

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No.960/2023
In
CP (IB) No.340/Chd/PB/2018
(admitted)**

**Under Section 60(5) of the
Insolvency & Bankruptcy Code,
2016**

In the matter of:

Punjab Basmati Rice Limited.(under Liquidation)

....Corporate Debtor

In the matter of IA No. 960/2023

Kulwinder Singh Makhni (Ex-Director, M/s. Punjab Basmati Rice Ltd.)
S/o Sh. Manjit Singh Makhni
having its registered office at
15-A, Rose Avenue, Tehsil & District
Amritsar

....Applicant/Ex-Director

Versus

Mr. Sanjay Kumar Aggarwal
Liquidator of Punjab Basmati Rice Ltd.
Having its registered office at
#14, New Punjab Mata Nagar, Main Street, Pakhowal Road,
Ludhiana

...Non-Applicant/Liquidator

Order delivered on: 25.08.2023

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

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(admitted)

Present

For the Applicant : Ms. Jyoti Sareen, Advocate

For the Respondent : Mr. D.P. Garg, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

The present application has been filed by Kulwinder Singh Makhni (Ex-Director of the corporate debtor) against the Liquidator seeking direction for the removal of the respondent/Liquidator and for appointment of a new Liquidator of the corporate debtor prior to the date of sale of assets of the corporate debtor, fixed for 29.03.2023.

2. The brief facts stated by the applicant are as below:

2.1 It is stated that the respondent has concealed material information from the IBBI as well as this Tribunal regarding the registration of FIR No. RCBD-1/2020/E/0004 dated 10.09.2020 involving criminal conspiracy, cheating, forgery, using forged documents, etc., causing wrongful loss to the tune of Rs. 26.16 Crore to complainant Union Bank of India, GTBH Branch, Ludhiana.

2.2 It is further stated that as per FIR, the respondent-liquidator has been named accused/suspect by CBI. A copy of the FIR has been attached as Annexure A-4 of the application. Further, as per point No. 7 of the FIR, the details of known/suspected/unknown accused with full particulars as

mentioned at serial No. 3 is stated to be *Sh. Sanjay Kumar Aggarwal (DIN No.) r/o 424, Industrial Area 'A' Cheema Chowk, Ludhiana-141003.*

2.3 Further, it is stated that the above-said FIR was registered against the directors and guarantors of the company, i.e., M/s. Supreme Tex Mart Limited, including the respondent on the basis of the Special Investigation Audit Report conducted by M/s. KPMG India.

2.4 The applicant has also filed a complaint against the liquidator before the IBBI, and the same is also sent to the SCC members of the corporate debtor. The same comes under the definition of misconduct. Moreover, the respondent-liquidator has not disclosed the above information in FORM A, 2nd Schedule, as per IBBI (Insolvency Professionals) Regulations. The non-disclosure of the above material fact regarding the registration of FIR against him would result in the respondent-liquidator being ineligible for appointment as an Insolvency Professional.

2.5 In this context, reliance has been placed on the decision of the Hon'ble Delhi High Court in the matter of ***Dr. Vidya Sagar Garg vs Insolvency and Bankruptcy Board of India*** (W.P (C) 9520/2017 and coordinate Bench of NCLT, Chennai in the matter of ***IDBI Bank Limited represented by Deputy General Manager vs. Shri. V. Venkata Sivakumar Liquidator of M/s. Jeypore Sugar Company Limited***; cited at 2022 ibclaw.in 628 NCLT.

3. The respondent-liquidator has filed its reply vide diary No. 00917/01 dated 18.05.2023, wherein the following has been stated:

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(admitted)

3.1 It is stated that the contents of the instant application filed by the applicant-ex-director are false and misleading. The respondent-liquidator has completed the sale of assets/properties of the corporate debtor by way of composite sale in an e-auction conducted electronically on 01.04.2023 in terms of the direction of this Hon'ble Adjudicating Authority dated 01.03.2023 and the entire realisation proceeds as realised has been distributed as per waterfall mechanism.

3.2 It is further stated that the respondent has made the relevant disclosure/declaration in Form 2/ Form AA before this Hon'ble Tribunal/IBBI/IPA.

3.3 That the respondent-liquidator has duly filed a reply to the complaint moved by the applicant against the liquidator before IBBI. In this regard, till date, neither any adverse action has been advised/authorised/initiated against the respondent by IBBI/IPA, nor any such fact has been communicated by the IBBI/IPA to the respondent.

3.4 It is submitted that the applicant/ex-director is trying to delay the proceedings of the corporate debtor by referring to one FIR registered at PS SBI, BSFB, New Delhi, and the respondent has not been informed by CBI about the registration of the aforementioned FIR. Moreover, in the said FIR, the name of the accused, i.e., Sanjay Kumar Aggarwal is the same as that of the respondent; however, no other details of the said accused match with the identity of the respondent/Liquidator. Further, the above-said FIR reveal that the name Sanjay Kumar Aggarwal has been wrongly incorporated in the FIR

as against the name of Sh. Sanjay Gupta (Promoter-Director of Supreme Tex Mart Limited), which is missing from the FIR.

3.5 It is submitted that the respondent-liquidator has not given any advice/opinion to Supreme Tex Mart Limited. The respondent being appointed as an Additional Independent non-executing director on 14.11.2015 and has resigned from the directorship on 14.11.2015.

3.6 The respondent has placed reliance on MCA Circular No. 1 of 2020 dated 02.03.2020/RBI Master Circular RBI/2014-2015/566 DBR No. CID.BC.90/20.16.003/2014-15, dated April 23, 2015 (Annexure R-5), in which it is stated that the non-executive independent director cannot be implicated in any criminal proceedings. Further, reliance has been placed on the decision of the Hon'ble Delhi High Court in the matter of **Har Sarup Bhasin vs. M/s. Origo Commodities India and Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd.** passed by the Hon'ble Supreme Court of India.

4. It is submitted by the respondent-liquidator in its written submission that the present application has now been rendered infructuous as the liquidation process of the corporate debtor is completed except for the filing of an application for the dissolution of the corporate debtor as per Section 54 of the IBC.

5. The applicant has filed a rejoinder, wherein it is stated that the Stakeholders Consultation Committee has filed IA No. 1245/2023, in which it has levelled allegations with respect to the transferring of the amount of Rs. 99,87,470/- in excess to a personal account to the liquidator, against the liquidator

fee of Rs. 30 Lakhs as approved by SCC without distributing the realised amount from the sale of assets of the corporate debtor. Further, the same averments as made in the application have been advanced for the sake of brevity and are not repeated herein.

6. We have heard the learned counsel for the parties.

7. In this connection, a reference is made to Regulation 31A (11) Substituted by Liquidation Process (Second Amendment) Regulations, 2021 vide Notification No. IBBI/2021-22/GN/REG079 dated 30th September, 2021, w.e.f. 30.09.2021.

8. Regulation 31A: Stakeholders' consultation committee.

(11) The consultation committee, after recording the reasons, may by a majority vote of not less sixty-six per cent., propose to replace the liquidator and shall file an application after obtaining the written consent of the proposed liquidator in Form AA of the Schedule II, before the Adjudicating Authority for replacement of the liquidator :

Provided that where a liquidator is proposed to be replaced, he shall-

(a) continue to work till his replacement; and

(b) be suitably remunerated for work performed till his replacement.

Provided that where a consultation committee under Regulation 31A has been constituted before the commencement of Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022, the liquidator, within thirty days of the commencement of the said Regulations, shall reconstitute the consultation committee as required

under the said Regulations and provisions provided under amended Regulation 31A shall come into effect only after such constitution.

8. In the case at hand, the applicant's suspended director has made certain allegations against the liquidator. In view of the aforementioned regulation, 31A (11), the power to remove the liquidator lies squarely with the Stakeholders Consultation Committee. We observed that the Suspended Director has no vested right to recommend the removal of the liquidator. We have also gone through the IA No. 1245/2023 filed by SCC, it nowhere recommends the removal of the liquidator and has only prayed for directions to the liquidator to immediately distribute the amount recovered by him from the sale of liquidation of assets of the corporate debtor after retaining the disputed amount with respect to his alleged liquidator fee plus liquidation expenses.

9. In view of such facts, the prayer made by the applicant is dismissed, and IA No. 960/2023 is disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

August 25, 2023
PB