

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

IA(IBC)/1784(CHE)2023

IN

IA(IBC)/264(CHE)2020

IN

CP(IB)/885/2018

(filed under Section 60(5) of Insolvency & Bankruptcy Code, 2016 read with Regulation 38(1) of IBBI (Liquidation Process) Regulation 2016 read with Rule 11 of National company law Tribunal rules 2016.

In the matter of M/s. MPL Cars Private Limited in (Liquidation)

Mr.K.Sivalingam,
Liquidator, M/s.MPL Cars Private Limited
Flat No.1603, Tulive Horizon Residences,
16/1, Arunachalam Road,
Saligramam,
Chennai-600093

...Applicant/Liquidator

Vs.

M/s Sundaram Home Finance Ltd.
Having office at Sundaram Towers,
Whites Road, Express Estate,
Royapettah, Chennai-600014,
Represented by its authorised signatory
Mr.Sunil Shankar

... Respondent

Order Pronounced on 12th July 2024

CORAM:

SHRI. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

SHRI. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

For Applicant : M.L. Ganesh, S Arun Kumar

ORDER

(Heard through video conferencing)

This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC") by the Applicant seeking following reliefs:

- (i) *The Applicant/Liquidator prays in order for dissolution of CD company, pass appropriate direction to transfer the unsold property situate at Apartment No D5, 5th Floor, No 189, Old Mahabalipuram Road, Sholingnallur Village, Kancheepuram District in the name of CD company in favour of secured creditor, M/s Sundaram Home Finance Ltd.*
- (ii) *Directing the Respondent to pay the Legal expenses and other charges for filing the instant application.*

SUBMISSIONS BY APPLICANT

2 The Applicant submits that Corporate Debtor M/s MPL Cars Private limited had been subjected to CIRP vide order dated 13.08.2019 passed in CP/885(IB)/2018. Ms Priya S anand was appointed as IRP who caused public announcement for creditors for their claims by virtue of publication dated 17.08.2019 indicating last date for submission of claims on 28.08.2019.

3. The Applicant further states that the said IRP had constituted the Committee of Creditors consisting of three financial creditors on 30.08.2019. The then IRP had received claims from three financial creditors on 28.08.2019 with a total amount of Rs.4,032.46 lakhs and one operational creditor for an amount of Rs.100.28 lakhs

4. The Applicant further submits that the first meeting of COC was held on 11.09.2019 and the IRP had informed the members of COC that there was no response from the suspended directors of the corporate debtor for

ascertaining the books and records of the corporate debtor and the status of the securities offered to the lenders.

5. The Applicant further submits that in the interregnum period, the operational creditor filed an application in MA No.945 of 2019 on 04.09.2019 to withdraw the CIRP application filed against the corporate debtor. The withdrawal application filed by the operational creditor was with a direction to the operational creditor and the corporate debtor to pay the remuneration of IRP as contemplated under the statute.

6. The Applicant further submits that subsequent to the said order, the IRP had filed an application in MA No.951 of 2019 on 09.09.2019 seeking for recalling of the above order dated 06.09.2019 which was allowed with a direction to the operational creditor to approach the IRP as contemplated under the statute.

7. The Applicant further submits that subsequently, the IRP had conducted second COC meeting on 04.10.2019 and one of the financial creditors proposed to replace the IRP and placed the same before COC and the COC members had decided to replace the aforesaid IRP by appointing the applicant / Mr.K.Sivalingam as RP and the said order appointment was ratified by this bench on 25.10.2019.

8. It is submitted that subsequent to appointment, RP had appointed two registered valuers for valuation of land and building, The RP convened the

Third COC meeting on 06.12.2019 and informed Coc members about the finalisation of claims including the Income tax and operational creditor.

9. The applicant states that the since the business of the CD were closed in the year 2016 and there were no dealership, in Fourth COC meeting held on 12.12.2019 COC members with 89.17% passed the resolution to liquidate the CD company, RP filed the liquidation application in IA No 264/IB/2020 and the liquidation was allowed on 27.01.2021.

10. It is submitted that corporate debtor owns one incomplete flat mortgaged exclusively to M/s Sundaram Home Finance Ltd. The Applicant submits that RP has filed OP No 166 of 2021 on behalf of CD company before the Madras High court to appoint the arbitrator to resolve the disputes arising out of the dealer sale and service agreement dated 15.06.2011 between CD company and M/s Ford India Pvt Ltd on 08.04.2021 Justice Mr S Rajeshwaran was appointed as sole arbitrator and final award was passed on 03.06.2022 directing M/s Ford India Pvt Ltd to pay the sum of Rs 5 Cr to the CD company. The applicant challenged the said award by Arb O.P.NO 490 of 2022 and the appeal was allowed.

11. It is submitted that the liquidation period was extended upto 26.01.2023. The applicant states that No claims were received by the unsecured financial creditors, workman, employee and shareholders. It is submitted that M/s Sundaram Home Finance Ltd has mortgage rights over

the incomplete flat and has opted for realisation of the security interest under section 52(4) of IBC, 2016. It is submitted that since they have opted for standing outside the liquidation proceedings to enforce the aforesaid secured asset no proceedings is initiated in that respect. And since it's a property with incomplete construction no value is assigned to the property. And it is submitted that there is no asset in name of the corporate debtor or under the custody of the liquidator.

12. It is submitted that total liquidation expenses incurred is Rs 6,63,772 after payment of liquidation expenses no amount is left with the liquidator, it is submitted that M/s Sundaram Home Finance Ltd has expressed no objection for dissolution of CD provided they should be in the position to sell the aforesaid property on its own subsequent to dissolution of CD Invoking SARFAESI.

13. It is submitted that respondents standing outside the liquidation proceedings has requested the liquidator to file the instant application in order to have exclusive legal right and title over the property and right to transfer the property without the intervention of the liquidator.

14. It is prayed before us to permit the liquidator to transfer the property which is the incomplete flat situated at Apartment No D5,5th Floor, No 189, Old Mahabalipuram Road, Sholingnallur village, Kancheepuram district.

SUBMISSIONS OF RESPONDENT

15. Respondent has not filed any counter to the application.
16. This application was heard on 05.04.2024 the counsel for the respondent M/s Sundaram Home Finance limited had appeared and submitted that they have no objection for the liquidator to precede under Regulation 38 of IBBI which states the aspect of distribution of unsold assets.

FINDINGS:

17. We have heard the learned counsels for the parties and perused the record.
18. The Application is filed by the Applicant Liquidator under Section 60(5) of Insolvency & Bankruptcy Code, 2016 read with Regulation 38(1) of IBBI (Liquidation Process) Regulation 2016 read with Rule 11 of National company law Tribunal rules 2016.
19. For the ready reference the relevant regulation and rules are appended.

60(5) Adjudicating Authority for corporate persons.

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

- (a) any application or proceeding by or against the corporate debtor or corporate*
- (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and*
- (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.*

Regulation 38: Distribution of unsold assets.

(1) The liquidator may, with the permission of the Adjudicating Authority, distribute amongst the stakeholders, an asset that [could not be sold, assigned or transferred] due to its peculiar nature or other special circumstances.

Rule 11 Inherent Powers.- *Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.*

20. The Applicant has sought this application IA(IBC)/1784/(CHE)2023 praying for transfer of the unsold property prior to dissolution of Corporate Debtor company. It is submitted that except of the above mentioned property there are no other assets with the Corporate Debtor or under the custody of the Liquidator. It is submitted that liquidator had filed the list of the Stakeholders and no Claims were received from any of the unsecured financial creditors, workman, employee and shareholders. And in this instant case M/s Sundaram Home Finance Ltd has got exclusive mortgage rights over flat with incomplete construction which is situated at apartment No D5, 5TH Floor, No 189, Old Mahabalipuram Road, Sholinganallur village, Kancheepuram District. And has opted for realisation of security interest under section 52(4) of IBC which is read as,

52(4) Secured creditor in liquidation proceedings. A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.

21. M/s Sundaran Home Finance limited has opted for standing outside the liquidation proceedings and has expressed no objection for dissolution of

corporate debtor provided they sell the aforesaid property. The position of law in the matter can be crystallised relying on Hon'ble Apex court judgement in *Laxmi Fibre Ltd. V/s. Andhra Pradesh Industrial Development Corporation Ltd. and Ors., (2015) SCC 464*, in which it was held that the Liquidator has no right to ascertain the claims and rights of the Secured Creditors who chose to stand outside the (Liquidation Process) in respect of the securities. Hon'ble Apex Court in *Pegasus Assets Reconstruction Pvt. Ltd. V/s. M/s. Haryana Concast Ltd. and Anr., (2016) 4 SCC 47*, in which the Hon'ble Supreme Court has observed that 'if the defaulter is the Company under winding up, said Financial Corporation can at best be a Secured Creditor who may opt to remain out of winding up but nonetheless it will be subject to Orders passed in accordance with Law under the Companies Act. It is also the clear intention of the Parliament expressed in Section 13 of the SARFAESI Act, that a Secured Creditor has a right to enforce its security interest without the intervention of the Court and Tribunal.

22. It is submitted that if the Liquidator continue to monitor the CD company, the respondents would have to meet the said expenses and the property is in hallow condition with only four walls constructed and major portion has to be constructed and this application has been filed based on the request of the respondent in order to obtain the exclusive legal right and title over the aforementioned property.

23. In light of the submission of the counsels were the application is filed by the parties in “*Consensus ad idem*” relying on the aforesaid decisions of the Apex court and in the interest of justice we are of the considered opinion that the property Apartment No D5, 5th floor, No 189, Old Mahabalipuram road, sholignallur village, Kancheepuram District be transferred to the secured creditor, M/s Sundaram Home Finance Limited.

24. with regard to the second prayer of the Applicant on payment of Legal expenses and other charges for filing the above application the respondent is directed to bare the legal expenses and charge which was incurred in filing this application, the applicant has not brought to knowledge of this court or nor placed any record as to amount incurred hence parties are directed to amicably discuss and pay the cost incurred.

25. For the aforesaid reasons, This bench allows the above application Accordingly the above IA(IBC)1784(CHE)2023 in IA(IBC)/264(CHE)2020 in CP(IB)885/2018 stands *Allowed*.

-SD-

**RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)**

-SD-

**JYOTI KUMAR TRIPATHI,
MEMBER (JUDICIAL)**