

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 22nd APRIL, 2024, 10:30 A.M.

**IA (IBC)/13/GB/2024
IA (IBC)/127/GB/2023
In CP (IB)/26/GB/2022**

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

IN THE MATTER OF	M/s Sundaram Mahadeo Autoworld Pvt. Ltd. 2. Sumit Agrwal Vs State Bank of India, 2. Tata Capital Financial Services Ltd., 3. Tata Motors Finance Solutions Ltd., 4. Indusind Bank Ltd.
UNDER SECTION	U/s 10 of IBC, 2016

For Petitioner (s) : Mr. V. Wadehra, Adv. --- IA (IBC)/127/GB/2023
Mr. N. Goenka, Adv. --- IA (IBC)/13/GB/2024

For Respondent (s) : Mr. V. Wadehra, Adv. --- IA (IBC)/13/GB/2024

ORDER

IA (IBC)/13/GB/2024

Order pronounced in the open court *vide* separate order, in the result the above IA is **dismissed**.

Detailed order follows.

IA (IBC)/127/GB/2023

Order pronounced in the open court *vide* separate order, in the result the above IA is **allowed**.

Detailed order follows.

Sd/-
Satya Ranjan Prasad
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)

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IA (IBC)/127/GB/2023

In the Matter of:

An Application under Section 33(2) and Section 34 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016 for an order of Liquidation of the Corporate Debtor;

-And-

In the Matter of:

Sandeep Khaitan, Resolution Professional of the Corporate Debtor having address at 2nd Floor, Sanmati Plaza, G.S. Road, ABC, Guwahati- 781 005, Assam;

... Applicant

-In-

Sundaram Mahadeo Autoworld Private Limited, NH-52, Near ITBP Headquarters, Bihaguri, Sonitpur- 784153, Assam;

...Corporate Applicant

-Versus-

1. **State Bank of India**, Central Office at Madam Cama Road, Mumbai-400021 with branch office at Tezpur Mission Chariali, P.O- Ketekibari, District- Sonitpur;
2. **Tata Capital Financial Services Limited (TCFSL)**, registered office at 11th Floor, Tower A, Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai- 400013, Maharashtra;
3. **Tata Motors Finance Solutions Limited (TMFSL)**, registered office at 14, 4th Floor, Sir HC Dinshaw Building, 16 Horniman Circle Fort, Mumbai- 400001, Maharashtra;
4. **IndusInd Bank Limited (IBL)**, registered office at 2401, General Thimmayya Road, Cantonment, Pune- 411001.

... Respondents

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In the Matter of:

An application under Section 60(5) of the Insolvency and Bankruptcy Code 2016, read with Rule 11 of NCLT Rules, 2016;

-And-

In the Matter of:

Amit Agarwal, R/0 D-121, First Floor, Phase-I, Ashok Vihar, New Delhi- 110052;

... Applicant

-Versus-

1. **Sandeep Khaitan**, Resolution Professional of the Corporate Debtor having address at 2nd Floor, Sanmati Plaza, G.S. Road, ABC, Guwahati- 781 005, Assam;
2. **State Bank of India**, Central Office at Madam Cama Road, Mumbai-400021 with branch office at Tezpur Mission Chariali, P.O- Ketekibari, District- Sonitpur;
3. **Tata Motors Finance Solutions Limited(TMFSL)**, registered office at 14, 4th Floor, Sir HC Dinshaw Building, 16 Horniman Circle Fort, Mumbai- 400001, Maharashtra;
4. **Tata Capital Financial Services Limited(TCFSL)**, registered office at 11th Floor, Tower A, Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai- 400013, Maharashtra;
5. **IndusInd Bank Limited (IBL)**, registered office at 2401, General Thimmayya Road, Cantonment, Pune- 411001.

... Respondents

Coram:

Shri H. V. Subba Rao : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Appearances:

IA (IBC)/127/GB/2023;
For Applicant : Mr. V. Wadehra, Adv

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For Applicant : Mr. N. Goenka, Adv. ;
Mr. S. Dutta Dobhal, Adv.
For Respondents : Mr. V. Wadehra, Adv. for R-1

Order pronounced on: 22.04.2024

COMMON ORDER

1. **IA (IBC) 127/GB/2023** has been filed under Section 33(2) and Section 34 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016 for an order of Liquidation of the Corporate Debtor, i.e. Sundaram Mahadeo Autoworld Private Limited. On the other hand, **IA (IBC)/13/GB/2024** has been filed under Section 60(5) read with Rule 11 of the National Company Law Tribunal, Rules, 2016 as an objection to the abovementioned IA(IBC) 127/GB/2023.
2. Since, the issues for consideration involved in both the above IAs are common, both the IAs are hereby disposed of through this common order.
3. The main crux of the issues involved in the above IAs are as follows:
 - 3.1 An Application for initiation of the Corporate Insolvency Resolution Process (“**CIRP**”) under Section 10 was admitted *vide Order* of this Bench dated 20th January, 2023 in CP (IB)/26/GB/2022. Mr Sandeep Khaitan (“**Applicant**”) was appointed as the Resolution Professional (“**RP**”) in place of the Interim Resolution Professional (“**IRP**”) *vide Order* dated 17th March, 2023.
 - 3.2 The RP published Expression of Interest (EoI) on 10th April, 2023 in “The Assam Tribune (English)” and “Asomiya Pratidin (Assamese)” in accordance with Regulation 36A of the CIRP Regulation. It is understood from the minutes of the 7th CoC Meeting dated 28th June, 2023 that no resolution plan had been received by the Applicant until the due date for submission.

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- 3.3 Further, at the 8th CoC Meeting dated 12th July, 2023, the CoC decided to proceed with the publication of the second round of invitation for EoI in order to provide fresh opportunity to interested parties to submit their resolution plan for the CD. Thereafter, it is confirmed from minutes of the 9th CoC Meeting dated 26th September, 2023 that the Applicant was in receipt of two resolution plans and after detailed verification, compliant plans were sent by the Applicant to the CoC on 6th October, 2023.
- 3.4 Finally, at the 12th CoC Meeting dated 28th November, 2023, the resolution plans were put for voting. The e-voting window for the resolution ran from 30th November, 2023 to 6th December, 2023 and the CoC members with 99.78% of majority votes (0.22% abstained) approved the liquidation of the CD as a going concern, subject to the approval of the Adjudicating Authority.
- 3.5 Therefore, the abovementioned **IA (IBC) 127/GB/2023** has been filed seeking permission of this Tribunal to go ahead with the liquidation of the CD.
- 3.6 Now, Mr Amit Agarwal (“**Objector**”) *via* **IA (IBC)/13/GB/2024** has objected to **IA (IBC) 127/GB/2023**, i.e., the application seeking liquidation of the CD. The Objector submits that he is the co-owner of the total land measuring an area of 3(three) bigas, 4(four) Kathas, 11(Eleven) Lessas i.e. 56,300 square feet covered under Dag No. 395 of periodic Patta No.204, under village Rangamati, mouza Bihaguri, P.O. Pithakhowa, P.S.Tazpur, Dist. Sontipur, Assam (“**Objector’s Property**”). It is noted that the Objector’s Property has been mortgaged to SBI as security for the loan availed by the CD.
- 3.7 The CD holds leasehold rights with respect to the abovementioned Objector’s Property. However, the leasehold rights of the CD extend to only a portion of the Objector’s Property i.e. land admeasuring 20,000 square feet (“**Leased Property**”) for a term of 15 years from 01.06.2015.

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- 3.8 Further, during the course of CIRP, on 09.06.2023, Respondent No.2 (“SBI”) published the sale notice of the personal property of the objector at a reserved price of Rs. 4,23,20,000/- (Rupees Four Crore Twenty-Three Lakh and Twenty Thousand Only). During the course of 7th CoC Meeting, the issue of sale notice was raised and discussed. Respondent No.4 (“TCFSL”) raised an objection against the publication of the sale notice by SBI owing to the reason that they have filed an application under Section 95 of the IBC before this Tribunal itself in Application bearing CP(IB) No.5/GB/2023 and the effect of moratorium imposed under Section 96 of the IBC prevents any such action.
- 3.9 On 17.07.2023, the RP published a Form G and invitation of Expression of Interest (“EOI”). Later, SBI *vide* letter 05.09.2023 sent only to the RP as alleged by the Objector) unilaterally decided to include the personal property of the Objector in the CIRP of the CD, subject to SBI being paid the full value of the same. Later, the 9th CoC Meeting dated 26.09.2023 was the occasion where for the first time discussion regarding inclusion of personal property of the Objector in the CIRP of the CD took place.
- 3.10 It was also submitted by the Objector that the personal property of the Objector does not form part of the assets of the CD in the Information Memorandum and the RFRP as is reflected by the minutes of the 10th CoC Meeting held on 13.10.2023. The aforementioned minutes also highlight that the personal property of the Objector had not been valued as an asset of the CD but separate amount was to be provided to SBI for the mortgaged personal property of the Objector as the inclusion of the freehold rights of the entire land was deemed essential for the resolution of CD by SBI.
- 3.11 The Objector raised formal objection *vide* email dated 19.10.2023 sent to the RP against the inclusion of his personal property in the CIRP. RP replied *vide* email dated 25.10.2023 and cited that SBI is the sole holder of the equitable mortgage

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of the personal property of the Objector, and they are at the liberty to enforce the same as deemed fit by them. Objector through emails dated 26.10.2023, 02.11.2023 again requested not to proceed with the CIRP to the RP and the RP replied *vide* emails dated 01.11.2023 and 07.11.2023 respectively.

3.12 During the course of 11th CoC Meeting held on 16.11.2023, the objections of the Objector were for the first time formally discussed and it was affirmed that all the emails of the Objector had been duly responded to, and all the replies had been shared with the members as well. In the same meeting, TCFSL also raised specific objections against the inclusion of the personal property of the Objector in the CIRP of the CD while personal insolvency resolution proceedings against the Personal Guarantor (“**PG**”) was still pending before this Tribunal and interim moratorium was operational.

3.13 The Objector has also contended that it is settled law that personal properties of the Third Party/Shareholders/Directors cannot form part of the Resolution Plan under Regulation 37 of the CIRP Regulations. At last, the Objector has contended that RP and the CoC have pushed the CD into liquidation despite there being every possibility of a resolution of the CD displaying that there was pre-determination on the part of the RP to send CD into liquidation.

4. The Respondents in IA (IBC)/13/GB/2024 filed Reply Affidavit and submit that:

4.1 The land in question (“**Leased Property**”) over which the CD has leasehold interest is land locked within the said larger area of Objector’s personal property. The only passage providing access to the Leased Property has a single point of access/pathway which is through the Objector’s Property. The dealership constructed on the Leased Property has other facilities which extend beyond the limits of leasehold area.

4.2 The Objector has relinquished its right to file the Objection to the Liquidation Application because the minutes of every meeting, and accompanying

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annexures, containing details of the discussions and deliberations, and the decisions taken in every meeting were sent to the Suspended Board which included the Objector.

- 4.3 The inclusion of the entire land was upon deliberation and discussion in the meetings of the Committee of Creditors in the presence of the co-owner, Sumit Agarwal and in the knowledge of the Applicant, given the peculiar circumstances of the asset in question.
5. Heard the Learned Counsel appearing for both the parties. Material available on record perused. In view of the forgoing, this Tribunal is of firm view that:
- 5.1. It is necessary to deal with the objections put forth by the Objector in IA (IBC)/13/GB/2024 first before allowing or disallowing the liquidation application in IA (IBC)/127/GB/2023.
- 5.2. Now, it is apparent from Order of this Tribunal in CP (IB) No.5/GB/2023 dated 30.11.2023 that on the basis of the Loan-cum-Guarantee Agreement dated 17.01.2020 and Loan cum Guarantee Agreement dated 19.02.2021, the Directors of the CD, namely, Sumit Agarwal and Amit Agarwal (who is the Objector) have given guarantees to discharge the due payment of the loan amount and performance of obligations under the facilities to TCFSL.
- 5.3. It must be noted with concern that the abovementioned Order dated 30.11.2023 also declared the commencement of interim-moratorium under 96(1)(a) of IBC, 2016 in relation to all the debts of the personal guarantor which shall cease to have effect on the date of admission of the application against the personal guarantor by TCFSL.
- 5.4. Now, the Objector has attempted to lay down three separate grounds on which it wishes to challenge the IA (IBC)/127/GB/2023 seeking liquidation of the CD. Firstly, he cites the Order dated 30.11.2023 declaring commencement of interim-moratorium under Section 96(1)(a) of the IBC as a shield against going after

Objector's Property. Secondly, it contends that the Objector's Property cannot be a part of the liquidation proceedings as it was clandestinely included in the CIRP of the CD despite being personal property of the Objector. Thirdly, he challenges the CIRP and rejection of resolution plans resulting in CoC voting for liquidation, by resorting to accusations relating to RP and CoC not being transparent in the process, communicating incompletely, and ignoring procedure set under the IBC.

- 5.5. It is a settled principle under law that interim-moratorium under Section 96(1)(a) of the IBC does not operate as a bar on the CIRP process of the CD on behalf of which the personal guarantee was given. This would organically include the outcome of a failed CIRP process i.e. liquidation of the CD. Moreover, the interim-moratorium under Section 96(1)(a) covers only debts of the individuals who are personal guarantors to the CD, and cannot in any conceivable way hinder the decision of the CoC to liquidate the CD in their commercial wisdom.
- 5.6. In addition, it is conceded by the Objector that Objector's Property has been mortgaged to SBI as security for the loan availed by the CD. It is also the submission of the SBI that owing to the peculiar facts and circumstances and the layout of the Objector's Property, there is no efficient conceivable way to alienate the Leased Property of the CD while not touching the adjoining area of land, especially when there is one common boundary for the entire identified piece of land.
- 5.7. In *Mr Prateek Gupta & Ors v Kotak Mahindra Bank Limited Company Appeal(AT)(Insolvency) No. 147 of 2022*, the Hon'ble NCLAT permitted the composite sale of land in which a portion belonged to the CD while the larger remaining portion mortgaged to the Bank belonged to the ex-Directors of the CD. This ruling is an aid to understand how the qualms of the Objector are misplaced at this present stage of merely allowing the liquidation of the CD. Even

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if the liquidation is allowed, the abovementioned case narrates how the composite property may be treated in the following manner:

“7. After considering the submission which have been made by the Learned Counsel for the Appellant, we are of the view that in the peculiar facts and circumstances of the case, no error can be found with the Order of the Adjudicating Authority directing for composite sale of land of both the parts under SARFARSI Act, 2002. Even the Liquidator when he sells the property under the liquidation, he has to follow the procedure under the SARFAESI Act, 2002 for sale of the property..... The Proportionate amount will be given to the Liquidator which shall be in the liquidation estate hence, the Corporate Debtor cannot suffer any loss in the aforesaid sale.”

- 5.8. There is nothing on record to establish that the RP or the CoC kept the Objector in dark regarding the position and treatment of Objector’s Property in the CIRP process or have clandestinely included Objector’s Property against the provisions and procedure laid down in the Code.
- 5.9. Now that objections in IA (IBC)/13/GB/2024 have been dealt with, we channel our attention to IA (IBC) 127/GB/2023, which has been filed under Section 33(2) and Section 34 for initiating the liquidation process of the CD. At this stage, this Tribunal is only concerned *vis a vis* the appropriate compliance with the procedure under the IBC regarding voting on resolution plans, their rejection and approval of liquidation of the CD by the CoC.
- 5.10. Now, it remains an undisputed fact that at the 12th CoC Meeting concerning the CIRP of the CD dated 28th November, 2023, the resolution plans were put for voting. The e-voting window for the resolution ran from 30th November, 2023 to 6th December, 2023 and the CoC members with 99.78% of majority votes (0.22% abstained) approved the liquidation of the CD as a going concern, subject to the approval of the Adjudicating Authority.

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5.11. Further, in the same above-mentioned meeting, the CoC confirmed that Mr. Sandeep Khaitan having IBBI Registration Number IBBI/IPA-001/IP-P00532/2017-18/10957 has been appointed as the Liquidator in the matter. The Consent Letter of the Liquidator has been enclosed with the application.

5.12. In this respect, it is relevant to reproduce section 33(2) of the Insolvency and Bankruptcy Code, which is as under:

“Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors (approved by not less than sixty six percent of the voting share) to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”

5.13. From a reading of the above provision, it is clear that when a Resolution Professional at any time during the CIRP but before confirmation of Resolution Plan approaches the Adjudicating Authority with the decision of the CoC approved by not less than sixty six percent of the voting share, the Adjudicating Authority shall pass a liquidation order. In this case, the CoC with 99.78% majority votes, approved the resolution for liquidation of the Corporate Debtor. Hence, this is a fit case to order liquidation under Section 33(2) of the IBC, 2016.

6. For the aforesaid reasons, (IBC)/13/GB/2024 is DISMISSED and IA (IBC)/127/GB/2023 is ALLOWED with the following directions:

6.1 The Corporate Debtor, Sundaram Mahadeo Autoworld Private Limited, is ordered to be liquidated with immediate effect under Section 33(2) of IBC, 2016.

6.2 RP has given his consent to act as the Liquidator of the CD, which has been approved by CoC. However, in view of directions contained in IBBI Circular dated 18.07.2023 *vide* no. Liq-12011/214/2023-IBBI/840 for appointment of

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Liquidator other than IRP/RP under Section 34(4)(b) of the IBC, we are appointing **Mr. Ashok Kumar Agarwala** having IBBI Registration IBBI/IPA-001/IP-P01763/2019-2020/12755 as the Liquidator. This appointment is subject to him 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, 2019. The Liquidator's fee is to be decided as per Regulation 4 (2) (b) of IBBI (Liquidation Process) Regulations, 2016.

- 6.3 The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time. The CoC under Regulation 39C has recommended that the sale of CD should be a going concern. The Liquidator is directed to adhere to it.
- 6.4 Public Notice as contemplated under Section 33(1) of the Code shall be issued in in the same newspapers in which advertisements were issued earlier during the CIRP, stating that the Corporate Debtor is in liquidation.
- 6.5 All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel shall cease to exist in accordance with section 34(2) of the Code. These powers shall henceforth vest in the Liquidator.
- 6.6 The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in the Liquidation process of the Corporate Debtor.
- 6.7 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 a suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this

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Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.

- 6.8 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.
- 6.9 In terms of Section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Guwahati, Assam, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this order to the Registrar of Companies, Guwahati, Assam.
7. 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.
8. Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
9. File be consigned to records.

Sd/-

Satya Ranjan Prasad
Member (Technical)

Sd/-

H.V. Subba Rao
Member (Judicial)

Signed this on 22nd day of April, 2024.