



IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI

IA (IBC)/1287 (CHE)/2022 in CP/1362/IB/2018

(Filed under Section 54 of the Insolvency and Bankruptcy Code, 2016)

In the matter of MPL Automobiles Agency Private Limited

C.PRABAKARAN,

Liquidator of MPL Automobiles Agency Private Limited

3/6, 10th Street, Venkateswara Colony

MMC, Chennai 600 051

... Applicant

Order Pronounced on 22nd November 2023

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant: S.Sathiyarayanan, Advocate

ORDER

(Heard Through Physical Mode)

This Application IA(IBC)/1362 (CHE)/2023, has been filed under Section 54 of the Insolvency and Bankruptcy Code, 2016 by the liquidator of the Corporate Debtor herein seeking for an order for Dissolution of the Corporate Debtor viz., **MPL AUTOMOBILES AGENCY PRIVATE LIMITED**.

2. It is stated that CIRP of the Corporate Debtor was initiated by this Tribunal vide order dated 24.10.2019 and One Mrs.Usha Balasubramanian was appointed as IRP.



3. It is stated that Liquidation of the Corporate Debtor was ordered by this Tribunal on 07.01.2022 in MA/31/CHE/2021 and the Applicant namely C.Prabakaran was appointed as the Liquidator.

4. Pursuant to the order of Liquidation, the Applicant had caused Public Announcement on 11.01.2022 by inviting claims from all the stakeholders and fixed the last date for submission of claim as 06.02.2022.

5. It is stated that the Applicant received claims from the following stakeholders of the Corporate Debtor. The details of Claims submitted and claim admitted are as under:

S. No.	Details of Stakeholders	Class of Stakeholder	Amount of Claim admitted (In Rs.)
1	*Axis Bank	Secured Financial Creditors	4,37,65,006
2	*ICICI Bank	Secured Financial Creditors	7,19,08,415
3	Assistant Commissioner State Tax	Government (Operational creditor)	1,44,78,725
4.	Employees' State Insurance Corporation	Government (Operational creditor)	9,477
5	Employees Provident Fund Organisation	Government (Operational creditor)	2,14,974

6	**Opulent Auto Care Pvt Ltd	Operational creditor	11,79,997
	Total		13,15,56,594



** No claims were received from the Financial Creditors on the last date of submission of Claims i.e. 6th February 2022. In absence of the same, Liquidator has considered the claim amount of financial creditors for Rs. 11,56,73,421/- (Axis Bank Rs.4,37,65,006 and ICICI Bank Rs. 7,19,08,415) based on the claims filed with late IRP – Ms. Usha Balasubramanian during the CIRP Period*

*** No claims were received from the Operational Creditor M/s. Opulent Auto Care Private Limited (Applicant of CIRP) – Unsecured (other than government dues) on the last date of submission of Claims i.e. 6th February 2022. In absence of the same, Liquidator has considered the claim amount of unsecured Operational creditor for Rs. 11,79,997/- based on the claim filed with late IRP – Ms. Usha Balasubramanian during the CIRP Period.*

6. It is stated that the Corporate Debtor did not have any operations at the time of commencement of liquidation. There were no employees and the unit remained as a closed unit. Further, the Corporate Debtor has no realizable assets as per the audited financial statement for FY 2017-18.

7. It is stated that the financial creditors of the Corporate Debtor had informed the Applicant that they are unwilling to participate in the liquidation process of the Corporate Debtor.

8. It is stated that since no funds were foreseeable to be received, no Bank Account was opened as Liquidation Account.

9. It is stated that the Corporate Debtor has no realizable assets. Applicant also appointed two Registered Valuers as required under the IBBI (Liquidation Process) Regulations, 2016, for valuing the not readily realizable



assets, however, the Registered Valuer could not commence valuation work due to non-availability of physical/realizable assets and required information of assets. Moreover, due to non-availability of funds with the Corporate Debtor, bundled with zero participation of financial creditors in liquidation process or payment of contribution towards Liquidation Cost as per regulation 2A of the IBBI (Liquidation Process) Regulation, 2016, the valuers did not commence the assignment. Even, no valuation of assets was carried out even during CIRP Process by the erstwhile IRP.

10. It is stated that the suspended directors of the Corporate Debtor are not traceable and the efforts to obtain information about the assets of the Corporate Debtor were also in vain.

11. It is stated that the Applicant Liquidator had earlier filed an application bearing IA/828/2022 under Section 54 of the Code seeking for dissolution of the Corporate Debtor and also seek directions to the financial creditors to pay the liquidator fee and cost incurred by him. This Tribunal vide order dated 10.10.2022 in IA/828/2022 dismissed the application and granted liberty to the Applicant to file two separate applications for seeking direction to the financial creditors to pay liquidator fee and liquidation cost incurred by him and also for seeking dissolution of the Corporate Debtor. Accordingly,

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the two separate applications including this application were filed by the Applicant.

12. The details of the relevant compliances as mandated under Section 54 of the IBC, 2016 read with the IBBI (Liquidation Process)

Regulations, 2016 are as under:-

S. No	COMPLIANCE	AVERMENTS	PAGE NO. IN THE APPLICATION
1	Regulation 12	Public Announcement in Form B in Trinity Mirror and Makkal Kural dated 11.01.2022	37-39
2	Regulation 35(2)	Appointment of Registered Valuers where no valuation conducted during CIRP	Para 13 at Page Nos.5-6 of the application
3	Regulation 31(2)	List of Stakeholders within 45 days of the Liquidation Commencement Date	73-79
4	Regulation 31A	Constitution of Stakeholders Consultation Committee (SCC)	78-79
5	Regulation 13	Preliminary Report dated 23.03.2022	40-59
6	Regulation 34	Preparation of Asset Memorandum dated 20.03.2022	60-70
7	Regulation 41	Opening of Bank Account in the name of the company in Liquidation in a Scheduled Bank	Para 9 at Page 5 of the application
8		Proof of Closure of the above Bank Account and other account in the name of the Company	N/A
9	Regulation 15	Quarterly Progress Reports and proof of filing the same before this Tribunal	80-104
10	Regulation 36	Asset Sale Reports after sale of Reports	N/A



11	Regulation 42(2)	Proof of Distribution within Ninety days from the receipt of realization	N/A
12	Regulation 45 (3)	Final report dated 22.06.2022	178-201
13	Regulation 5 (1) (e)	Compilation of Minutes of SCC	105-164
14	Regulation 15	Audited Accounts of receipts and Payments	N/A
15	Regulation 37	Completion of Liquidation Process within one year from Liquidation Commencement Date or extension if any, date of the order & period	N/A
16		Form-H	165-176

13. It is seen from Form-H that the Applicant / Liquidator has not filed any Application under Sections 43, 45, 50 and Section 66 of IBC, 2016. Further in Form -H, the amounts distributed to stakeholders as per Section 52 and 53 of the code is as under:



(Amount in Rs. lakh)

Sl. No.	Stakeholders* under section 53 (1)	Amount Claimed	Amount Admitted	Amount Distributed	Amount Distributed to the Amount Claimed (%)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	(a): CIRP Costs	N.A.	N.A.	N.A.	N.A.	N.A.
2	(a): Liquidation Costs***	*40,694	40,694			Pending
3	(b)(i)	N.A.	N.A.	N.A.	N.A.	N.A.
4	(b)(ii)	11,56,73,421	11,56,73,421	NIL	NIL	**
5	(c)	N.A.	N.A.	N.A.	N.A.	N.A.
6	(d)	11,79,997	11,79,997	NIL	NIL	**
7	(e)(i)	1,47,03,176	1,47,03,176	NIL	NIL	Company has no liquid fund nor any realizable assets
8	(e) (ii)	N.A.	N.A.	N.A.	N.A.	



9	(f)	N.A.	N.A.	N.A.	N.A.	
10	(g)	N.A.	N.A.	N.A.	N.A.	
11	(h)	N.A.	N.A.	N.A.	N.A.	
Total		13,15,97,288	13,15,97,288			

*If there are sub-categories in a category, please add rows for each sub-category. - Not applicable

Note:

** During Liquidation Process, no claims were received from the Financial Creditors on the last date of submission of Claims i.e. 6th February 2022. In absence of the same, Liquidator has considered the claim amount of financial creditors for Rs. 11,56,73,421/- (Axis Bank Rs.4,37,65,006 and ICICI Bank Rs. 7,19,08,415) based on the claims filed with late IRP – Ms. Usha Balasubramanian during the CIRP Period.

**During Liquidation Process, no claims were received from the Operational Creditor M/s. Opulent Auto Care Private Limited (Applicant of CIRP) – Unsecured (other than government dues) on the last date of submission of Claims i.e. 6th February 2022. In absence of the same, Liquidator has considered the claim amount of unsecured Operational creditor for Rs. 11,79,997/- based on the claim filed with late IRP – Ms. Usha Balasubramanian during the CIRP Period.

*** The CA certified liquidation cost (actual expenses incurred in Liquidation Process) excluding Liquidator fees from 07.01.2022 to final order of dissolution of company and legal expenses towards preparation and filing of Interlocutory Application for dissolution of Company under regulation 14 of under Regulation 14 of Liquidation Process Regulation, 2016 along-with details of estimated cost are enclosed herewith and have been submitted to financial institutions as per Regulation 2A of Liquidation Process Regulations 2016.



14. At this juncture, it is relevant to refer Section 54 of the IBC, 2016 which reads as under: -

Section 54

“(1) Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

(2) The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.”

15. From the averments made in the Application and on perusal of the final report and the Compliance Certificate filed in Form-H, we find that the Corporate Debtor has been completely liquidated. In the circumstances as averred and as prayed for by the Applicant, an order for dissolution is required to be passed by this Tribunal under Section 54 of the IBC, 2016. Accordingly, we order for the dissolution of the Corporate Debtor viz., *MPL Automobiles Agency Private Limited*. The Liquidator is directed to forward the copy of this Order to the RoC concerned and also to the IBBI for its records within a period of 7 days from the date of this Order.



16. In terms of the above, this IA (IBC) 1287/CHE/2022 stands **allowed** and CP/1362/IB/2018 also stands **disposed of**

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

SANJIV JAIN
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI

IA(IBC)/1288(CHE)2022 in CP/1362/(IB)/2018

(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w
Regulations 2A & 4 of IBBI (Liquidation Process) Regulations, 2016 and Rule 11 of
NCLT Rules, 2016)

In the matter of M/s. MPL Automobiles Agency Private Limited

Dr. C. Prabakaran,
Liquidator,
M/s. MPL Automobiles Agency Pvt. Ltd,
F1, Abul Regency, 1st Floor, No.6,
South Mada Street, Srinagar Colony,
Saidapet, Chennai – 600 015.

... Applicant

-vs-

1. **Axis Bank,**
Arcot Plaza, 4th Floor,
New No. 38, Old No. 165,
Arcot Road, Kodambakkam,
Chennai – 600 024
2. **ICICI Bank,**
ICICI Bank Towers, DSMG – BLG,
Arihant Insight, Plot No. 24, Block No. 1,
Ambattur Industrial Estate,
Ambattur, Chennai – 600 058

... Respondents

Order Pronounced on 22nd November, 2023

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : Mr. S.Sathiyarayanan, Advocate

For Respondent No.1 : Mr. V.V.Sivakumar, Advocate

For Respondent No. 2 : Mr. Dev Eshwar, Advocate



ORDER

(Heard Through Physical Mode)

This IA(IBC)/1288(CHE)2022 has been filed under Section 60(5) of IBC, 2016 r/w Regulation 2A and 4 of IBBI (Liquidation Process) Regulation, 2016 and Rule 11 of NCLT Rules, 2016 by the Liquidator of M/s. MPL Automobiles Pvt. Ltd for directing the Respondents Axis Bank (R1) and ICICI Bank (R2) / Financial Creditors to pay a sum of Rs.4,88,927/- (Rs. 1,84,961/- by Axis Bank and Rs.3,03,966/- by ICICI Bank) towards the Liquidator's fees and expenses incurred by him towards the liquidation process of the Corporate Debtor.

2. Briefly the facts which are relevant for disposal of the present Application are that, this Tribunal on the application under Section 9 of IBC, 2016 filed by an Operational Creditor against the Corporate Debtor vide its order dated 24.10.2019 in CP/1362/(IB)/2018 initiated the CIRP against the Corporate Debtor. The liquidation of the Corporate Debtor was ordered vide dated 07.01.2022 since no resolution plan came. Due to untimely demise of the erstwhile IRP, the Liquidator could not get the complete records. He prepared the reports based on the information / reports gathered from the other sources and from auditor of Corporate



Debtor. He made the public announcement under Regulation 12 on 11.01.2022. He admitted the claim of various creditors including the Respondents as detailed below:

S.No.	DETAILS OF STAKEHOLDERS	CLASS OF STAKEHOLDERS	AMOUNT OF CLAIM ADMITTED (IN Rs.)
1	*Axis Bank	Secured Financial Creditor	4,37,65,006
2	*ICICI Bank	Secured Financial Creditor	7,19,08,415
3	Assistant Commissioner of State Tax	Government (Operational Creditor)	1,44,78,725
4	Employees' State Insurance Corporation	Government (Operational Creditor)	9,477
5	Employees Provident Fund Organisation	Government (Operational Creditor)	2,14,974
6	**Opulent Auto Care Pvt. Ltd	Operational Creditor	11,79,997
		Total	13,15,56,594

* No claims were received from the Financial Creditors on the last date of submission of Claims i.e., 6th February, 2022. In absence of the same, Liquidator has considered the claim amount of Financial Creditors for Rs.11,56,73,421/- (Axis Bank Rs.4,37,65,006/- and ICICI Bank Rs.7,19,08,415/-) based on the claims filed with late IRP – Ms. Usha Balasubramanian during the CIRP period.

** No claims were received from the Operational Creditor M/s. Opulent Auto Care Private Limited (Applicant of CIRP) – Unsecured (other than government dues) on the last date of submission of Claims i.e., 6th February 2022. In absence of the same, Liquidator has considered the claim amount of unsecured Operational Creditor for Rs.11,79,997/- based on the claim filed



with late IRP – Ms. Usha Balasubramanian during the CIRP period.

3. He verified the claims as per Regulation 30 and prepared the list of stakeholders as per Regulation 31 of the IBBI (Liquidation Process) Regulations, 2016. At the time of commencement of liquidation of the Corporate Debtor, there were no operations of the Corporate Debtor nor there were employees and unit remained as a closed unit. No liquid assets / realizable assets as per the audited financial statement for FY 2017-2018 were found. No valuer was appointed for the valuation of the assets of the Corporate Debtor since there was non-co-operation from the CoC of the Corporate Debtor and the suspended directors.

4. It is alleged that the Respondents / Financial Creditors neither attended the SCC meeting nor participated in the liquidation process rather informed that they are not willing to participate in the process. It is stated that the Liquidator incurred the expenses as detailed in para 10 of the Application, total amounting to Rs.4,48,233/- which expenses are to be contributed by the Financial Creditors i.e., Respondents 1 and 2 in



the proportion as prescribed under Regulation 2A of IBBI (Liquidation Process) Regulations, 2016.

5. It is stated that although the Applicant had appointed two registered valuers for valuing the Non Readily Realizable Assets (NRRA), but due to non-availability of funds, the valuers did not commence the work. It is stated that the Applicant had earlier filed application i.e., IA/828/2022 under Section 54 of IBC, 2016 seeking directions to the Financial Creditors to pay the Liquidator fees and costs, but the Tribunal vide order dated 10.10.2022 dismissed the application, however granted liberty to the Applicant to file two separate applications for seeking direction to the Financial Creditors to pay the Liquidator fee and the liquidation cost incurred by him and for seeking dissolution of the Corporate Debtor. Accordingly he filed the two separate applications.

6. On getting notice of the Application, R2 filed the reply/counter alleging that the Corporate Debtor had availed a business loan facility from R2 in the year 2007. As a security for the above loan, it created a mortgage / charge of the immovable properties in favour of



R2. The Corporate Debtor committed default and the account was declared as NPA on 31.03.2016. R2 initiated the SARFAESI proceedings and sold the property of the Corporate Debtor on 16.03.2021 in an auction and realized Rs.6,22,00,000/-. It is stated that Corporate Debtor is still liable to pay Rs.4,68,57,242/- to R2 as on date. It is alleged that R2 never filed any claim with the IRP rather informed the CoC in the first meeting that it has already enforced its security. It also voted against all the resolution brought by the erstwhile RP and did not participate in the second and third CoC meeting. It is stated that Respondent has paid the IRP fees of Rs.5,73,736.80 to the erstwhile IRP. Since R2 had realized that the Corporate Debtor does not have any realizable asset, it refrained from the CIRP Process.

7. It denied that it is liable to contribute any amount as claimed by the Liquidator stating that no claims were preferred by R2 against the Corporate Debtor during liquidation process. It is stated that as per Section 34(9) of the IBC, 2016, the fees for the conduct of the liquidation proceedings shall be paid to the Liquidator only from the proceeds of the liquidation estate under Section 53. It is stated that



Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 does not encompass the fee of the Liquidator. It is alleged that no steps have been taken by the Liquidator under Regulation 14 for early dissolution of the Corporate Debtor and he cannot claim any fees as per his own whims and fancies. Moreover, he has not produced any documents as a proof to substantiate the amount of cost incurred by him during liquidation as claimed.

8. R1 in reply to the said application, submitted that R1 is an unsecured Financial Creditor having voting share of 37.84% in the CoC. Consequently, it paid a sum of Rs.2,10,012/- towards the CIRP costs and expenses. On 07.05.2022, R1 had apprised the Liquidator that it would not participate in the liquidation proceedings, since the Corporate Debtor has no realizable assets or monies, therefore, it is not bound to pay any amount towards the liquidation costs. It reiterated what has been stated by R2 in its reply referring Section 34(9) and 53 of the IBC, 2016.

9. We have heard Ld. Counsels for the parties and perused the records.



10. Section 33 of IBC, 2016 provides for initiation of liquidation. Section 34 of IBC, 2016 provides for appointment of Liquidator and fee to be paid. Section 34(8) provides that an insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the board. Section 34(9) provides that the fees for the conduct of liquidation proceedings under sub-section (8) shall be paid to the liquidator from the proceeds of the liquidation estates under Section 53.

11. It is an admitted case of the Applicant that at the commencement of the liquidation, the Corporate Debtor did not have any operations nor had any employees and the unit was a closed unit. It did not have any liquidated assets / realizable assets as per the audited financial statement for the FY 2017-2018. Although the Liquidator has alleged that under Regulation 10, he made a public announcement, verified the claims and prepared a list of stakeholders, but he has also stated that the Respondents / Financial Creditors never attended the SCC meeting nor participated in the liquidation process of the Corporate Debtor, which is



also the case of the Respondents. They had rather communicated to the Applicant that they are not willing to participate in the liquidation process since there were no realizable assets of the Corporate Debtor.

12. It may be true that the Liquidator had incurred some expenses as detailed in para 10 of the application for a sum of Rs.4,48,233/-, but Section 34(9) clearly provides that the liquidator shall charge the fee for the conduct of the liquidation proceedings in such proportion to the value of the liquidation estate assets and the fee shall be paid from the liquidation estate under Section 53 of IBC, 2016. The record and the application clearly show that there were no proceeds of the liquidation estate. That being the position the Respondent cannot be directed to bear / pay the fees / expenses of the Liquidator especially when they had expressed their unwillingness to participate in the SCC meeting being fully aware that there are no realizable assets of the Corporate Debtor. In this case, the Liquidator after preparation of preliminary report had knowledge that the realizable properties of the Corporate Debtor were insufficient to cover the cost of liquidation process and the affairs of the Corporate Debtor did not require any further investigation, as provided

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under Regulation 14. He instead filing an application for early dissolution, waited for the complete liquidation process and filed the application under Section 54 incurring the expenses which were not required.

13. In the present case, the Applicant has referred Regulation 2A which provides that when the CoC did not approve a plan, the Liquidator shall call upon the Financial Creditors to contribute the excess of liquidation costs over the liquid assets of the Corporate Debtor as estimated by him in proportion to the financial debts owed to them by the Corporate Debtor. It is seen from the records that during the period of Liquidation, the approval of liquidation costs was rejected by the CoC where the Financial Creditors has not preferred to file a claim before the Liquidator. In this case, Respondent/Financial Creditors had already refused to participate in the liquidation process. Even during the CIRP, R2 after attending the first CoC did not attend the CoC. Both the Respondents had contributed to the CIRP costs and had communicated their decision not to participate in the SCC Meeting. In

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these circumstances, the Respondents cannot be directed to contribute the amount as prayed for by the Liquidator.

14. It is true that the Liquidator had incurred expenses from his pocket and same should be paid. But since there is no provision either in the Act or the Regulations or the Rules, we request the IBBI to make some provisions for the liquidation fee in case the assets of the Corporate Debtor are NRRA otherwise, no Liquidator will come forward to complete the liquidation process in case the Corporate Debtor does not have any realizable assets.

15. For the foregoing discussions, we **dismiss** the Application. No costs.

16. Let the copy of the order be sent to the IBBI with a request to look into and make some provisions for carrying out the smooth liquidation process of the Corporate Debtor by the Liquidator.

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

SANJIV JAIN
MEMBER (JUDICIAL)