

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER

IA No. 325/JPR/2020 &
IA No. 433/JPR/2021
In CP No. (IB)-156/9/JPR/2019

IN THE MATTER OF:

TOYOTA. KIRLOSKAR MOTORS PRIVATE LIMITED

...Operational Creditor/Applicant

VERSUS

R.S. MOTORS PRIVATE LIMITED

...Corporate Debtor/Respondent

MEMO OF PARTIES

TOYOTA KIRLOSKAR MOTORS PRIVATE LIMITED

Plot No. 1 Bidadi Industrial Area
Ramanagara Taluk, Banglore Rural
District, Ka 562109 In

...Operational Creditor/Applicant

VERSUS

R.S. MOTORS PRIVATE LIMITED

Opp, Eklinggarh, Goverdhan
Vilas Road, Nh-8 Udaipur Nh-8,
Udaipur, RJ 000000 IN

...Corporate Debtor/Respondent

IN THE MATTER OF IA No. 325/JPR/2020 & IA No. 433/JPR/2021


Mr. Rajeev Sharma

Resolution Professional of the
Corporate Debtor M/s R.S.
Motors Private Limited

...Applicant

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For the Applicant : Shivanshu Naval, Adv.
Varun Mehra, CS.
For the Corporate Debtor : Rajendra K. Salecha, Adv.

Order Pronounced On: 31.08.2022

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application bearing IA No. 325/JPR/2020 is filed by the Resolution Professional of Corporate Debtor namely M/s R.S. Motors Private Limited ('Applicant' / 'RP') under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 ('Code') for passing an order of Liquidation against the Corporate Debtor.
2. It is seen that M/s Toyota Kirloskar Motor Pvt. Ltd. ('Operational Creditor') filed an application under Section 9 of the Code seeking initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor. This Adjudicating Authority vide order dated 30.09.2019 admitted the said application and appointed Mr. Sudhir Bhansali as the Interim Resolution Professional ('IRP').
3. In compliance with provisions of the Code, the IRP constituted the Committee of Creditors ('CoC'). The 1st meeting of CoC was held on 30.10.2019, wherein the agenda to replace the IRP with another Resolution Professional ('RP') was placed, however, no voting was held on the said agenda. Thereafter, the 2nd meeting of the CoC was held on 02.11.2019 in

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which the same agenda was considered and voted upon. The said agenda to replace the IRP Mr. Sudhir Bhansali with new RP Mr. Rajeev Sharma was passed with 100% majority and the same was confirmed by this Adjudicating Authority vide order dated 15.11.2019. It is seen that in the 4th Meeting of the CoC held on 11.12.2019 the agenda *to take approval for publishing Form-G for the Expression of Interest ('EOI') for the purpose of invitation of Resolution Plans* was discussed and approved unanimously by the CoC.

4. Meanwhile an application bearing *IA No. 129/JPR/2020* was preferred by the Applicant herein seeking extension of the period of CIRP by 90 days beyond the period of 180 days after excluding the lockdown period. This Adjudicating Authority vide Order dated 31.07.2020 allowed the aforementioned application and the CIRP period was extended by 90 days beyond the period of 180 days i.e. after excluding the lockdown period i.e. from 25.03.2020 to 30.06.2020. The present application for initiation of Liquidation of the Corporate Debtor was filed on 12.10.2020.
5. As the CIRP was initiated on 30.09.2019, the stipulated date for the completion of 180 days of CIRP was 27.03.2020. This Authority vide order dated 31.07.2020 excluded the lockdown period from 25.03.2020 to 30.06.2020 and further extended the period of CIRP for 90 days. Hence the date of completion of CIRP as per the order of this Authority was

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30.09.2020. The Supreme Court vide order dated 23.09.2021 excluded the period from 15.03.2020 to 02.10.2021 for computing limitation. Finally, the last date for completion of CIRP was 31.12.2021. As mentioned earlier this application for Liquidation was filed on 12.10.2020 which is well within the prescribed period under the Code.

6. For ease of reference following is a detailed list minutes of the meetings of the CoC filed by the RP:

<i>Sr. No.</i>	<i>Particulars</i>	<i>Filed vide</i>
1.	1 st Meeting held on 30.10.2019	Diary No. 2635/2019 dated 08.11.2019
2.	2 nd Meeting held on 02.11.2019	
3.	3 rd Meeting held on 02.12.2019	Diary No. 2960/2019 dated 16.12.2019
4.	4 th Meeting held on 11.12.2019	
5.	5 th Meeting held on 04.01.2020	Diary No. 287/2020 dated 10.02.2020
6.	6 th Meeting held on 16.01.2020	
7.	7 th Meeting held on 09.03.2020	Diary No. 538/2020 dated 18.03.2020
8.	8 th Meeting held on 27.08.2020	Diary No. 949/2020 dated 12.10.2020
9.	9 th Meeting held on 29.08.2020	
10.	10 th Meeting held on 14.09.2020	
11.	11 th Meeting held on 28.09.2020	
12.	12 th Meeting held on 30.09.2020	
13.	13 th Meeting held on 27.11.2021	Diary No. 2738/2021 dated 15.12.2021
14.	14 th Meeting held on 31.11.2021	
15.	15 th Meeting held on 03.12.2021	

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7. In the 11th meeting of the CoC held on 28.09.2020, the agenda with respect to taking decisions related to ongoing CIRP was brought up. M/s Reliance Commercial Finance Limited ('Financial Creditor No. 1') having 76.88% voting rights proposed the resolution and M/s Tata Capital Housing Finance Limited ('Financial Creditor No. 2') having 23.12% voting share seconded the resolution for liquidation of the Corporate Debtor. The appointment of liquidator took place in the 12th meeting of the CoC held on 30.09.2020 whereby the committee unanimously decided to replace the Applicant with Mr. Jai Prakash Rawat as liquidator to the Corporate Debtor.
8. We have carefully heard and considered the arguments of the learned counsel for the RP and perused the records. Taking into consideration the above facts concerning the affairs of the Corporate Debtor, the provision of Section 33 of IBC, 2016 is as follows: -

"33. Initiation of liquidation. —

(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, if 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

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- 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 creditor 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-clause (i), (ii) and (iii) of clause (b) of sub-Section (1)."*

9. The Hon'ble National Company Law Appellate Tribunal ('NCLAT'), in Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 308 of 2020 observed as under:

"Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of the corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review".

However, whether the relevant Application is filed within stipulated timelines as per the applicable procedure is to be seen.

10. ***The prescribed period for filing Application***— In the present case, the Application under Section 9 of the Code was admitted on 30.09.2019, and the RP filed the present Application on 12.10.2020. Accordingly, the date for completion of CIRP was 31.12.2021. Hence, the present application is filed within the prescribed period. In view, the Application under consideration is taken up under Section 33(2) of the Code.
11. ***Appointment of Liquidator and fee to be paid***— Section 34(1) of the Code provides that where the Adjudicating Authority passes an order for

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liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the Corporate Insolvency Resolution Process shall, subject to submission of written consent act as the Liquidator for liquidation. The relevant provisions of Section 34(1) of the Code are as follows: -

“(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4)”.

12. The CoC in its 12th meeting dated 30.09.2020 has resolved by 100% voting to replace present RP, Mr. Rajeev Sharma with Mr. Jai Prakash Rawat having registration No. IBBI/IPA-001/IP-P-01969/2020-21/13039 to act as Liquidator and Mr. Jai Prakash Rawat has also given his consent letter dated 30.09.2020 which is at page 57 of the application. It is noted that liquidation proceedings herein, at the instance of the resolution passed by the CoC, are automatically initiated due to prescription of statute. Therefore, Mr. Jai Prakash Rawat is appointed as the Liquidator.
13. It is also seen that Regulation 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') have been inserted by notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant

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aspects in this respect are examined hereunder.

14. **Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)** - The CoC has not decided on the estimated liquidation cost. Therefore, it is directed that the liquidation costs will be taken on an actual basis which will be approved by the stakeholders' committee formed during the liquidation of the Corporate Debtor. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs. The Liquidator is directed to place on record the valuation reports along with the status report of the assets owned by the Corporate Debtor within two weeks of this order.
15. **Assessment of sale as a going concern (Regulation 39C of CIRP Regulations, 2016)** — The CoC shall consider/discuss the selling of the Corporate Debtor as a going concern, as the first option or selling the business(s) of the Corporate Debtor as a going concern, as the second option, before exploring other options as per Regulations 32 & 32A of IBBI (Liquidation Process) Regulations, 2016 and Regulation 39C of CIRP Regulations. The Liquidator shall submit a report regarding the same before this Authority
16. **The fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016)** – The CoC in its 12th meeting fixed the fee of the Liquidator to Rs. 50,000/-

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(Rupees Fifty Thousand Only) per month. Taxes and expenses like out of pocket expenses, publications expenses, valuations, travelling expenses, advocate charges, court fees, conveyance expenses and other inter connected expenses that will be extra will be paid on actual basis.

17. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor namely M/s R.S. Motors Private Limited is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include: -

(i) As per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor;

Provided that a suit or other legal proceedings may be instituted by Liquidator on behalf of Corporate Debtor, with the prior approval of the Adjudicating Authority;

(ii) The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings concerning such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

(iii) This order of liquidation under Section 33 of Code shall be deemed as notice of discharge to the officers, employees and workmen of the Corporate Debtor;

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- (iv) All the powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have an effect and shall be vested in the Liquidator;
- (v) The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor, and provisions of Section 19 of the Code shall apply concerning liquidation process as they apply with CIR process with the substitution of references to the Resolution Professional for the Liquidator;
- (vi) The Liquidator shall publish a public announcement per Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stakeholders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date;
- (vii) Under Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and regular progress reports according to Regulation 15.

18. In view of the foregoing, *IA No. 325/IPR/2020* is disposed of. Copy of this order is supplied to the counsel for the Applicant, the Liquidator and the

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Registrar of Companies forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

IA No. 433/JPR/2021

This is an Application under Section 12(2) of the IBC, 2016 read with Regulation 40 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016 filed by the Sh. Rajeev Sharma, Resolution Professional of the Corporate Debtor namely M/s R.S. Motors Private Limited praying therein to extend the period of the Corporate Insolvency Resolution Process for 60 days beyond 270 days.

In view of the foregoing order passed in *IA-325/JPR/2020* initiating Liquidation against the Corporate Debtor namely M/s R.S. Motors Private Limited, the present IA bearing *IA No.433/JPR/2021* has become infructuous. Accordingly, the same is dismissed being infructuous.

DEEP
CHANDRA
JOSHI

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DEEP CHANDRA JOSHI
Date: 2022.08.31
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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

PRASANTA
KUMAR
MOHANTY

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**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**

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