(4)

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI

IA(IBC)/8(CHE)/2022 IN IBA/1433/2019

(filed under Section 54 (1) of the Insolvency & Bankruptcy Code, 2016 Read with Regulation14 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 and as Amended on 04-03-2021)

In the matter of **M/s. DSC MOTOR PRIVATE LIMITED**

E. Santhanalakshmi
Interim Resolution Professional (IRP)
No. 42B, Sree Krishna Flats,
S-1, 2nd Floor, LIC Nagar 2nd Street,
Madipakkam,
Chennai - 600091

... ***Applicant***

Order pronounced on ***15th March 2023***

CORAM:

JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant: E. Santhanalakshmi

O R D E R

Per: **SAMEER KAKAR, MEMBER (TECHNICAL)**

This Application has been filed by the Interim Resolution Professional seeking the following prayer:

a. to pass order of early dissolution of the Corporate Debtor on the following grounds stated herein:

i. that the CD cannot be continued as going concern as it was not functional at the time of initiation of the CIRP process;

ii. there is no cooperation from the Directors of the Corporate Debtor since the books of accounts not furnished to the IRP;

iii. there is no cooperation from the Committee of Creditors who are not attending the CoC Meetings and not ready to contribute the cost of CIRP; and

iv. there are no liquid assets with the Corporate Debtor to cover the cost of the CIRP and liquidation process.

b. and pass such other orders as deem fit and proper in the given circumstances of the case in the interest of justice.

2. The CIRP in the matter commenced vide order dated 30.09.2021 and the applicant herein was appointed as Interim Resolution Professional.

3. Public announcement was issued on 03.10.2021. Pursuant to the public announcement, claims were received and CoC was constituted.

4. The Applicant submits that the business of the Corporate Debtor is not in operation. The last balance sheet was filed on 31.03.2017 and thereafter no compliance has been done as per MCA records. The Applicant visited the Corporate Debtor at its registered address and found that the Corporate Debtor had

vacated office long ago and some another occupant is functioning at the said address. The Applicant further states that despite various emails and notices sent through post the Corporate Debtor, Suspended Directors are not responding. The Applicant further submits that the Applicant contacted the Financial Creditor but despite reminders no claim was filed.

5. The Applicant submits that upon the scrutiny of the MCA records it was found that the directors of the Corporate Debtor are also directors of other companies, some of which have been struck off by MCA and one another associated company is under CIRP. Despite follow up, the details of the Corporate Debtor has not been furnished to the Applicant with required certain details. Claims were received and CoC was ultimately formed and report was submitted with the Tribunal on 23.10.2021.

6. The Applicant further submits that notice has been served to the Members of the CoC and four meetings were conducted through video conferencing as well as by physically. The CoC of the Corporate Debtor comprises mainly of Financial Creditors mostly individuals and they do not want to contribute the CIRP cost. The 4th CoC meeting was held on 18.12.2021 which was attended by only two (2) members i.e. Mr. B. Suresh Kumar and Mahindra & Mahindra Financial Services Limited represented by

its Assistant Legal Manager. Out of two members only one person participated in voting, another person walked out without casting the vote. The resolution passed in the 4th CoC meeting is appended at Annexure-18 of the application typeset. The Applicant further submits that the CIRP cost has not been contributed and has not been ratified by the CoC despite persistent follow up by the Interim Resolution Professional.

7. The Interim Resolution Professional submits that total 76 creditors claim aggregating to Rs. 7,57,57,117/- (Rupees Seven Crore Fifty Seven Lakh Fifty Seven Thousand One Hundred and Seventeen only) were received out of which claims which pertained to Financial Creditor amounted to Rs. 6,49,50,759/- (Rupees Six Crore Forty Nine Lakh Fifty Thousand Seven Hundred and Fifty Nine only) (73 FCs) and that of Operational Creditor were Rs. 1,08,06,358/- (Rupees One Crore Eight Lakh Six Thousand Three Hundred and Fifty Eight only) (3 OCs).

8. The 5th CoC meeting was scheduled on 29.12.2021 to obtain the consent of the CoC for resolution of the Corporate Debtor and to ratify the Application filed under Section 54(1). The meeting was convened through video conferencing, however, nobody from the CoC participated. The copy of the notice of CoC meeting and the minutes are attached as at

Annexure - 22 & 23 of the application typeset. The Interim Resolution Professional further submits that the Corporate Debtor is not a going concern and there are no employees of the Corporate Debtor as on the Insolvency commencement date. It is also submitted that the Corporate Debtor was not viable for resolution and liquidation, since the showroom was vacated and assets were disposed off much before the commencement of CIRP.

9. Heard the Counsel for the Applicant and it is relevant to reproduce Section-54 of the Insolvency and bankruptcy as follows:

> *"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.*
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> *2. The Adjudicating Authority shall on application filed by 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".*

10. It is seen from the above that "**only a liquidator**" can file an application to the Adjudicating Authority for the dissolution of the Corporate Debtor and the present application has been filed by the Interim Resolution Professional. Considering the provision of law under Section 54 of IBC, 2016, we are not inclined to order for dissolution of the Corporate Debtor at this stage.

11. We also observe that the CIRP in the matter was ordered by this Tribunal on 30.09.2021. The Ld. Interim Resolution Professional confirms that no application is presently pending seeking any extension/exclusion of CIRP.

12. The Interim Resolution Professional further states that the CIRP period of the Corporate Debtor is already long over and that no resolution plan has been received in the matter.

13. We reproduce the section 33(1) of the Code:

> (1) Where the Adjudicating Authority, -
>
> (a) before the expiry of the insolvency resolution process period or the **maximum period permitted for completion of the corporate insolvency resolution process under section 12** or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non- compliance of the requirements specified therein,

It shall -

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan intimates the Adjudicating Authority of the decision of the committee of creditors '[approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[Explanation. - For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

14. As the CIRP period is already over and no resolution plan is pending or approved for our consideration and as the maximum period prescribed under Section 12 of the Code is already over

taking resort to Section 33(1)(a), we are compelled to order for liquidation of the Corporate Debtor.

OTHER TERMS & CONDITIONS OF LIQUIDATION:

15. Thus, as a consequence thereof, the Corporate Debtor is required to be ordered for liquidation as per Section 33(1)(a) of IBC, 2016. As CoC has approved the name of Liquidator, we hereby appoint **E. Santhanalakshmi, *Interim Resolution Professional (Email: irp.santhanalakshmi.gmail.com)* (IBBI/002/IP-N00831/2019 -2020/12661)**, who has given his consent and whose AFA is valid till 14/03/2023, as the Liquidator of the Corporate Debtor, to carry out the liquidation process subject to the following terms of the directions.

a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.

b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent

preferences and file suitable application before this Adjudicating Authority.

d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;

e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.

h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.

i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

16. Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

Justice RAMALINGAM SUDHAKAR
PRESIDENT