



**THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH**

**IA (IB) (Liq) No. 4/CB/2024
IN
(CP (IB) No. 35/CB/2023)**

[An Application under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 read with Regulations 39B, 39C and 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016]

In the matter of:

SUSHANTA KUMAR CHOUDHARY

Resolution Professional of
Grand Auto Udyog Pvt. Ltd.
Registration No: IBBI/IPA-001/IP-P00117/2016-17/10252
64, Hem Chandra Naskar Road, Belegkata,
Kolkata, West Bengal - 700010

... Applicant/Resolution Professional

Order Pronounced on: 18.10.2024

**Coram: DEEP CHANDRA JOSHI, MEMBER (JUDICIAL)
KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)**

APPEARANCE:

For Applicant: Subham Agrawal, Adv.
Sushanta Kumar Choudhary, RP

ORDER

1. This instant application is filed by Mr. Sushanta Kumar Choudhury, Resolution Professional of the Corporate Debtor, Grand Auto Udyog Private Ltd. (hereinafter referred to as "**Applicant**") under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**Code**") for seeking liquidation order of the Corporate Debtor.




2. The averments made in the Application and submitted by the learned Counsel for the Applicant are as follows:

(i) This Adjudicating Authority vide its order dated 06.03.2024 admitted the petition under Section 7 of the Code, filed by the Financial Creditor i.e., IndusInd Bank Limited for initiation of Corporate Insolvency Resolution Process (“**CIRP**”) of the Corporate Debtor. The Applicant herein was appointed as the Interim Resolution Professional (“**IRP**”) of the Corporate Debtor.

(ii) The Applicant made a public announcement of the CIRP of the Corporate Debtor on 08.03.2024, for inviting submissions of claims by the creditors. Initially, the Committee of Creditors (“**CoC**”) was constituted wherein the IndusInd Bank Limited, Employees Provident Fund Organization and CT and GST Circle were part of it. Subsequently, on receipt of a claim from the State Bank of India, the CoC was reconstituted wherein the IndusInd Bank Limited and State Bank of India formed the CoC with voting share of 95.04% and 4.96% respectively.

(iii) On appointment as Resolution Professional, the Applicant had appointed Transaction Auditors to identify the nature of transactions entered into by the management of the Corporate Debtor prior to the CIRP initiation date involving any kind of Preferential, Undervalued, Fraudulent and Extortionate (PUFE) transactions under sections 43, 45, 50 and 66 of the Code. However, the Transaction Auditor has not been able to complete the audit for want of records and documents and non-cooperation from the suspended board of directors. In this regard, the Applicant has filed IA (IB) No. 156/CB/2024 under Section 19(2) of the Code before this Tribunal which is pending adjudication.



(iv) The Applicant published Form-G on 04.05.2024, pursuant to which the Applicant received a proposal from two Resolution Applicants, namely MFPL Commercial Pvt. Ltd. and Subhlaxmi Investment Advisory Pvt. Ltd. However, the proposal of Subhlaxmi Investment Advisory Pvt. Ltd. was rejected due to non-submission of the EMD amount.

(v) In the 8th meeting of the CoC held on 27.08.2024, the members of the CoC while deciding on the resolution plan submitted by MFPL Commercial Pvt. Ltd. observed that the financial proposal of MFPL was very insignificant and therefore such plan was not commercially feasible and viable.

(vi) Further, considering the fact that the initial phase of 180 days of the CIRP period was going to expire on 02.09.2024, the members of the CoC advised the Applicant to file an application for liquidation of the Corporate Debtor. However, since the preparatory works for approval of the liquidation had not yet been initiated, the 8th CoC meeting was adjourned to 29.08.2024.

(vii) The CoC in the adjourned meeting held on 29.08.2024 approved the liquidation of the Corporate Debtor with a 95.04% voting share under Section 33(2) of the Code on the ground of a non-feasible/non-viable resolution plan received from the sole resolution applicant.


(viii) As per the circular No. Liq-12011/214/2023-IBBI/840 dated 18.07.2023, the Insolvency and Bankruptcy Board of India (“**IBBI**”) have recommended that an Insolvency Professional other than the IRP/RP may be appointed as Liquidator in all the cases where a Liquidation order is to be passed henceforth, and the Liquidator can be appointed from the panel list of IBBI. Therefore, in furtherance of the

abovementioned circular of IBBI, the CoC resolved to appoint M/s. Waterfall Insolvency Professionals Pvt. Ltd. to act as a Liquidator of the CD at a monthly fee of Rs. 1,00,000/- plus GST at applicable rates. In this regard, Mr. Gaurang C. Shah, Managing Director of the M/s. Waterfall Insolvency Professionals Pvt. Ltd. has given his written consent to act as a Liquidator of the Corporate Debtor vide letter dated 28.08.2024 which is annexed with the present application.

(ix) Further, the CoC in the same meeting has ratified and approved the balance CIRP costs from 06.08.2024 till 02.09.2024 amounting to Rs. 4,28,732/-

(x) In compliance with Regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016, the CoC after consulting the Applicant has arrived at the best estimate of the liquidation costs for the Corporate Debtor, which is estimated at Rs. 18.00 lakhs. The Applicant further submits that the CoC has agreed to contribute towards the estimated liquidation costs. The detailed break-up of such costs is as follows:

Sl. No.	Particulars	Total (For 12 months)
1.	Liquidator's Fees	12,00,000.00
2.	Liquidator's OPE	1,00,000.00
3.	Legal Fees	2,00,000.00
4.	Advertisements	1,00,000.00
5.	e-Auction Charges	1,00,000.00
6.	Auditor Fees (for audit of receipt and payments)	25,000.00
7.	Accountant and Statutory Audit	75,000.00
	Total Estimated Expenses	18,00,000.00



(xi) By virtue of Regulation 39B(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016, the CoC is required to make the best estimate of the value of the liquid assets of the Corporate Debtor available to meet the liquidation costs. However, in the instant case, the CoC in its 8th Meeting observed that the Corporate Debtor does not have any liquid assets. Hence, no exercise is required to be undertaken concerning the estimation of liquid assets of the Corporate Debtor. In this regard, the CoC has agreed to contribute the entire amount of estimated liquidation costs to meet the liquidation expenses.

(xii) In compliance with Regulation 39C of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016, the CoC while deciding the liquidation of the Corporate Debtor, recommended that the Liquidator shall explore the possibility of selling the Corporate Debtor as a going concern under Regulation 32 (e) or sell the business of the Corporate Debtor as a going concern under Regulation 32 (f) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Further, the CoC advised the Applicant to prepare the group-wise assets from the latest accounts of the Corporate Debtor which may be used for the sale of the Corporate Debtor as a going concern.

(xiii) In furtherance of Regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the CoC has approved the fees of the proposed Liquidator which shall be Rs. 1,00,000/- (Rupees One Lakh Only) per month plus the applicable GST rates and the Out-of-Pocket Expenses.



3. We have heard the learned counsel appearing on behalf of the Applicant, and have perused the relevant material available on record. It is noted that the Corporate Debtor was admitted into CIRP vide order dated 06.03.2024. The CoC was comprised of two Financial Creditors wherein IndusInd Bank Ltd had a 95.04% voting share and the State Bank of India had a 4.96% voting share. Form-G was published on 04.05.2024. Subsequently, two resolution plans were received by the Applicant out of which one was rejected for non-submission of the EMD amount. In the 8th CoC meeting dated 27.08.2024 which was adjourned to 29.08.2024, the resolution plan submitted by MFPL Commercial Pvt. Ltd. was rejected by CoC as CoC was of the opinion that such plan was commercially non-viable and non-feasible.

4. Further, the CoC in its 8th meeting resolved to liquidate the Corporate Debtor. In this regard, the COC in accordance with Regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 resolved and approved the liquidation cost of Rs 18,00,000/- (Rupees Eighteen Lakhs Only). However, in the present case, as the Corporate Debtor does not have any liquid assets, hence, the CoC has agreed to contribute the entire amount of estimated liquidation costs. Further, the proposed Liquidator has provided his written consent to act as the Liquidator of the Corporate Debtor and has also agreed to the fees proposed by the CoC. Further, the proposed Liquidator in his written consent has affirmed that he is not subject to any disciplinary proceedings initiated by the IBBI or the Insolvency Professional Agency. As such the application deserves to be allowed.

5. In view of the facts and circumstances and documents available on record, we pass the following order:




(i) The Corporate Debtor, Grand Auto Udyog Private Ltd. shall be put into liquidation in terms of the provisions of Section 33 (2) of the Code read with the Regulations made thereunder which shall be effective from the date of this order. Accordingly, we allow IA (IB) (Liq) No. 4/CB/2024.

(ii) The Moratorium declared under Section 14 of the Code shall cease to have effect from the date of the order of liquidation.

(iii) In accordance with Section 34(4)(b) of the Code and the Circular dated 18.07.2023 of IBBI, we hereby appoint **Waterfall Insolvency Professionals Pvt. Ltd.**, an Insolvency Professional Entity **having registration no. IBBI/IPE-0022/IPA-1/2022-23/50016** as a liquidator of the Corporate Debtor. The Liquidator so appointed shall complete the liquidation process of the Corporate Debtor as per the provisions of the Code read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(iv) In furtherance of the recommendation of the CoC at its 8th meeting, the Liquidator so appointed shall explore the possibility of selling the Corporate Debtor as a going concern under Regulation 32 (e) or selling the business of the Corporate Debtor as a going concern under Regulation 32 (f) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. In this regard, the Applicant is directed to provide the Liquidator the group-wise assets from the latest accounts of the Corporate Debtor which may be used for the sale of the Corporate Debtor as a going concern.

(v) All the powers of the Board of Directors and Key Managerial Persons of the Corporate Debtor, as the case may



be, hereafter cease to exist. All these powers henceforth vest with the Liquidator so appointed.


(vi) The personnel of the Corporate Debtor are directed to extend all cooperation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

(vii) The CoC in its 8th meeting in furtherance of Regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has approved the Liquidator fees which shall be **Rs. 1,00,000/- (Rupees One Lakh Only) per month exclusive of GST and Out of out-of-pocket expenses.**

(viii) Once the liquidation process is initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor. The Liquidator has the liberty to institute a suit and other legal proceedings on behalf of the Corporate Debtor with the prior approval of this Adjudicating Authority, as provided in sub-section (5) of section 33 of the Code.

(ix) This liquidation order shall be deemed to be notice of discharge to the officers, employees, and workmen of the Corporate Debtor except to the extent that the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

(x) This Adjudicating Authority directs the Liquidator to issue a public announcement stating that the Corporate Debtor is in liquidation. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, Commercial Tax, Provident Fund etc., who are likely to have any claim upon the Corporate Debtor so that the authorities



concerned are informed of the liquidation order timely. The Liquidator will also provide a copy of this order to the trade unions/employee associations of the Corporate Debtor so that the workman/employees can also be informed of this liquidation order through their association.

(xi) The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the Corporate Debtor, the Resolution Professional, and the Liquidator by speed post as well as e-mail within one week from the date of this order, after completion of all the formalities.

(xii) The Applicant is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.

6. Accordingly, **IA (IB) (Liq) No. 4/CB/2024** stands **Allowed** and **Disposed off**.

Sd

Kaushalendra Kumar Singh
Member (Technical)

Sd

Deep Chandra Joshi
Member (Judicial)

Kaushik_LRA