

**THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. IV
AT NEW DELHI**

**IA No. 01/ND/2021
IN
Company Petition No. (IB)-1525(ND)/2019**

Under Section 33(1) of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Rohit Sehgal

Resolution Professional

Ajit Automotive Service Private Limited ...Applicant

And in the matter of:

M/S Dynamic Security

...Operational Creditor

Versus

Ajit automotive services private limited

... Corporate Debtor

Coram:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

MS. SUMITA PURKAYASTHA

HON'BLE MEMBER (Technical)

MEMO OF PARTIES**Rohit Sehgal**

AAA Insolvency Professionals LLPE-10A,
Kailash Colony, Greater Kailash Part I,
New Delhi-110048 Applicant

Versus**Mr. Bhavinder Singh Khurana**

B-2/10 Phase-II, Ashok Vihar
Delhi, 110052 Respondent no. 1

Mr. Anju Khurana

B-2/10 Phase-II, Ashok Vihar
Delhi, 110052 Respondent no. 2

Mr. Sanjay Mehra

B2/12, Phase-2 Ashok Vihar New
Delhi 110052 Respondent no. 3

Judgment delivered on: 15.06.2021

For the Applicant: Nipun Gautam and Prateek Kushwaha

ORDER

Dr. Deepti Mukesh, Hon'ble Member (J)

1. This is an application filed by the Resolution Professional under Section 33 (1) of Insolvency and Bankruptcy Code, 2016 (**hereinafter referred as the “Code”**) for issuance of directions for liquidation of the corporate debtor, Ajit Automotive Service Private Limited.
2. That one operational creditor, M/S Dynamic Security, had filed an application bearing no. IB 1525(ND)/2019 under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this tribunal vide order dated 19.08.2019 and Mr. Mohinder Singh appointed as Interim Resolution Professional (IRP) of Ajit Automotive Service Private Limited.
3. Thereafter, in terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) the said Interim Resolution Professional made a public announcement in FORM-A.
4. On 18.09.2019, the CoC decided to replace IRP as RP and appoint Mr. Rohit Sehgal as RP.
5. In the fourth meeting held on 11.02.2020, RP informed the members of the CoC that two rounds of Expression of Interest for inviting the Prospective Resolution Applicants have been made, against which no expression of interest was ever received till that date. The RP informed the members in the said meeting

about the CIRP period getting expired on 15.02.2020. The CoC deliberated the status of the CIRP and was of opinion that in absence of nil expression of interest received, it will be proper to take corporate debtor into liquidation.

6. The CoC passed the Resolution for Liquidating the Corporate Debtor in accordance with Section 33 (2) of the Code with 92.99% of Voting share. The Resolution read as follows:

Resolution No. 1

To initiate the liquidation process against the Corporate Debtor: "RESOLVE THAT, Ajit Automotive Services Private Limited, the Corporate Debtor be liquidated under section 33(2) of Insolvency and Bankruptcy Code, 2016."

7. The CoC passed a resolution for the sale of the corporate debtor as a going concern (in liquidation) in accordance with regulation 39 C of CIRP Regulations with 91.07% vote share.

The Resolution reads as follows:

RESOLUTION NO. 4

To approve the sale of the Corporate Debtor as a going concern (in liquidation)

"RESOLVED THAT Corporate Debtor would be kept as a going concern during liquidation process and the liquidator be and is hereby authorized to explore sale of the Corporate Debtor as going

concern under Regulation 32 (e) or 32(j) of Liquidation Process Resolution.”

8. The consent of RP to act as liquidator is annexed with the application being FORM AA duly filed by Mr. Rohit Sehgal.
9. Due to non-receipt of a Resolution Plan within the period of CIRP, the CoC after deliberation thought fit to not to seek extension of CIRP period but opted for liquidation as per the provisions of the IBC, 2016. The relevant sub-section 1 of section 33 is reproduced hereunder:

“33. (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.”

10. Ld. RP represents that valuation report as required to be obtained under the provisions of IBC, 2016 from the registered valuer in relation to the fair value of

the assets of the corporate debtor as well as its liquidation value has been duly done by registered valuers. As per the valuation reports, the fair value of corporate debtor is approximately Rs 5,52,85,000/- and the liquidation value is approximately Rs 4,35,80,000/-.

11. This Tribunal is of the view that as per the record and submissions made, we endeavours to obtain resolution of corporate debtor has failed and CoC in its commercial wisdom decided to liquidate the corporate debtor which does not require any interference. In present circumstances the CoC decision is appropriate.

12. We hereby order that the corporate debtor Ajit Automotive Service Private Limited

stands liquidated and the incidence of liquidation to follow, on and from the date of this order in terms of the provisions of IBC, 2016 and more particularly as given in Chapter – III of IBC, 2016 and also in terms of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017. Mr. Rohit Sehgal, present RP is appointed as liquidator by COC in its fourth meeting dated 11.02.2020 who has consented to act as liquidator. Minutes of COC meeting and consent Form 2 are annexed with the application. Therefore, we order and give following directions:

- a. Mr. Rohit Sehgal, Resolution Professional holding registration no. IBBI/PA- 001/ IP-P00528/2017-18/ 10953, is appointed as Liquidator in terms of Section 34(1) of the Code;
- b. Mr. Rohit Sehgal is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation

12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

- c. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. Similarly, in relation to other fiscal and regulatory authorities which governs the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- e. 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;
- f. This order is deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- 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 and in accordance with the relevant regulations.
- h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the

liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

- i. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

The present application is allowed and disposed of in terms of above order.

Sd/-
(MS. SUMITA PURKAYASTHA)
MEMBER (T)

Sd/-
(DR. DEEPTI MUKESH)
MEMBER (J)