

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I**

IA No. 3833/MB/C-I/2022

In

C.P (IB) No.3558/MB/C-I/2018

An application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016

Filed by

Indian Bank

...Applicant

Versus

Anil Mehta

Liquidator of

Pratibha Industries Limited.

...Respondent

In the matter of

Bank of India

...Financial

Creditor

Versus

Pratibha Industries Limited.

... Corporate Debtor

Order Pronounced on: 17.07.2023

Coram:

Hon'ble Member (Judicial) : Mr. H.V. Subba Rao
Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Applicant : Mr. Rohit Gupta, Advocate
For the Respondent : Ms. Dipti Das i/b Fox Mandal &
Associates, Advocate.

ORDER

Per: Anu Jagmohan Singh, Member (Technical)

1. The present Applicant is filed by the secured Financial Creditor and Stakeholder of Pratibha Industries Limited i.e. (Corporate Debtor). The following reliefs are sought by the Applicant:
 - i. That this Tribunal be pleased to remove the Liquidator of the Corporate Debtor.
 - ii. That this Tribunal be pleased to replace Mr. Anil Mehta as the Liquidator and appoint Mr. Avil Menezes as the new Liquidator.

Backdrop of facts

2. The Corporate Debtor was admitted in CIRP vide Order dated 01.02.2019. Since, no Resolution Plan was passed, the Corporate Debtor was Liquidated vide Order dated 08.02.2021 and the Respondent herein was appointed as the Liquidator.
3. The Applicant submits that the Stakeholders Consultation Committee (“SCC”) in the meeting held on 01.12.2022 has voted by 85.94% in favor of removing the present Liquidator and replacing him with the new Liquidator. The minutes of the meeting dated 01.12.2022 are placed as Exhibit G of the Petition.

4. The Applicant has placed on record the written consent of the proposed Liquidator as Exhibit A of the Petition.
5. The Applicant contends that the Respondent has been running the Liquidation process with total incompetence. He failed to exercise due care and diligence while discharging his functions as a Liquidator. The Respondent is concealing financial information from stakeholders thereby prejudicing their interest and incurring unwanted expenses to increase the Resolution Cost. Consequently, the Applicant has lost faith in him.
6. The Applicant submits that the Respondent has refused to provide the minutes of SCC meeting despite repeated requests. Further, the Respondent has been interfering with the statutory rights of the Applicants by fixing sale of non-relinquished assets of the Corporate Debtor which are secured assets of the Applicant and other stakeholders.
7. It is submitted that FIR's are being lodged by engineers and contractors against the Respondent as the Liquidator. A complaint with the IBBI board has also been filed.
8. The Applicant submits that the Respondent has resorted to making unilateral decisions without considering the suggestions or recommendations of the SCC. Further, the Respondent has circulated distorted and recorded erroneous minutes of Stakeholders Meetings. The Applicant submits that the stakeholders have raised several objections to

rectify the minutes.

9. The Applicant submits that there was diversion of funds of FEMC – Joint Venture of Rs.32,11,62,907/-. It is submitted that the Respondent has not only appropriated receivables of FEMC Joint Venture but has dishonestly defeated the legal rights of consortium of lenders.
10. The Applicant submits that the Respondent has failed to perform his duties and discharge his functions as a Liquidator under the Code. The Respondent has been conducting the Liquidation process in manner which is prejudicial to the interest of all the stakeholders.
11. The Applicant states that in a Joint Lenders Meeting held on 18.10.2022 wherein the lenders of the Corporate Debtor have agreed for change of Liquidator. The minutes of the meeting dated 18.10.2022 are Annexed as “Exhibit-C” of the Application.
12. The Applicant submits that after elaborate discussion, all the lenders have unanimously agreed for appointment of one Mr. Avil Menezes. The lenders agreed to hold the SCC meeting with an agenda of replacement of Respondent as the Liquidator by putting it for vote. Accordingly, the Applicant who was authorized by the lenders to send the communication to the Liquidator, sent an email dated 22.11.2022 requesting the Respondent to call for such meeting.
13. The Applicant states that in the 14th Meeting of the SCC held on 01.12.2022 decided to put the agenda for removal of Liquidator for

voting and resolved by a majority of 85.94% in favour of removing the present Liquidator and replacing him with new Liquidator. The minutes of the stakeholders meeting are annexed as Exhibit-G of the Application. The voting sheet of the 14th SCC are placed on record vide Additional Affidavit dated 03.01.2023.

14. The Applicant submits that the Liquidator can be replaced with majority vote of not less than 66% of the consultation committee. Further, proper reasoning and discussion has been recorded in the 14th meeting of SCC for replacement of the Liquidator.
15. The Applicant submits that the Disciplinary Committee of IBBI Board has vide Order dated 28.10.2022 has held that the Respondent has violated Section 14(1)(b) and 208(2) of the Code, Regulation 7(2)(a) and 7(2)(h) of Insolvency Professional Regulations read with clause 1,2,3 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulation for payment of pre-CIRP expenses during the moratorium. The DC held that there were procedural lapses about not informing the CoC about the agenda of clearing the pre-CIRP dues. The DC imposed a penalty of Rs.5,00,000/- on the Respondent.
16. In the aforesaid backdrop of facts, the Applicant has filed the present Application for replacement of present Liquidator with Mr. Avil Menezes bearing registration No. IBBI/IPA-001/IP-P00017/2016-2017/10041.

Submissions advanced by the Respondent/Liquidator

17. At the outset, the Respondent submits that the Applicant has already filed IA No. 2015 of 2021 inter alia for removal of Mr. Anil Mehta as the Liquidator and the matter was heard and reserved for orders. However, due to reconstitution of bench the matter was de-reserved. The Respondent argues that the matter is already pending before this bench and therefore, the present Application should be dismissed as sub-judice.
18. The Respondent submits that current Liquidation assignment is a complicated one and he was involved in the process since inception as the Resolution Professional as well as a Liquidator. Therefore, it may not be practical to appoint a new Liquidator.
19. The Respondent submits that he has managed the entire process in an efficient manner and kept the Corporate Debtor as a going concern. He further submits that the financial condition of the Corporate Debtor has improved tremendously during the CIRP and the Liquidation Process.
20. The Respondent qua the contention of the Applicant that he has refused to provide the minutes of the SCC submits that, the Applicant was not part of the SCC pursuant to the Liquidation Regulations as they stood prior to the amendment to the Liquidation Regulations, 2016 dated 16.09.2022. The Respondent submits that after the Applicant became part of the CoC, he has shared the minutes of the SCC meetings held thereafter.

21. The Respondent submits that it has incorporated the requests of lenders to modify the minutes and rectified the same as per actuals and accordingly issued the addendum to the minutes of 13th SCC meeting dated 08.11.2022.
22. The Respondent submits that the Applicant has not signed the confidentiality undertaking under Regulation 5 of the Liquidation Regulation due to which financial documents have not been shared with the Applicant.
23. The Respondent submits that the Applicant had filed its claim dated 17.03.2021 with the Respondent informing that it will not relinquish its security interest in terms of Section 52 of the Code with respect to two assets namely Delhi Jal Board Project and FEMC Pratibha Project. The Applicant was liable to pay the CIRP Costs, Liquidation Cost and workmen dues. However, the Applicant failed to pay the dues and also failed to sell the secured assets within 6 months from the dated of non-relinquishment.
24. The secured assets claimed by the Applicant were deemed to be relinquished and a Show Cause Notice was issued to the Applicant vide email dated 01.11.2021. Therefore, the Respondent states that with a view to sell the Corporate Debtor as a going concern 3rd Auction Notice was issued along with the disclaimer.
25. The Respondent with respect to the issue of FEMC-Pratibha Joint

Venture submits that the matter is sub-judice in IA No. 628 of 2022 which is pending before this Tribunal. Further, he submits that the allegation baseless and funds were transferred to Bank of Baroda wherein the account is in the name of the Corporate Debtor.

26. The Respondent submits that the SCC in its 14th meetings whilst resolving to remove the Liquidator have failed to assign reasons for replacement.

27. The Respondent submits that the Order of the Disciplinary Committee of IBBI is not relevant in the present Application. Further, there was a specific finding with respect to the intentions of the Liquidator by the Disciplinary Committee which reads as under:

“There are no evidences which can raise doubts about the intentions of Mr. Mehta for not acting bona fide. The case for running the CD as a going concern is strong and evidence suggests that payment of pre-CIRP dues became of crucial importance to keep the CD as a going concern.”

28. In summation, the Respondent submits that it has acted in the bona fide interest of the Corporate Debtor and has made an endeavor to keep the Corporate Debtor as a going concern.

Findings and Directions:

29. We have perused records and heard the submissions made by the parties.

30. The provision for replacement of the Liquidator was inserted vide amendment to the Liquidation Regulations, 2016 by Notification

No. IBBI/2022-23/GN/REG094, dated 16th September, 2022
(w.e.f. 16-09-2022). Regulation 31A (11) reads as under :

“31A (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.”

31. In the present case the SCC has resolved to replace the Liquidator with a majority vote of 85.94% in meeting held on 01.12.2022. On perusal of the minutes it is observed that a detailed discussion ensued amongst the lenders and the Liquidator was given complete opportunity to put forward his clarifications and responses to the allegations levied. Therefore, the defense of the Liquidator that he was replaced without assignment of reasons is rejected. The Applicant has placed on record the consent of Mr. Avil Menezes to act as a Liquidator in Form AA dated 30.11.2022.
32. As far as the question of remuneration is concerned this bench had directed the Liquidator during the course of hearing to submit a note with respect to outstanding dues of Liquidator during the process.

The Liquidator has complied with the direction and filed a note dated 15.05.2023 wherein a tabular chart of outstanding dues totaling to an amount of Rs. 21,78,121/- is mentioned.

33. The Applicants have filed a note dated 18.05.2023 in response to the note of the Liquidator. The Applicant submits that since the amount set out is in excess of Rs.19 Lakh, the same would be considered in the first meeting to be held after the new Liquidator takes charge. Since, the Applicant has failed to clarify as to why they are withholding the payment of Liquidation Costs. There is no reason to delay the payment of outstanding dues of Liquidation Costs till the first meeting after new Liquidator takes charge.
34. The SCC is directed to forthwith pay the outstanding dues of the Respondent amounting to Rs. 21,78,121/- after verification of the amount.
35. In the aforesaid backdrop, the conditions stipulated in the above-mentioned Regulation for replacement of Liquidator are complied with.
36. The Hon'ble NCLAT in the matter of *Dr. K.V. Srinivas Company Appeal (AT) (CH) (INS.) No. 319 / 2022* has held as follow:

“34. A ‘Liquidator’, is to act in the interests of ‘General Body’ of ‘Creditors’, and ought not to continue in Office, if the ‘Creditors’, no longer have confidence in its ability, to realise ‘Company’s Assets’ to

*the `Creditors' best advantage, and to `prosecute' / `pursue' the
`Claims', with due diligence.”*

37. In the present, it is evident that the lenders are dissatisfied with the performance of the Liquidator and have lost trust in him to continue the process of Liquidator. The minutes of the JLM held on 18.10.2022 records the concern raised by the Lenders that the conduct of the Liquidator is worrisome.
38. The Liquidator is arrayed as a party Respondent in the present Application, he has vide his affidavit-in-reply raised various contentions opposing his replacement. The Liquidator has advanced submissions attributing motive to the Applicant for his replacement, which are not relevant at this stage, since the resolution for replacement of Liquidator was passed by a majority of 85.94%.
39. This Adjudicating Authority has very limited scope of judicial review in matters wherein certain decisions are placed entirely on the commercial wisdom of the CoC or SCC as the case may be, this position is made clear by a catena of Judgements of the Hon'ble NCLAT.
40. Moreover, it is evident from a mere perusal of the minutes of Stakeholder Consultation Committee meetings, that the Liquidator has lost the trust and confidence of the stakeholders.
41. Therefore, in order to achieve smooth functioning of the Liquidation

process of the Corporate Debtor, we deem it fit and proper to direct that the present Liquidator be replaced with the new Liquidator Mr. Avil Menezes proposed by the SCC. Without going into the merits of contentions of both sides, on the conduct of the Liquidator; the present Application is allowed in the interest of stakeholders.

42. With the aforesaid observation, **IA No. 3833 of 2022 in CP(IB) No. 3558 /MB/C-I/2018** stands disposed of as **allowed**.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

17.07.2023

Priyal

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)