

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No.301
IA/344(AHM)2023
in
CP(IB) 184 of 2018

Order under Section 33 IBC

IN THE MATTER OF:

Avil Menezes Erstwhile RP of AMW Motors Limited

.....Applicant

.....Respondent

Order delivered on 28/07/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Ajai Das Mehrotra, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-SD-

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-II**

IA/344(AHM)2023 in CP(IB) No. 184 of 2018

[Application under Section 33 read with 34 of the Insolvency and Bankruptcy Code, 2016]

In the Matter of:

AMW Motors Limited,

Registered office at:
Administrative Building,
Bhuj, Bhachau Road,
Near Village Kannaiyabe,
Bhuj Kachchh-Gujarat-370020

....Applicant

Versus

**Erstwhile Resolution Professional of
AMW Motors Limited**

Unit No. 106, Kanakia Atrium-2,
Chakala, Andheri Kurla Road,
Andheri East, Mumbai-400093

....Respondents

In the Matter of:

CP(IB) No. 184 of 2020

[An application under section 7 of the Insolvency and Bankruptcy Code, 2016]

Indian Overseas Bank

....Financial Creditor

Versus

AMW Motors Limited

....Corporate Debtor

Order Pronounced on: 28.07.2023

Coram: SHAMMI KHAN, HON'BLE MEMBER (J)
AJAI DAS MEHROTRA, HON'BLE MEMBER (T)

Appearance:

For the RP : Mr. Bishwajit Dubey, Advocate a.w. Ms. Aishwarya Gupta, Adv. Ms. Jeta Shree and Ms. Shriji Pandey, Advocate,
For the Applicant: Mr. Mily Ghoshal, Advocate
For the CoC: Mr. Dhruvad Vaghani, Advocate a/w Ms. Nandita Bajpai, Advocate, Mr. Ajiz M.K. Advocate, Mr. Shrikant Pillai, Advocate

ORDER

1. The instant application is filed by Mr. Avil Menezes- the Resolution Professional ("**RP**") of the Corporate Debtor - M/s. AMW Motors Limited under Section 33 read with Section 34 of the Insolvency and Bankruptcy Code, 2016 ("**IBC, 2016**") for liquidation of the Corporate Debtor- M/s. AMW Motors Limited.

2. Learned Counsels for the Applicant appeared and made the averments which are summarised as under:

I. This Adjudicating Authority by its order dated 01.09.2020 admitted the Corporate Debtor in the Corporate Insolvency Resolution Process ("**CIRP**") in an application filed by the Financial Creditor – Indian Overseas Bank under Section 7 of the IBC, 2016. Mr. Avil Menezes (the Applicant herein) was appointed as Interim Resolution Professional ("**IRP**").

II. The IRP made public announcement in Form-A in two newspapers i.e., "Business Standards"- Mumbai Edition in English and "Kutch Uday"-Kutch (Bhuj) in Gujarati on 03.09.2020 and on 04.09.2020 in "NavShakti"-Mumbai Edition and "Times of India"- Kutch

(Bhuj) Edition, and the copy of the same is attached with the application.

III. The Claims filed as admitted by the applicant are as under:

Creditors	Claims filed (amount in INR Crore)	Claims Admitted (amount in INR Crore)
Financial Creditor(unrelated)	4004.46	3,983.87
Financial Creditor (related)	8.30	8.30
Employees and workman	64.25	43.77
Operational Creditor including statutory creditors	276.09	151.78
Other creditors	31.82	8.03
Total Creditor claims	4,385.32	4,195.77

IV. It may be noted that the claim of one of the Financial Creditor i.e. State Bank of India of INR 14.9 Crores, pertaining to a corporate guarantee of INR 25 Crores issued by the Corporate debtor on behalf of Tranztar Commerical Vehicle Applications Ltd (“TCVAL”) was admitted by the Applicant as a financial debt. However, SBI has ceased to be a part of the CoC as its claim was satisfied on account of it entering into a compromise agreement vide compromise letter dated 09.02.2022 with TCVAL. Pursuant to the Compromise letter, the receipt of outstanding dues was confirmed by SBI and a no dues certificate dated 21.05.2022 was issued by SBI to TCVAL. Accordingly, the claim of State Bank of India in the CIRP of the Corporate Debtor stood withdrawn. SREI Infrastructure Finance Limited (“SREI”) had filed its claim as financial debt towards corporate guarantee given by the Corporate Debtor on

behalf of AMW Commercial Vehicles Applications limited, on 24.11.2020 and submitted the clarification/additional documents sought by the applicant vide email dated 11.05.2022. After due verification of the said documents/information provided, SREI's claim was accepted as an unsecured financial creditor by the Applicant on 02.06.2022.

V. The Committee of Creditors ("CoC") comprised of the following members and their respective voting shares are as under :

Sr. No.	Name of the Financial Creditor	Voting Share (%)
1	IDBI Bank	22.62%
2	Indian Overseas Bank	17.43%
3	Bank of India	16.69%
4	Central Bank of India	10.15%
5	Punjab National Bank (including Oriental Bank of Commerce)	9.85%
6	UCO Bank	9.34%
7	Srei Equipment Finance Limited	6.10%
8	Bank of Baroda	5.43%
9	JM Financial Asset Reconstruction Company Limited	1.93%
10	OSI Steel Private Limited	0.29%
11	Frontier Steel Components Limited	0.16%
	Total	100%

VI. In the first meeting of CoC dtd. 01.10.2020 whereby, interalia the Applicant updated the CoC on the CIRP, corporate structure and financial position of the corporate debtor, operations of the factory, business operations and sale projections, claims of financial and operational creditors received so far. Further, the appointment of experts including valuation experts was discussed and approved. The CoC also decided in favour of appointment of present RP for conducting the CIRP of the Corporate Debtor. The Registered Valuer viz. M/s.

Adroit Appraisers & Research Private Limited and the following individuals were appointed to determine the liquidation value and the fair value of the assets of the Corporate Debtor as on 01.09.2020.

- a. Mr. Jayesh Kumar Shah (registration no. IBBI/RV/07/2020/13066)- financial assets.
- b. Mr. Karan Mody (registration no. IBBI/RV/07/2019/12344)-land and machinery.
- c. Mr. Sunil Apte (registration no. IBBI/RV/02/2019/10871)- land and building.

The aforesaid valuers were appointed in terms of Regulation 35 of the CIRP Regulations.

VII. It is stated that the N.V. Dand & Associates was appointed as the transaction auditors for the Corporate Debtor (“**Transaction Auditor**”) pursuant to discussions and the e -voting matter in the first meeting of the CoC held on 01.10.2020 for the purpose of audit and review of the transactions of the Corporate Debtor for a period commencing from 01.09.2018 to 31.08.2020 for categorization of the same as preferential, undervalued, extortionate and fraudulent transactions. The result of the e-voting on appointment of the Transaction auditor was communicated to the CoC dated 13.10.2020. The copy of the minutes of the first CoC meeting is attached with the application.

VIII. In the second meeting of CoC held on 19.10.2020, the CoC discussed the eligibility criteria and timelines for submissions of Expression of Interest (“EoI”) and resolution plans. The minutes of the Second meeting of CoC is attached with the application.

IX. It is to state that the Applicant on 27.10.2020 published a newspaper advertisement in Business Standard and Business Standard (English), Kutch Uday (Gujarati) and Times of India (Gujarat) for inviting EoI’s from prospective Resolution Applicant(s).

X. It is to state that in the third meeting of CoC held on 27.11.2020, the Applicant informed the CoC that EoIs were received

from 7 prospective Resolution Applicants (“**PRAs**”). Accordingly, the CoC members unanimously approved the extension of the last date for submission of EoI to 15.12.2020 and the publication of the revised Form-G. A revised Form –G was issued by the Applicant on 30.11.2020 for inviting the PRAs. The Applicant further informed that certain strategic and financial investors requested for extension of time to submit EOI.

XI. It is to state that in the fourth meeting of the CoC held on 10.12.2020, the CoC discussed Request for Resolution Plans (hereinafter referred to as “RFRP”) by 18.12.2020, including Evaluation Matrix as per Regulation 2(ha) of the CIRP Regulations. The same was approved by majority vote of 99.69%. The copy of the same is attached with the application.

XII. It is to state that in the fifth meeting of CoC held on 19.01.2021, the CoC approved to seek extension of CIRP period by 90 days and vide order dated 19.02.2021 extension was allowed. The CoC also resolved to extend the timeline for submission of resolution plan by 30 days i.e. till 17.02.2021 and thereafter twice resolved to further extend the last date for submission of resolution plan to 20.04.2021.

XIII. It is submitted that extension of CIRP period by 60 days beyond 270 days was allowed vide order dated 31.05.2021. In the 12th CoC meeting held on 18.05.2021, the resolution plan submitted by Gladiator Consortium was discussed and after due deliberation, CoC directed Applicant Resolution Professional to inform prospective resolution applicant to improve the financial plan/commercial offer of the resolution plan. The CoC in its 14th meeting resolved to file an application for exclusion of 8 weeks on account of Covid-19 pandemic and the application by Resolution Professional for this exclusion was allowed vide order dated 26.07.2021. Despite various opportunities given to the prospective resolution applicant, Gladiator Consortium to revise the plan, no revised resolution plan was submitted. Thus, the CoC in its 18th meeting held on 10.08.2021 discussed the commercials of the resolution plan submitted by Gladiator Consortium. Post

discussion, CoC unanimously opined that it is not viable and feasible and accordingly Gladiators resolution plan was rejected by 99.12% votes. Thereafter, CoC approved liquidation and application for liquidation of Corporate Debtor was filed on 20.09.2021.

XIV. During the pendency of the liquidation application, email dated 13.12.2021 was received by the applicant from Triton for submission of EoI. Thereafter, an EOI for submission of resolution plan was received by the Applicant and two applications were filed by the prospective resolution applicants namely Triton Electric Vehicle LLC and Tube Investment India Ltd. seeking condonation of delay and permission to submit a resolution plan for the corporate debtor. These applications were allowed vide orders dated 31.01.2022 and 23.02.2022 respectively. In order dated 23.02.2022, following directions were issued by the Adjudicating Authority:

“ All the Resolution Plans may be received by the RP till 15th March, 2022 evening at 6:00 p.m. which then can be processed and put up before the CoC for consideration”

Thereafter, Tube Investment India Ltd. filed an application seeking further six week's time to submit a resolution plan. Considering the decision of CoC vide order dated 16.03.2022, Tube Investment India Ltd. was allowed to submit a resolution plan on or before 21.03.2022. The prospective resolution applicant Triton Electric Vehicle LLC submitted its resolution plan and the same was discussed in 25th and 26th CoC meeting held on 23.03.2022 and 04.04.2022. The CoC in its 26th meeting through e-voting held from 05.04.2022 to 29.04.2022 approved the resolution plan of Triton Electric Vehicle LLC by 99.6% voting share. The Resolution passed by CoC is reproduced hereinunder :

“RESOLVED THAT the Resolution Plan dated February 23, 2022 and as amended from time to time and submitted on March 28, 2022 alongwith First Addendum to the Resolution

Plan submitted on April 04, 2022 by Triton Electric Vehicle LLC (“Triton Resolution Plan”) is hereby approved by the Committee of Creditors of the AMW Motors Limited pursuant to Section 30(4) of the Insolvency and Bankruptcy Code, 2016 and the rules and regulations thereunder”

XV. It is submitted that vide order 21.12.2022, this Tribunal has approved the resolution plan. The copy of the same is attached with the application.

XVI. It is further submitted that due to failure of Successful Resolution Applicant i.e. Triton Electric Vehicle LLC to meet its obligation and implement the plan, erstwhile CoC in its meeting dated 13.02.2023 instructed the Applicant to file application for liquidation in capacity of erstwhile RP of Corporate Debtor. The fees of the liquidation and other formalities as were decided by erstwhile CoC in the eighteenth CoC meeting. may be relied upon for the purpose of filing application for liquidation.

XVII. On the request of SRA, vide orders dated 30.03.2023 and 21.04.2023 time was allowed to SRA to give formal proposal to CoC regarding funding of the Resolution Plan. On 02.05.2023, the Ld. Counsel Mr. Monaal Davawala appeared for Triton Electric Vehicle LLP, the Successful Resolution Applicant and informed that the SRA is unable to fund the Resolution Plan, and therefore appropriate orders may be passed. Ld. Counsel Mr. Bishwajit Dubey appeared for the RP and stated that since SRA has defaulted in payment, hence, this liquidation application may be considered.

3. We have heard the learned counsel for the Applicant and perused the material available on record. It is noted that Corporate Debtor was admitted into CIRP by the Adjudicating Authority vide order dated 01.09.2020 wherein Mr. Avil Menezes was appointed as Resolution Professional of Corporate Debtor. The said RP/Applicant conducted several CoC meetings for considering Resolution Plan submitted by Gladiator consortium but the same was found not feasible and viable and hence was rejected by CoC by 99.12% votes.

Thereafter, CoC approved liquidation and application was filed for liquidation on 20.09.2021. During the pendency of the said application two interlocutory applications were filed by Prospective Resolution Applicants (PRA's) namely, Triton Electric Vehilce LLC and Tube Investments India Ltd., seeking condonation of delay and permission to submit resolution plan. The said applications were allowed. Only Triton Electric Vehicle LLC submitted the resolution plan which was approved by 99.6% voting by the CoC. However, the Successful Resolution Applicant failed to implement the Resolution plan and therefore, this application is preferred by the Applicant for liquidation of Corporate Debtor.

4. This Tribunal vide order dated 21.12.2022 had approved Resolution Plan in favour of Triton Electric Vehicle LLC. It has been seen that as no funds have been infused by Triton by February 6,2023 in terms of the Triton Resolution Plan, it failed to implement the Resolution Plan therefore present application deserves to be allowed in accordance with Section 33(3) of IBC, 2016 which states as follows:

“(3) Where the resolution plan approved by the Adjudicating Authority [under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)”

“(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the Resolution Plan, it shall pass a liquidation order as referred to in sub-clauses(1), (ii) and (iii) of clause (b) of sub-section (1)”.

5. The Successful Resolution Applicant, Triton Electric Vehicle LLC has failed to fund and implement the resolution plan, and has thus contravened the resolution plan. Considering the facts of this case, we are of the view that the present application deserves to be allowed, and hence by invoking the

provisions of Section 33(3) of the Insolvency and Bankruptcy Code, 2016, we allow the present application with the following directions:

(i) IA/344(AHM)2023 is allowed and the Corporate Debtor - M/s. AMW Motors Limited., is ordered to be liquidated in terms of the provisions of the IBC, 2016.

(ii) The Liquidation of the Corporate Debtor is effective from the date of this order.

(iii) As per section 34(1) of the IBC, 2016, the Applicant/Resolution Professional, Mr. Avil Menezes (IBBI/IPA-001/IP-P01017/2016-2017/10041) is hereby appointed as a Liquidator of the Company – AMW Motors Limited. The Liquidator so appointed shall complete the Liquidation process as per the provisions of the Insolvency and Bankruptcy Code, 2016 r.w. Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(iv) Public notice shall be issued in the same newspaper i.e., “Business Standards”- in English and “Kutch Uday”-Kutch (Bhuj) in Gujarati stating that the Corporate Debtor is in Liquidation.

(v) The Liquidator will first try to sell the corporate debtor as a going concern in terms of IBBI (Liquidation Process) Regulations, 2016.

(vi) All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor, hereafter cease to exist. All these powers henceforth, vest with the Liquidator.

(vii) The personnel(s) of the Corporate Debtor are directed to extend all co-operations to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor. Further, the Liquidator

shall also provide all co-operation to the various Government agency(s)/ authority(s) in ongoing investigations/inquiry or inquiries initiated hereafter.

(viii) That once Liquidation process initiated subject to section 52 of the Code, no suit or legal proceedings shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute the suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority as mentioned in sub-section 5 section 33 of the IBC, 2016.

(ix) This Liquidation order shall be deemed to be notice of discharge to the officers, employees, and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the Liquidation process by the Liquidator.

(x) The registry is directed to upload this order on the official website within two working days from the date of this order. The authenticated copy of this order be sent by the Registry to the Financial Creditor, Corporate Debtor, Registrar of Company, Resolution Professional and Liquidator by Speed-post within one week from the date of this order.

6. Accordingly, IA/344(AHM)2023 in CP(IB) 184/AHM/2018 is allowed and disposed of.

-SD-

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN
MEMBER (JUDICIAL)**

Vaishali PS/ Aarti LRA