

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

I.A. No. 6145 OF 2023

IN

CP (IB) No.1416/(PB)/2018

**ORDER UNDER SECTION 60(5) READ WITH RULE 11 OF THE NATIONAL
COMPANY LAW TRIBUNAL RULES, 2016**

IN THE MATTER OF:

Ram Pal Toshniwal

(Sole Proprietor of M/s RIDHI SIDHI)

..... Operational Creditor

Versus

RK Silk Mills India Limited

..... Corporate Debtor

AND IN THE MATTER OF:

Mr. Prashant Agarwal

Liquidator of RK Silk Mills India Limited

..... Applicant

Order Pronounced On: 02.04.2024

CORAM:

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

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

APPEARANCES:

For the Liquidator: Adv. Ankit Sareen and Adv. Yash Tandon

ORDER

1. IA-6145/2023 has been filed by the liquidator of RK Silk Mills India Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code"), for seeking the following reliefs:
 - (a) To allow the instant application;
 - (b) To pass an appropriate order under Rule 11 of the NCLT Rules, 2016 for the closure of liquidation process of corporate debtor;
 - (c) Any other orders or directions, that this Hon'ble Tribunal may be pleased to pass.

2. 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 appointed the Applicant herein, Mr. Prashant Agrawal as the Interim Resolution Professional, whose appointment as Resolution Professional was confirmed by this Adjudicating Authority on 27.01.2020.

3. It is submitted that when no resolution plan was submitted during the process of CIRP, the Committee of Creditors 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 under section 33 of the Code, 2016. The resolution 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.

4. It is submitted that in compliance to Regulation 12 of the IBBI (Liquidation Process) Regulation, 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.

5. 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 and taken on record by this Tribunal. Further the modified list of stakeholders was taken on record by this Adjudicating Authority vide order dated 19.07.2022.
6. 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.
7. It is submitted that as per sub - regulation (1) of Regulation 21A of the IBBI (Liquidation Process) Regulations, ***"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."***

- 8.** 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 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.
- 9.** 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 to MBFS showed its inability to admit the claim and informed that in light of regulation 21A of the Liquidation Process Regulation, the vehicle was made part of the Liquidation estate and a report of asset memorandum has already been filed by the Applicant.
- 10.** 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 of the asset of the CD. 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. This application was dismissed as not pressed vide order dated 03.01.2024. Relevant part of the order dated 03.01.2021 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.

11. It is submitted that on 17.11.2022, the applicant informed the 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 read as under:

“(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.”

12. The final list of stakeholder of the CD is extracted 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	12,68,998.00	12,68,998.00	N.A.

	Company (India) Limited			
Operational Creditors other than Workmen, Employees, and Government	M/s Ridhi Sidhi	30,59,668. 00	19,05,525.00	N.A.
	M/s Mukund Chemicals)	3,20,429.0 0	2,10,500.00	N.A.
	M/s Bansal & Associates	1,90,000.0 0	1,90,000.00	N.A.
Governments	Central Goods & Services Tax Department , Alwar	6,47,21,36 5.00	6,47,21,365.0 0	N.A.
	Commercial Tax Department	99,16,096. 00	99,16,096.00	N.A.
	Total	8,39,16,13 3.45	8,21,66,159. 68	

13. It is submitted 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 and viable to continue with the litigation and the applicant should not pursue it further.
- b. **Mercedes Benz GLA 200 CDI style vehicle:** The possession of vehicle is currently with MBFS

14. 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.

15. 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
16. It is submitted that in these circumstances the applicant/liquidator has no other feasible course of action other than praying for the closure of liquidation process of the CD before this Tribunal.

Analysis and Findings

17. We have heard the Ld. Counsel for the applicant/liquidator and perused his application for closure of the liquidation process of the CD. The applicant in the instant case prays to this Adjudicating Authority for exercising power under Rule 11 of the NCLT Rules, 2016 for allowing the present application.
18. We would now like to refer to Regulation 45 of the IBBI (Liquidation Process) Regulations, 2016 which reads as under:

45. Final report prior to dissolution.

- (1) When the corporate debtor is liquidated, the liquidator shall make an account of the liquidation, showing how it has been conducted and how the corporate debtor's assets have been liquidated.
- (2) If the liquidation cost exceeds the estimated liquidation cost provided in the Preliminary Report, the liquidator shall explain the reasons for the same.
- (3) ⁶⁵[The liquidator shall submit an application along with the final report and the compliance certificate in form H to the Adjudicating Authority for –
 - (a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or
 - (b) for the dissolution of the corporate debtor, in cases not covered under clause (a).]

The provisions enshrined under the code r/w allied regulations provides that the liquidator shall make an application along with the final report and compliance certificate in Form H for seeking closure of liquidation process where the CD is sold as a going concern and for other cases, the liquidator shall make an application for dissolution of the CD.

19. In the case at hand the sole asset of the CD is a Mercedes Car, the possession of which as per applicant is with MBFS. The applicant also filed IA 3634/2022 for seeking direction to MBFS to provide the custody and control to the applicant Liquidator. However, vide order dated 03.01.2024 the IA 3634/2022 was dismissed as not pressed. In these circumstances there are no assets available with the CD for distribution.
20. Be that as it may, given the facts of the present case, the liquidator should have moved an application for dissolution of the CD instead of seeking closure of liquidation as the outcome of closure of liquidation without dissolution in the present case will be that the company will be handed back to the suspended management even without discharging its liabilities and the liquidator will also be discharged from its responsibilities.
21. In the instant case, the CD has not been sold as a going concern and yet applicant is pressing for closure of liquidation process. We are of the view that it is not a fit case where the power conferred under Rule 11 of NCLT Rules, 2016 can be exercised as there is a specific provision provided under Regulation 45(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 for cases where the CD is not sold as a going concern. In those cases, the liquidator should move an application for dissolution of the CD by filing Final Report and compliance certificate in Form-H.

22. ORDER

For the reasons as mentioned above, IA-6145/2023 for seeking closure of liquidation process is dismissed. Liberty is granted to the applicant to move an appropriate application for dissolution of the CD in terms of the code.

23. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

24. File be consigned to the record storage current.

Sd/-
RAMALINGAM SUDHAKAR
(PRESIDENT)

Sd/-
AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)