

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Arguments through web-based video conferencing platform)**

**IA No.774/2022
In
CP (IB) No.70/Chd/Hry/2018
(admitted matter)**

**Under Section 54 of the
Insolvency and Bankruptcy Code,
2016**

In the matter of :

Ashapura Perfoclay Limited ...Operational Creditor
Versus
Mahabir Techno Limited ...Corporate Debtor

And in the matter of: -

IA No.774/2022

Vinod Kumar Mahajan
with Registered address at
Flat No. 309, RCS Society, Sector 48-A,
Chandigarh-160047 ...Applicant/Liquidator

Judgment delivered on: 19 .01.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing : -

For the Applicant/Liquidator : Mr. Saurabh Bhardwaj, Advocate
Mr. Vinod Mahajan, Liquidator in person

Per: Subrata Kumar Dash, Member (Technical)

JUDGEMENT

1. IA No.774/2022 in CP (IB) No.70/Chd/Hry/2018 is being filed by Vinod Kumar Mahajan, the liquidator of M/s Mahabir Techno Limited- Corporate Debtor under Section 54 of Insolvency and Bankruptcy Code,

2016 for the dissolution of Corporate Debtor i.e. **M/s Mahabir Techno Limited.**

2. The main Company Petition bearing CP (IB) No.70/Chd/Hry/2018 was filed by Ashapura Perfoclay Limited-Operational Creditor under Section 9 of IBC and was admitted by the Adjudicating Authority, by order dated 30.10.2018 for initiating CIRP and Mr. Vinod Kumar Mahajan was appointed as Interim Resolution Professional. Afterwards, the IRP is appointed as the Resolution Professional of the Corporate Debtor. Subsequently, the Adjudicating Authority by its order dated 22.02.2019 has passed an order for the liquidation of the Corporate Debtor under Section 33(2) of IBC, 2016 and appointed the Resolution Professional to act as Liquidator under Section 34(1) of IBC, 2016.

3. The Liquidator made the public announcement on FORM B dated 27.02.2019, under Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 in two newspapers, which were published on 02.03.2019 in Financial Express and Amar Ujala. The last date for filing the claim has been fixed as 24.03.2019.

4. Pursuant to the public announcement, the liquidator has received two claims i.e. one from Union Bank of India- Financial Creditor and the other from Ashapura Perfoclay Limited- Operational Creditor. The liquidator has verified the claims amounting to Rs.57,07,06,793/- by the Financial Creditor and Rs.31,07,783/- by Operational Creditor in

accordance with Regulation 30 of IBBI (Liquidation Process) Regulation, 2016.

5. Pursuant to Regulation 35 of IBBI (Liquidation Process) Regulation, 2016, the Liquidator appointed two Valuers i.e. Sh. Vikas Aggarwal, Regd. Valuer with IBBI, Regn. No. IBBI/RV/06/2018/10046 and Mr. Rajiv Aggarwal, Black Olive Ventures Private Limited, Govt. approved L & B Valuer No.CCI/LDH/Tech./Valuer/2011-12/140 for valuation of the assets of the Corporate Debtor by Resolution Professional. The Fair Market Value and Liquidation Value had been submitted by both the valuers pertaining to the Land & Building of the Corporate Debtor in their detailed reports dated 27.02.2019 & 01.03.2019 respectively. It is submitted that no Plant, Machinery & Equipment were found at the factory premises as the same has been removed by the Corporate Debtor before the takeover of the factory premises by Union Bank of India- Financial Creditor under the SARFAESI Act, 2002. Moreover, there were no stocks available at the factory premises at the time of the takeover by the Financial Creditor under SARFAESI Act, 2002.

6. The liquidator had also filed an application u/s 19(2) with seeking directions to the members suspended Board of Directors of the Corporate Debtor, to provide requisite books/financial statements etc. Since, the books of accounts and financial statements were never provided to the Resolution Professional/Liquidator. This tribunal by order

dated 18.05.2020 has directed to initiate criminal proceedings against the members suspended Board of Directors of the Corporate Debtor. `

7. It is averred that only the land and building measuring 32 Kanal 4 marla was available with the Corporate Debtor which was mixed with the land standing in the name of personal guarantors. All the immovable properties were mortgaged with Union Bank of India- Financial Creditor and possession of the same has been taken by Financial Creditor under section 13(4) of SARFAESI Act, 2002. The Financial Creditor by e-mail dated 07.06.2019 has intimated the liquidator about exercising their rights under section 52(1)(b) of IBC, 2016. The financial creditor intended to realize their security interest outside the liquidation proceedings. The liquidator has verified the existence of security interest and handed over the asset of the corporate debtor

8. It is submitted that the immovable property has been put on sale through e-auction on various dates by the Bank. Finally, in the e-auction held on 22.10.2021 and the property was sold by the Bank- Financial Creditor for Rs.8.68 crore to the Highest bidder.

9. It is also stated that the Balance Sheet of the Corporate Debtor as at 31.03.2017 shows Trade Receivables of Rs.33.46 crore. However, No balance sheets were available with the liquidator for the ending on 31.03.2018 or on the date of commencement of CIRP Process. Hence, the same has been treated as Nil. The only tangible asset, the land and building of the Corporate Debtor, has been sold by the Financial Creditor

for Rs.8.68 crore, after exercising their rights under section 52(1)(b) of IBC, 2016 and has appropriated the full amount towards their total dues amounting to Rs.57,07,06,793/-.

10. The Liquidator has also submitted the assets memorandum on 08.05.2019 and the final report as per Regulation 45 of IBBI (Liquidation Process) Regulation, 2016 on 10.06.2022

11. This tribunal has extended the period for the liquidation process by order dated 24.11.2021 by six months beyond 20.02.2021. The liquidator has paid the receipt and payment account pertaining to sale of assets of the Corporate Debtor and distribution for the period ending 31.03.2019, 31.03.2020, 31.03.2021, 31.03.2022 & 06.06.2022. The total cost incurred to conduct the Liquidation Process of the Corporate Debtor is Rs.20,80,243/- and the Income and Expenditure Account for the period ending 31.03.2019, 31.03.2020, 31.03.2021, 31.03.2022 & 06.06.2022 has also been audited from M/s Rajeev Sood and Company, Chartered Accountants.

12. The matter was earlier reserved on 13.10.2022 which was relisted on 16.11.2022 for the compliance of filing the compliance certificate in Form H as per Regulation 45 of IBBI (Liquidation Process) Regulation, 2016. The applicants are also directed to clarify the issues pertaining to the objections raised by the stakeholders against dissolution of the Corporate Debtor, completion of the Liquidation process within the

statutory time period, recovery of the liquidation cost including Liquidator's fee and pendency of any other application.

13. The Liquidator has filed Form H by Diary No. 01275/3 dated 29.11.2022 under Regulation 45 of IBBI (Liquidation Process) Regulation, 2016. The Liquidator has also stated that the entire process of the Liquidation has been completed within the extended time period as per order of this Tribunal dated 24.11.2019. It is also stated that no Stakeholder's Consultation Committee was required to be formed in the present Liquidation Process as liquidation was commenced on 22.02.2019 i.e. prior to the amendment. The Liquidator has also recovered all liquidation cost along with the liquidator's fee and no other application concerning the subject matter has been filed before any other Court.

14. Heard, Mr. Saurabh Bhardwaj, counsel for the Liquidator and Mr. Vinod Kumar Mahajan, learned Liquidator. We have carefully perused the pleadings of the party along with extant provisions of the Code and the Rules made thereunder.

15. The present application is filed under action 54 of the I&B Code.

The relevant provisions of Section 54 of the IBC read as under:-

"Section 54 of the IBC

- 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 data is registered.”*

16. The above facts and circumstances of the case, has established that due process of Liquidation, as per extant provisions, was followed by the Liquidator. The Financial Creditor has exercised its security interest under Section 52(1)(b) of the Code and the Liquidator has handed over the assets of the Corporate Debtor. As no books of accounts are available with the Liquidator, there is no question of trade receivables by the Liquidator. In Form-H it has also been seen that there are no applications pending under Sections 43, 45, 50 and 66 of the Code. The Financial Creditor has sold the Land and Building at Rs. 8.68 crores which are above the liquidation value of the Corporate Debtor. The Liquidator has also stated that the whole liquidation cost amounting to Rs. 20,80,243/- and CIRP cost 4,27,703/- has been received and no dues are pending. Therefore, the liquidation process is deemed to have been completed under Chapter III of Part II of the Code, and thus it would be just and proper for the Adjudicating Authority to dissolve the Company. No party is going to be affected by dissolving the company.

17. In the result, by exercising powers conferred on the Adjudicating Authority, under Section 54(2) of the Code, the Interim Application bearing IA No.774/2022 in CP (IB) No.70/Chd/Hry/2018 is disposed of with the following directions:

- (i) M/s Mahabir Techno Limited, the Corporate Debtor, is hereby dissolved with immediate effect;

- (ii) The Liquidator is directed to close the Liquidation Bank Account within three weeks from the date of receipt of the copy of this order.
- (iii) The Registry is directed to forward a copy of this order to the Concerned Registrar of Companies within a period of two weeks from today;
- (iv) The Liquidator is also directed to forward copies of this order to all other statutory authorities connected with the affairs of the Company.
- (v) The liquidator, Shri Vinod Kumar Mahajan is discharged from his duties and responsibilities as the liquidator of the corporate debtor company

18. Accordingly, IA No.774/2022 also stands allowed and disposed of.

-sd-19.01.2023
(Subrata Kumar Dash)
Member (Technical)

-sd-19.01.2023
(Harnam Singh Thakur)
Member (Judicial)

January 19, 2023
SM/SA