

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

IA No.- 23/2024
In
CP (IB) – 1416 (PB)/2018

**Order under Section 54(1) of the Insolvency and Bankruptcy Code, 2016
Read with Regulation 14 and 45 of the IBBI (Liquidation Process)
Regulations, 2016**

IN THE MATTER OF:

Ram Pal Toshniwal

(Sole Proprietor of M/s Ridhi Sidhi)

.... Operational Creditor

Versus

R.K. Silk Mills (India) Ltd

..... Corporate Debtor

AND IN THE MATTER OF IA No. 23/2024

Mr. Prashant Agarwal

Liquidator of RK Silk Mills India Limited

.... Applicant

Versus

Registrar of Companies (ROC-New Delhi)

.... Respondent

ORDER PRONOUNCED ON: 23.07.2024

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant/Liquidator: Mr. Ankit Sareen and Mr. Yash Tandon (Adv.)

ORDER

1. This Application has been filed by the Liquidator of R.K. Silk Mills (India) Ltd i.e. Corporate Debtor before this Adjudicating Authority under Section 54 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”), for seeking the following reliefs:
 - a) To dissolve the corporate debtor, R K Silk Mills India Limited as per the provision of section 54 of the Insolvency and Bankruptcy Code, 2016.
 - b) To discharge the Liquidator of the corporate debtor.
 - c) To direct the stakeholders to contribute towards the liquidation expenses for an amount of Rs. 4,74,418.00/-
 - d) To waive the compliance applicable on the corporate debtor as per the companies Act, 2013 (as amended thereof) and any other applicable law
 - e) To condone delay in completion of liquidation process of the corporate debtor for the period starting from 21-08-2023 till the date of this application.
 - f) To pass any other order as this Hon'ble Tribunal may deem fit in the interest of Justice, equity and good conscience.

2. The Corporate Debtor namely R.K. Silk Mills India Ltd. was incorporated on 21.01.1991 as a Company having CIN: U18201DL1991PLC042809 under the erstwhile Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana. The Authorised Share Capital of the Corporate Debtor is Rs. 3,25,00,000/- (Rupees Three Crores Twenty-Five Lakhs Lakh Only) and the Paid-up Share Capital of the Corporate Debtor is Rs. 3,23,05,510/- (Rupees Three Crores Twenty-Three Lakh Five Thousand Five Hundred and Ten Only) as per MCA data of the CD. The CD was primarily engaged in the business of supplying chemicals in Bhilwara which is used for manufacturing and processing of textiles.

Brief Background of the Case

3. RK Silk Mills India Limited ("Corporate Debtor") was admitted into Corporate Insolvency Resolution Process ("CIRP") vide order dated 19-11-2019 passed by Bench-IV of NCLT, Delhi and the Applicant was appointed as the IRP, whose appointment as RP was confirmed by this Adjudicating Authority on 27.01.2020.
4. It is submitted that when no resolution plan was submitted during the process of CIRP, the Committee of Creditors ("CoC") in their 4th meeting dated 22.06.2020 concluded that the revival of the Corporate Debtor was practically not possible and decided to liquidate the CD. The resolution of CoC for liquidation of the CD was passed with 100% voting share. Pursuant thereto Bench-IV of NCLT, Delhi vide its order dated 21.02.2022, appointed Applicant as the Liquidator and passed directions to initiate liquidation proceedings of the CD.
5. It is submitted that in compliance to Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 the liquidator issued a public announcement in Form B in two daily newspapers, namely Financial Express and Jansatta on 26-02-2022 and called upon the stakeholders to submit their claims within a period of thirty days since liquidation

commencement date, i.e., on or before 23-03-2022. Further, in compliance with Regulation 35(2) of the Liquidation Process Regulations, two registered valuers of each class i.e. Securities and Financial Assets and Plant & Machinery were appointed to determine the realizable value of the assets/businesses of the CD.

6. It is submitted that in compliance to Regulation 30 r/w regulation 31(1) of the Liquidation Process Regulations, claims were verified and stakeholders' consultation committee was constituted and report under Regulation 31(2) was filed which was taken on record by this Adjudicating Authority. Further the modified list of stakeholders was taken on record by this Adjudicating Authority vide order dated 19.07.2022.
7. It is submitted that Mercedes-Benz Financial Services India Private Limited (earlier known as Daimler Financial Services Private Limited) (MBFS) was the secured financial creditor of the CD during its CIRP. The security interest of the said Financial Creditor was a Mercedes Benz GLA 200 CDI Style Vehicle and as decided by the COC during its second meeting dated 31-01-2020, the custody of the vehicle was handed over to the said financial creditor since they had facilities and infrastructure for its safekeeping.
8. As per sub - regulation (1) of Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016 ***"a secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II. Provided that where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate."***

9. It is submitted that during the liquidation, when MBFS did not file its claim and did not intimate its decision for relinquishment of security interest or to realise its security interest within thirty days from the liquidation commencement date, the vehicle covered under the security interest was presumed to be part of the liquidation estate in accordance with section 36(3) of the Code, 2016 and the Applicant sent an email dated 07-05-2022 to MBFS for handing over the control and possession of the vehicle to the Applicant.
10. It is submitted that in the aftermath of the event, MBFS filed its claim after the prescribed time limit of 30 days vide email dated 27-05-2022 in which it did not opt to relinquish its security interest. The applicant vide email dated 30.05.2022 responded to MBFS and showed its inability to admit the claim and informed that in light of regulation 21A of the Liquidation Process Regulations, 2016, the vehicle was made part of the Liquidation estate and a report of asset memorandum has already been filed by the Applicant.
11. It is submitted by the applicant that it sent numerous emails to MBFS to handover the control and possession of the vehicle to it and despite this, the MBFS is not cooperating to enable the registered valuers to have an access to the vehicle for conducting the valuation. These events led the applicant to file IA 3634/2022 seeking direction to MBFS to provide the custody and control of the asset of the CD.

However, this application was dismissed as not pressed vide order dated 03.01.2024. Relevant part of the order dated 03.01.2024 is extracted as under:

IA-3634/2022

1. Prayer in this application reads as follows:
 - a) *Direct the respondent to provide the liquidator with the control of the Mercedes Benz GLA 200 CDI Style Vehicle bearing registration no. RJ 02 CD 6085, being the asset of the Corporate Debtor.*
 - b) *Pass such other order/directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of the case.*
2. Mr. Ankit Sareen, Ld. Counsel for the Liquidator submitted that the sole asset of the CD is a Mercedes Car which is lying with one of the Financial Creditor viz. Daimler Financial Services Pvt. Ltd. having estimated value around Rs.5.50 Lakhs, which is deteriorating day by day and he has not been able to obtain possession so far.
3. In any event, it would entail further expenditure to continue the liquidation process which would be futile, therefore the SCC has informed not to pursue the present application.
4. Accordingly, this IA-3634 stands dismissed as not pressed.

12. It is submitted that in accordance with Regulation 41 of the IBBI (Liquidation Process) Regulations, 2016 the liquidator for crediting all realization of assets of the CD opened a bank account on 22.08.2022 with the following details:

Bank Account No.: 41212588097

Bank Details: SBI Bank, Prithviraj Road

IFSC: SBIN0031443

13. It is submitted that on 17.11.2022, the applicant informed MBFS that by virtue of IBBI (Liquidation Process) (Second Amendment) Regulations

2022 dated 16.09.2022 it had considered and provisionally admitted the claim of MBFS filed under Form-D for Rs. 26,19,942/-. Regulation 12(2)c) of the IBBI (Liquidation Process) Regulations, 2016 read as under:

Public Announcement by Liquidator

12(2) The public announcement shall: -

“(c) provide that where a stakeholder does not submit its claims during the liquidation process, the claims submitted by such a stakeholder, and duly collated by the interim resolution professional or resolution professional, as the case may be, during the corporate insolvency resolution process under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, shall be deemed to be submitted under section 38.”

14. The final list of stakeholders of the CD is as under:

R K SILK MILLS INDIA LIMITED (In Liquidation)				
Class of category	Name of Stakeholders	Claimed amount (Rs.)	Admitted claim by Liquidator (Rs.)	Security Interest
(A)	(B)	(C)	(D)	(E)
Secured Financial Creditors who has relinquished his security interest	Mercedez-Benz Financial Services India Private Limited (Earlier known as Daimler Financial Services Private Limited)	26,19,942.68	21,34,040.91	The Secured Financial Creditors chose not to relinquish the security interest but the same was intimated beyond the intimation period, therefore the same was made part of the liquidation estate as per regulation 21A of the Liquidation Process Regulations, 2016.

Unsecured financial Creditors	HDFC Bank Limited	18,19,634.77	18,19,634.77	N.A.
	Asset Reconstruction Company (India) Limited	12,68,998.00	12,68,998.00	N.A.
Operational Creditors other than Workmen, Employees, and Govt.	M/s Ridhi Sidhi	30,59,668.00	19,05,525.00	N.A.
	M/s. Mukund Chemicals)	3,20,429.00	2,10,500.00	N.A.
	M/s Bansal & Associates	1,90,000.00	1,90,000.00	N.A.
Govt.	Central Goods & Services Tax Department	6,47,21,365.00	6,47,21,365.00	N.A.
	Commercial Tax Department	99,16,096.00	99,16,096.00	N.A.
	Total	8,39,16,133.45	8,21,66,159.68	

15. It is submitted by the applicant that the CD has following assets:

a. **Non-readily realizable assets:** The CD has 2 pending litigations, however, during the 2nd meeting of SCC dated 26.12.2022, it was decided by SCC that it is not feasible nor viable to continue with the litigations and the applicant should not pursue them further.

b. **Mercedes Benz GLA 200 CDI style vehicle:** The possession of vehicle is currently with MBFS.

16. It is submitted that due to lack of possession of the sole asset of the CD with the liquidator, the liquidation process of CD could not be completed within a period of one year as provided under Regulation 44 of the IBBI

(liquidation Process) Regulation, 2016. Thereafter an application was filed bearing No. 1278/2023 for seeking extension of liquidation period of the CD, which was allowed by this Adjudicating Authority vide order dated 10.03.2023 and six months period was granted for completing liquidation process.

17. It is submitted that the third SCC meeting was conducted on 15.05.2023 after a long delay on account of MBFS requesting for time to conduct the third SCC meeting again and again. Once again due to non-cooperation displayed by MBFS, the process of liquidating the CD could not be concluded even after the extension of time period which ended on 21.08.2023.
18. On 11.11.2023 the liquidator filed an application bearing IA No. 6145/2023 for seeking closure of the liquidation process of the CD and on 02.04.2024 this Adjudicating Authority disposed of IA No. 6145/2023 while granting liberty to the applicant to move an appropriate application for dissolution of the CD.
19. It is submitted that the applicant intimated the SCC about the order dated 02.04.2024 and on 22.04.2024 called for 4th meeting of SCC wherein the committee members deliberated on the provisions of Regulation 14 of the IBBI (Liquidation Process Regulations), 2016 relating to Early Dissolution. The committee members considered that the realisable value from the assets of CD is zero. Consequently, the members of SCC approved that CD be dissolved and passed the following resolution with 79.00% voting share:

"RESOLVE THAT the stakeholders' consultation committee authorize the liquidator to conduct early dissolution of the corporate debtor, R K Silk Mills India Limited, in accordance with Regulation 14 of the IBBI (Liquidation Process) Regulations, 2016.

"FURTHER RESOLVED THAT the liquidator be directed to apply to the Adjudicating Authority for necessary directions and approvals for the early dissolution of the corporate debtor."

"FURTHER RESOLVED THAT the necessary actions and steps required for the early dissolution be undertaken by the liquidator in compliance with the provisions of the said Regulation 14 and other applicable laws and regulations."

Analysis and Findings

20. We have heard the Ld. Counsel for the applicant/liquidator and perused his application. Vide order dated 02.04.2024 this Adjudicating Authority granted liberty to the applicant to move an application for dissolution of the CD. The applicant/liquidator has moved the present application for seeking early dissolution of the CD. The Final Report and Compliance Certificate in the prescribed form, i.e. Form H is filed with application as **Annexure 16 and 17** respectively.
21. Section 54 of the Code read as follows: -

“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.”

22. Regulation 14 of the IBBI (Liquidation Process) Regulations, 2016 read as follows:-

*“**Early Dissolution-** Any time after the preparation of the Preliminary Report, if it appears to the liquidator that-*

(a) The Realizable Properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and

(b) The affairs of the corporate debtor do not require any further investigation;

[he shall consult the consultation committee and if it advises for early dissolution, he may apply, along with a detailed report incorporating the views of the consultation committee, to the Adjudicating Authority] for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution”

23. Upon conjoint reading of the above provisions, the ultimate objective of the code is either to resolve the issue by way of approval of Resolution Plan or to liquidate and then dissolve the CD, as expeditiously as possible. In the instant case, the CD had a sole asset, namely, Mercedes

Benz GLA 200 CDI Style vehicle bearing registration no. RJ02CD6085, the possession of which is also with the financial creditor (MBFS). The Liquidator sent multiple notices to them seeking control of the vehicle but to no avail. Thereafter, the Liquidator filed an application bearing IA No. 3634/2022 for seeking direction to MBFS to handover the possession of vehicle. Thereafter, the SCC formed the view not to pursue the litigation due to increased cost, accordingly, the said IA was dismissed as not pressed on 02-01-2024. The corporate debtor does not have any asset in its name. Further, the SCC considered that total liquidation cost is surpassing the realizable value, which is set at zero, and accordingly, decided to put the resolution for early dissolution for the voting.

24. The Present Interlocutory Application appears to be bonafide. In the interest of the Corporate Debtor and to enable the Applicant to perform his duties under the Code, it is prudent to dissolve the Corporate Debtor, and it is ordered accordingly.
25. The applicant/liquidator submits that the liquidation of CD was approved during the 4th CoC meeting held on 22.06.2020, from which date none of the stakeholders contributed towards the liquidation expenses and the same is being incurred by the applicant himself from 22.06.2020 till the present date. Further the applicant/liquidator has attached duly certified liquidator's receipt & payment account for the period of liquidation as **Annexure-15**. Moreover, the SCC in their 1st meeting held on 04.07.2022 with 100% voting share approved the estimated liquidation cost to be Rs. 10,20,000 plus GST, if any, plus the liquidator's fee as per the provision contained in Regulation 39B of the CIRP Regulations, 2016

Accordingly, the SCC members are directed to contribute towards unpaid liquidation expenses amounting to Rs 4,74,418/- in proportion to the financial debts owed to them by the CD.

26. In the present application the applicant/ liquidator also submits that due to lack of cooperation exhibited by the suspended management and auditors of the corporate debtor, he was unable to fulfill the legal obligations, including tax liabilities, ROC Compliances, and other applicable compliances of the corporate debtor and therefore now seeks waiver from these compliances. For this particular relief applicant/liquidator is given liberty to move in accordance with law.
27. This Adjudicating Authority vide order dated 10.03.2023 granted extension of 6 months to the liquidator to complete the Liquidation Process i.e. till 21.08.2023. The Liquidator submits that due to lack of possession of the sole asset (Car) of the CD with the liquidator & on account of Non-Cooperation by the Suspended Management the liquidation process could not be completed within the time frame. Therefore, as prayed, the delay in completion of Liquidation Process of CD is accordingly condoned.

ORDER

28. Hence, IA-23/2024 stands allowed and the Corporate Debtor is ordered to be dissolved.
29. The Liquidator is further directed to serve a copy of this order upon the Registrar of Companies, NCT of Delhi and Haryana, immediately and, in any case, within fourteen days of receipt of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.
30. The Liquidator shall stand discharged from his responsibilities, subject to procedural compliances. The Corporate Debtor stands dissolved from the date of this Order.
31. IA-23/2024 and IB-1416(PB)/2018 shall stand disposed of in accordance with the above directions.

32. The Registry is directed to send copies of this order to all the parties for information, for taking necessary steps and to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
33. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
34. File be consigned to the record storage final.

Sd/-

**RAMALINGAM SUDHAKAR
(PRESIDENT)**

Sd/-

**AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)**