,000	10,00,00,000/-	1,00,000
28-Jan-19	2,00,00,000	20,00,00,000/-	6,50,000
29-April-20	19,78,000	1,97,80,000/-	1,18,680
Total	6,49,78,000	64,97,80,000/-	17,08,680

Analysis and Findings

4. We have heard the Applicant and perused the case records and the averments made in the application. The relevant documents annexed with the respective submissions have also been examined. On perusal of the record, we observed that the Applicant has duly complied the directions given by this Adjudicating Authority through its Order dated

13.10.2022 and 05.12.2022. Hence, we are of the view that no prejudice shall be caused to any interested parties, if the Applicant is allowed to place the above mentioned facts and documents on record.

5. Accordingly, subject to the aforesaid observations, the present Application i.e., I.A./992/2023 in (IB)-728/(ND)/2021 filed by the Liquidator on behalf of the Corporate Person under Section 35(1)(n) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rule, 2016, stands allowed.

Let a copy of order be served to parties

Sd/-

(DR. BINOD KUMAR SINHA)

MEMBER (TECHNICAL)

Sd/-

(P.S.N. PRASAD)

MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-206

IB-728/ND/2021

Intervention Petition/31/2023

IN THE MATTER OF:

Eicher Polaris Pvt. Ltd.

.... Applicant

SECTION

U/s 59 IBC

Order delivered on 16.10.2023

CORAM:

**SHRI P.S.N PRASAD,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. Intervention
Petition/31/2023 in IB-728/ND/2021 is **allowed**.

**Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (T)**

**Sd/-
(P.S.N PRASAD)
MEMBER (J)**

**THE NATIONAL COMPANY LAW TRIBUNAL
COURT V, NEW DELHI**

Int. Pet. 31/2023

IN

Company Petition No. (IB) – 728/(ND)/2021

*Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of NCLT Rules, 2016.*

IN THE MATTER OF:

EICHER POLARIS PRIVATE LIMITED
CIN: U34300DL2012PTC243453
HAVING ITS REGISTERED OFFICE AT 3RD FLOOR,
SELECT CITYWALK, A-3,
DISTRICT CENTRE, SAKET, NEW DELHI-110017

..... CORPORATE PERSON

AND IN THE MATTER OF-

MULTIX OWNERS AND USERS WELFARE SOCIETY,
THROUGH ITS SECRETARY, AUTHORIZED SIGNATORY
AND HAVING REGISTERED OFFICE AT 8/353-C,
KOTTAYIL HOUSE, SS ROAD, VENGARA P.O
MALAPPURAM DISTRICT KERALA-676304

.... PRESENT APPLICANT

VS

1. MR. HITESH GOEL
THE LIQUIDATOR APPOINTED BY THE CORPORATE PERSON
FOR CONDUCTING THE VOLUNTARY PROCESS OF THE
CORPORATE PERSON,
C4/1002, THE LEGEND APARTMENTS, SECTOR 57,
GURGAON, HARYANA, 122011

.... LIQUIDATOR

2. EICHER POLARIS PRIVATE LIMITED
CIN: U34300DL2012PTC243453
HAVING ITS REGISTERED OFFICE AT 3RD FLOOR,
SELECT CITYWALK, A-3,

**Int. Pet. 31 of 2023
IN
CP(IB) No. 728/ND/2021
Order Delivered On: 16.10.2023**

DISTRICT CENTRE, SAKET, NEW DELHI-110017

... CORPORATE PERSON

Order Pronounced on: 16.10.2023

CORAM:

SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Judy James, Mr. Pervinder Mr. Avinash
Bhati, Advs.

For the Respondent : Mr. Shahan Ulla, Mr. Nikunj Mahajan, Mr. Varun
Kalra, Advs.

ORDER

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 on behalf of Multix Owners and Users Welfare Society, seeking permission of this Adjudicating Authority to implead itself in C.P. (IB) NO. 728/ND/2021.

The applicant in the present application has prayed for the following reliefs :-

- a) *Direct the liquidator, the Applicant in C.P (IB) NO. 728/ND/2021 to implead Multix Owners and Users Welfare Society i.e Applicant, as a party respondent in the said application; and*
- b) *Permit Applicant to intervene in C.P. (IB) NO. 728/ND/2021;*

Int. Pet. 31 of 2023

IN

CP(IB) No. 728/ND/2021

Order Delivered On: 16.10.2023

c) Pass any other order(s) or direction as this Hon'ble Tribunal may deem fit and proper in facts and circumstances of the present case.

2. Briefly stated the facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows: -

- i. The present Applicant submits that the liquidation proceedings initiated by the Liquidator in C.P. (IB) NO. 728/ND/2021 is based on false declaration of solvency and in total absence of the required satisfaction as stated under Section 59(3)(b) of the Code. That on July 01, 2019, a case titled as Multix Owners and Users Welfare Society (Through its Secretary) Vs Eicher Polaris Pvt. Ltd. & Ors Consumer Complaint C.C. No. 1178 of 2019 was filed before the Hon'ble National Consumer Dispute Redressal Commission, by 274 persons alleging that the Corporate Person, along with other parties, is responsible for unfair trade practices, deficiency of goods, restrictive trade practices etc. The complainant, inter-alia, prayed for reimbursement of the cost of the vehicle in dispute and a compensation of Rs. 3 crores along with interest. A Copy of the Consumer Complaint in CC No. 1178/2019 is placed on record as Annexure A-2.
- ii. To ensure continuity of repair and maintenance services and availability of vehicle's spare parts to the purchasers of vehicles, Corporate Person entered into a service provider agreement with TVS Automobile Solutions Private Limited dated January 14, 2020 ("TVS ASPL") for 5 years. As per the agreement TVS ASPL shall provide repair, warranty & maintenance services and provide spare parts during the remaining useful life of the vehicles sold with warranty. A True Copy of the service provider agreement dated 14.01.2020 entered between Corporate Person and TVS ASPL is placed on record as Annexure 3. This agreement was produced before the Hon'ble Consumer Commission in the month of August, 2022 for the first time and the present applicant was not even aware of the same, and even this proceeding was not informed, except when the applicant found the

- service provider agreement in the Consumer Forum to be just an agreement on paper which is worth 4.97 crores and stamped on just a 100-rupee stamp on non-judicial paper.
- iii. That as required by the Proviso to Section 59(3) (c) of the Code, on February 18, 2020, a meeting of the Creditors of the Corporate Person was convened. In the said meeting, the Creditors representing at least two-thirds in value of the debt of the Corporate Person approved the special resolutions passed in the EGM of the Corporate Person to initiate the voluntary liquidation of the Corporate Person and appointment of the liquidator. That on passing of the said resolutions by the Shareholders and the Creditors of the Corporate Person, the voluntary liquidation proceedings are deemed to have commenced on and with effect from February 18, 2020, the Liquidator took over the management and control of the affairs of the Corporate Person and its assets with effect from February 18, 2020.
- iv. In CC No.1178 of 2019, the matter was first listed in 2019 and more than 19 hearings have been conducted and the matter is at the stage of evidence. The True Copy of the proceedings report and the Latest Order in CC No.1178 of 2019 is placed on record. That it came to the notice of the Applicant only on an apprehension when the terms of agreement were not implemented in letter and spirit, and found that terms of the Service Provider Agreement were in force, except for the same being on paper. The society then decided to inspect the file on the instruction of the counsel for the society. That if the Service Provider agreement would have been implemented and enforced in letter and spirit, it would have resolved all the issues of the retail customers in India. The sole ground that the Corporate Person exited the market without any notice and without any resolution to its existing customers and by executing that agreement it was an admission of its fault, and later when there was stone walling by the TVSASPL officials and suspicious behavior of the TVSASPL when it refused to provide services in accordance with the Agreement, it became imperative

for the Applicant to come and approach this Adjudicating Authority by inspecting the file and intervening in this process.

- v. Therefore, a clear vested legal right has accrued in favour of the present Applicant for the consideration of its claims before the Hon'ble NCDRC, New Delhi. The 'Service Provider Agreement' is an unregistered document and inadequately stamped and the terms of the agreement already stand vitiated and a bone of contention is the consumer complaint filed by the Applicant. That the liquidation order if issued will strike major blow on the claim of the Applicant and poor members who don't have the resources to approach any court due to the economic strata in which they belong. As such any decision in the present Interlocutory Application shall vitally affect the rights of Present Applicant and its members in the pending Voluntary Liquidation Process of the Corporate Debtor. It is, therefore, imperative that the Present Applicant, being a necessary, and in any event a proper party, should be impleaded as a party Respondent in the application filed by the liquidator, as no final adjudication can take place in absence of the Present Applicant.
- vi. The Applicant is a charitable organization namely, Multix Owners and Users Association in the State of Kerala. The Association has filed a claim for Rs. 10 Crores before the National Consumer Forum, New Delhi. In the said case, the Corporate Applicant namely Eicher Polaris has submitted an agreement evidencing that spares and service are being provided by TVS ASPL Pvt Ltd, Guindy, Chennai and a sum of Rs 4.97 crores were paid to TVS for the same. On an apprehension, regarding the statements made by the Corporate Person, an inspection was conducted by the present applicant at the time after filing this Application and finalizing the same for listing. On inspection of the file in the voluntary liquidation proceedings, it was revealed that only in the indexes and the content one can find the mention of such a service provider agreement with TVSASPL. In the very same petition at para 7.4, the Corporate Person contends that the assets

lying at the factory premises have been destroyed in fire and subsequently claims insurance on the same. A bare perusal of the claim shows that the entire factory being burnt down on 21st October, 2020 and if that is the case, then under what circumstances was a service provider agreement dated 14/01/2020 with head of terms undated alleged to have consented on 19/10/2019 with stamp paper dated 18/12/2019 and made effective on 01.11.2019. It only infers that they never had intentions to perform the service obligations as per the agreement.

- vii. A bare perusal of the value of immovable and moveable assets (Page 17 Volume 1) clearly shows that almost 50% of the value and inventory stood depleted, so how was it conceivable on the Corporate Person to implement the Service Provider Agreement signed and executed in January, 2020 for 5 years with TVSASPL. That it is hereby contended that the fire was caused in October, 2020 to reduce the liquidation value so as to evade claims of all retail claimants. That the total value of the spare parts required to provide TVSASPL to service the Service Provider Agreement are either in scrap form or damaged by fire, rounding off approximately 4.05 Crores. That 25 vehicles have been valued at 25 lacs approx. That the main objective is to reduce the liquidation value and with that, evade claims of its retail customer even before the claim is decided by the Hon'ble NCDRC.
- viii. That, it is nothing but fraud played by the Corporate Person in this liquidation proceedings. On inspection, and on bare perusal of the claim form, one cannot even make out the agency/ company to which the claim form has been filed with. The Service Provider Agreement is printed on a 100-rupee Stamp Paper and submitted to the National Consumer Forum. The agreement also states that GST has been paid for 4 years now to TVS ASPL, but till date, the Consumers in the Consumer Case in CC No.1178 of 2019 against Eicher Polaris have never been benefitted. We apprehend that the agreement is a name sake document filed to mislead the Hon'ble Commission and to scuttle the claims of the consumer which this

Liquidator is very keen to reject and has done the same in the past. That it is most respectfully submitted that the agreement entered into by TVS ASPL dated 14.01.2020 as claimed by Eicher Polaris be not terminated even after liquidation order is passed by this Tribunal and thereby on the contrary be directed to enforce the agreement in letter and spirit and also pay the adequate stamp duties and GST dues to the revenue Department of the State of Tamil Nadu.

- ix. That this liquidation is being hastily done to avoid the claims and an escape from statutory duties which this Adjudicating Authority is not made aware of till date. The association has been pursuing its remedy before the consumer forum but would like to place the Service Provider Agreement on record here as it involves statutory duties being evaded like inadequate stamping as this Corporate Applicant has a past history in doing so. This liquidation order if pronounced would cause grave revenue loss to the State of Tamil Nadu as even GST duty which is claimed have not been paid to State of Tamil Nadu and the Central Government on the consideration provided for in the Service Provider Agreement.
- x. It is also submitted that the presence of Present Applicant is imperative for a complete and final adjudication of all issues of priority or any questions of law or fact which may be raised. It is, therefore, reiterated that Present Applicant is both necessary and proper party to such application, and in absence of the Present Applicant, the issues raised cannot be adjudicated fully, effectively and finally. The present applicant has vital stakes in the matter and therefore is entitled to fully defend its right.

3. Briefly stated, the reply on behalf of Respondent are as follows:

- i. The Applicant has filed the present application seeking impleadment after this Adjudicating Authority reserved C.P (IB) NO. 728/ND/2021 for orders on 01.05.2023. It is submitted by the Respondent that an application for impleadment is not maintainable after the hearing has concluded and

orders are reserved. Filing of this application at this stage is an abuse of the legal process. The Applicant was aware of the pendency of the Company Petition right from after its admission in the year 2021.

- ii. It is noteworthy that a consumer case titled Multix Owners and Users Welfare Society v. Eicher Polaris Pvt. Ltd. & Ors bearing number C.C. No. 1178 of 2019 ("Consumer Complaint") was filed by 274 consumers ("Complainants/Consumers") before the Hon'ble National Consumer Dispute Redressal Commission ("NCDRC"), New Delhi in July 2019. As of the date of filing of the present Company Petition, the Hon'ble NCDRC had not issued notice to the Opposite Parties therein. While the present Company Petition was filed before this Hon'ble Tribunal on 02.10.2021, notice was issued to the Opposite Parties therein, only on 30.11.2021.
- iii. On the commencement of liquidation of the Corporate Person, a public announcement was taken out by the Liquidator on 22.02.2020 as per provisions of the Code. Out of the total 274 consumers in the Consumer Complaint, only 134 persons submitted their claims before the Liquidator on 07.07.2021 and 22.07.2021. Pursuant to the review of the documents submitted by these consumers along with the claim form, the Liquidator found that the claimants have not submitted any proof of claim and/or documents in support of the claim.
- iv. The Liquidator examined the documents and material on record with respect to the complaints filed before Hon'ble NCDRC, New Delhi and after reviewing the material and documents, the Liquidator found that no amount is payable by the Corporate Person to the said 134 consumers. The Liquidator sent letters dated 14.09.2021 and 27.09.2021 to all the 134 claimants mentioning that their claim has been rejected along with the grounds for rejection. Copy of the letters dated 14.09.2021 and 27.09.2021 are placed on record.
- v. It is noteworthy that no communication was received from any of the 134 Complainants/Consumers pursuant to that. Now, after nearly two years,

the consumers/members of the Applicant Society by way of the present application have approached this Adjudicating Authority. Further, the consumers/members of the Applicant Society did not even file a statutory appeal against the rejection of their claims. It is clear that the Applicants were fully aware of the pendency of the Company Petition and the present Application is nothing but an abuse of the legal process.

- vi. Section 42 of the Code provides the right to a person aggrieved from the decision of the Liquidator of rejection of their claim to file a statutory appeal within 14 days. No such appeal was preferred by the consumers. Accordingly, the window provided under the Code for redressal against an order passed by the Liquidator closed long ago. Having failed to avail the remedy provided by law, the Applicants cannot be allowed to agitate the same issue through an intervention/impleadment application.
- vii. Section 59 of the Code doesn't prescribe that a consumer be made party to a Company Petition seeking voluntary liquidation under the Code, nor a prior approval is required from the consumers of corporate person. Per contra, it only prescribes for the approval of the creditors of a Corporate Person and the same has been duly obtained by the Corporate Person on 20.02.2020. It is humbly submitted that the Corporate Person has complied with all the requirements for Voluntary Liquidation under Sections 35 to 53 of the Code.
- viii. It is pertinent to note that the Applicant has solely placed reliance on the Service Provider Agreement to allegedly substantiate its impleadment, however, notably Applicant is not a party to the said agreement. It is stated that Corporate Person entered into a Service Provider Agreement with TVS ASPL for providing repair and maintenance services for the vehicles manufactured and sold by the Corporate Person, irrespective of whether such vehicles are under warranty or not, for a period of 5 (five) years from 01.11.2019. This service was/is available during the warranty period as per the terms of the warranty of the vehicle purchased by the

Complainants/Consumers. The service by TVS ASPL is intended to continue post the liquidation of the Corporate Person. Hence, the Complainants/Consumers are/were free to avail such services from TVS ASPL as available in accordance with the terms of the warranty, and accordingly raise their grievances, if any, before the appropriate tribunal against TVS ASPL.

- ix. Further, the Applicant has already approached the Hon'ble NCDRC seeking relief therein. Without prejudice to the fact there is no deficiency of service by the Corporate Person, the alleged cause of action, if any, would arise only against TVS ASPL in terms of the Service Provider Agreement. Therefore, filing of the present Application is merely an attempt at forum shopping, and to derail the process of Voluntary Liquidation of the Corporate Person, which is against the basic principles of the Code.
 - x. It is submitted that the Service Provider Agreement was filed before the Hon'ble NCDRC on 22.08.2022. The same is evident from the Index of Documents filed by the Corporate Person herein before the Hon'ble NCDRC, which has been annexed by the Applicant along with the present Application on Page 74. It is also pertinent to note that the Liquidator intimated the Applicant about the Service Provider Agreement dated 14.01.2020 with TVS through the rejection of claim letters dated 14.09.2021.
 - xi. Therefore, the Applicants were aware of the Service Provider Agreement entered between the Corporate Person with TVS back in September 2021, and have however approached this Adjudicating Authority highly belatedly seeking impleadment, solely on the ground of alleged lack of service provided by TVS to the Applicants. It is submitted that the Applicant has based the present application on mere surmises and conjectures.
4. We have gone through the documents on record and arguments advanced by Ld. Counsels for the Applicant and the Respondent.
 5. In the present case, it is stated by the Applicant that on July 01, 2019, a case titled as Multix Owners and Users Welfare Society (Through its

Secretary) Vs Eicher Polaris Pvt. Ltd. & Ors Consumer Complaint C.C. No. 1178 of 2019 was filed before the Hon'ble National Consumer Dispute Redressal Commission, by 274 persons alleging that the Corporate Person, along with other parties, is responsible for unfair trade practices, deficiency of goods, restrictive trade practices etc. The Applicant further contends that the liquidation proceedings initiated by the Liquidator in C.P. (IB) NO. 728/ND/2021 is based on false declaration of solvency and in total absence of the required satisfaction as stated under Section 59(3)(b) of the code.

6. In the instant application, the main issue which arises before this Adjudicating Authority is that, whether the Applicant has locus standi to implead in C.P. (IB) NO. 728/ND/2021, which was reserved by this Adjudicating Authority on 01.05.2023?
7. In order to determine the above-mentioned issue, this Adjudicating Authority needs to see the grounds on which the claim was filed by the Applicant before the Hon'ble NCDRC. It is observed that the Applicant is a charitable organization namely, Multix Owners and Users Association in the State of Kerala and the Association has filed a claim for Rs. 10 crores before the National Consumer Forum, New Delhi. In the said case, Eicher Polaris Pvt. Ltd. (Corporate Person) has submitted an agreement evidencing that spares and service are being provided by TVS ASPL Pvt. Ltd., Guindy, Chennai and a sum of Rs 4.97 crores were paid to TVS ASPL for the same. On an apprehension, regarding the statements made by the Corporate Person, an inspection was conducted by the Present Applicant, and on inspection of the file in the Voluntary Liquidation proceedings, it was revealed that only in the indexes and the content, one can find the mention of such Service Provider Agreement with TVSASPL, but the Annexure numbered as Annexure A-9 is a Termination Agreement and the Service Provider Agreement was concealed before this Adjudicating Authority. Therefore, on perusal of the documents on record in C.P. (IB) NO. 728/ND/2021, the contention of the Applicant that the Service Provider

Agreement was concealed before this Adjudicating Authority, stands substantiated.

8. It is also observed that the proceedings before the Hon'ble National Consumer Dispute Redressal Commission, is filed by 274 persons alleging that the Corporate Person, along with other parties, is responsible for unfair trade practices, deficiency of goods, restrictive trade practices etc. The said case is listed for next day of hearing before the Hon'ble NCDRC on 02.02.2024.
9. It is clearly evident from the facts of the present case, i.e. concealment of the Service Provider Agreement by the Corporate Person in C.P. (IB) NO. 728/ND/2021, and the dispute which is raised before the Hon'ble NCDRC (in which the Corporate Person is the respondent along with 23 other respondents), that the Corporate Person has not approached this Adjudicating Authority with clean hands. Therefore, a dissolution order under Section 59 (8) of the Code, if passed, without hearing the claimants would tantamount to enable the Corporate Person to evade claims and statutory duties owed by them to various stakeholders.
10. At this stage it would be relevant to consider the provision of Section 59 (3) of IB Code, 2016. The same is reproduced below: -

"... (3) Without prejudice to sub-section (2), voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely: —

(a) a declaration from majority of the directors of the company verified by an affidavit stating that—

(i) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

(ii) the company is not being liquidated to defraud any person; ..."

11. On bare perusal of Section 59(3)(a)(ii), it can be observed that one of the essential conditions for voluntary liquidation of a Corporate Person is that, the Company is not being liquidated to defraud any person. Therefore, the Voluntary Liquidation proceedings filed by the Corporate Person in C.P. (IB) NO. 728/ND/2021, without resolving the issues pending before the Hon'ble NCDRC, is also against the objective envisaged in the Code.
12. Therefore, this Adjudicating Authority is of the considered view that the Applicant being a necessary party, has locus standi to intervene in C.P. (IB) NO. 728/ND/2021. Therefore, we see no impediment in allowing the instant application bearing Intervention Petition No. 31 of 2023, and accordingly the Applicant is permitted to implead itself in C.P. (IB) NO. 728/ND/2021 and the order reserved for passing final orders stands de-reserved. The C.P. (IB) NO. 728/ND/2021 may be listed before the Regular Bench for doing the needful.

Let copy of the order be served to the parties.

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)

Sd/-
(SHRI. P.S.N. PRASAD)
MEMBER (JUDICIAL)