



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

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

**SHRI ATUL CHATURVEDI,  
HON'BLE TECHNICAL MEMBER**

**IA (IBC) No. 559/JPR/2022**  
**In CP No. (IB)- 14/7/JPR/2021**

**IN THE MATTER OF:**

**SU1 CAPITAL PRIVATE LIMITED**

**...Financial Creditor**

**VERSUS**

**GRD TRUCKS PRIVATE LIMITED**

**...Corporate Debtor**

**MEMO OF PARTIES**

**GRD TRUCKS PRIVATE LIMITED**

*Through its RP Mr. Prashant Agrawal*  
Office at: F-106, First Floor, Sumer  
Complex, Gautam Marg, C-Scheme,  
Jaipur- 302001 (Rajasthan)

E-mail: [ippagrawal@gmail.com](mailto:ippagrawal@gmail.com) /  
[cirp.frd@gmail.com](mailto:cirp.frd@gmail.com)

**...Applicant**

**FOR THE APPLICANT:** Prashant Agrawal, RP *present in person*

**Order Pronounced On: 12.10.2023**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This present Application bearing *IA No. 559/JPR/2022* is filed by the Resolution Professional ('Applicant'/'RP') for *M/s GRD Trucks Pvt. Ltd.*



(‘Corporate Debtor’) under Section 33(2) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (the ‘IBC / Code’) seeking approval for Liquidation of the Corporate Debtor as approved by the Committee of Creditors (‘COC’).

2. This Adjudicating Authority *vide* order dated 28.04.2022 had admitted the Application filed by *M/s SUI Capital Private Limited* under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (‘CIRP’) of the Corporate Debtor and as a consequence thereof, appointed *Mr. Prashant Agrawal* as Interim Resolution Professional (‘IRP’).
3. In compliance with provisions of the Code, the Applicant issued a public announcement, under Form – A in Economic Times (Jaipur Edition) and Rashtradoot (Jaipur Edition) on 06.05.2022. As the Corporate Debtor conducted its substantial business in New Delhi and also had its registered address in New Delhi, the Applicant issued a public announcement, under Form – A in Financial Express (New Delhi Edition) and Jansatta (New Delhi Edition) on 06.05.2022, for inviting claims from the creditors of the Corporate Debtor on or before 12.05.2022. Later, in compliance with provisions of the Code, the IRP constituted the COC under Regulation 17(1) of the Insolvency and Bankruptcy Board of India (Insolvency



Resolution Process for Corporate Person) Regulations, 2016 ('CIRP Regulations') and same was taken on record *vide* Order dated 04.10.2022.

4. The first meeting of the CoC was held on 27.05.2022, wherein the CoC neither appointed the IRP as the RP nor replaced the IRP with another RP. In accordance with Section 16(5) of the IBC, 2016 and as per the Regulation 17(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the IRP was acting in the capacity of Deemed RP of the Corporate Debtor until the appointment of the RP.
5. It is also seen that during CIRP, in compliance of Regulation 27, the RP had appointed two registered valuers in each category i.e., Plant & Machinery and Securities & Financial Assets. On the basis of audited Financial Statements of the Corporate Debtor, formed an opinion to appoint a forensic/ transaction auditor, and invited Expression of Interest ('EoI') from various leading firms, and thereafter, appointed *M/s Sahaj Associates* for a professional fee of Rs. 58,500/- (inclusive of out-of-pocket expenses) plus GST, if any, for conduct of transaction/ forensic audit for the period starting from 01.04.2019 to 28.04.2022 to identify transaction under Sections 43, 45, 50 and 66 of the IBC, 2016.
6. The 2<sup>nd</sup> meeting of CoC was held on 12.07.2022. In compliance of Section 36A of the IBBI (Insolvency Resolution Process for Corporate Persons)



Regulations, 2016, the RIP proceeded with for publication of Form G on 12.07.2022 and invited the EoI for submission of resolution plan for the Corporate Debtor. In the Second meeting of CoC, the IRP had finalized the eligibility criteria, evaluation matrix and the RFRP for the Prospective Resolution Applicants.

7. In the 3<sup>rd</sup> Meeting of CoC held on 29.08.2022, wherein the CoC unanimously appointed the IRP i.e., Mr. Prashant Agrawal as RP and the same was confirmed by this Adjudicating Authority vide its order dated 12.09.2022. It was discussed in the meeting that in response to the publication of Form-G, only one Resolution Applicant has been considered to be in the final list of the Resolution Applicant. In the 4<sup>th</sup> Meeting of CoC held on 19.09.2022, since no resolution plan received from the Resolution Applicant till the last date of submission of the Resolution Plan, the RP informed that the CoC is required to discuss and decide on either extension of CIRP or for the liquidation of the Corporate Debtor. It also mentioned that the last date for completion of the CIRP was 25.10.2022.
8. In the 5<sup>th</sup> CoC Meeting held on 18.10.2022, the RP once again apprised the status of CIRP of the Corporate Debtor to take decision either for the extension or for the Liquidation. Upon declaration of result, it was found that the resolution for extension of CIRP has been dissented by the



members holding 93.44% voting shares, whereas the resolution for liquidation of the Corporate Debtor has been approved by the members holding 90.60% voting shares. A copy of the minutes of the 5<sup>th</sup> meeting of CoC is annexed as Annexure 5 of the Application.

9. 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 provisions of Section 33 of IBC, 2016 are 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 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)”.*



10. 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.

11. The prescribed period for filing Application – In the present case, the application under Section 7 of the Code was admitted on 28.04.2022. The RP apprised in the 5th Meeting dated 18.10.2022, since no resolution plan has been received, till the last date of submission of the Resolution Plan, therefore, the RP proposed alternative resolution for liquidation of the Corporate Debtor. Subsequently, the RP filed the present application on 02.11.2022 in accordance with Section 33(2) of the Code. 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.
12. ***Appointment of Liquidator and fee to be paid*** – In the 5<sup>th</sup> meeting of COC, approved the appointment of RP as Liquidator of the Corporate Debtor with



93.44% voting rights. However, IndusInd Bank Limited, one of the members of CoC requested to call an urgent meeting of CoC vide email dated 20.03.2023 for change of Liquidator and proposed for one Mr. Vijay Kishore Saxena having registration No. IBBI/IPA-001/IP-P01766/2019-2020/12708. The RP called 9<sup>th</sup> meeting of CoC on 24.03.2023 and presented the said agenda before the Committee. The agenda was put up for voting and the same was passed with 90.60% voting. The RP filed an additional affidavit to bring on record the change of Liquidator. Section 34(1) of the Code provides that 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 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:

*“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)”*



13. Mr. **Vijay** Kishore Saxena is eligible to be appointed as Liquidator. Mr. Vijay Kishore Saxena with IBBI registration No. IBBI/IPA-001/IP-P01766/2019-2020/12708 has filed his written consent in format/ Form-AA dated 21.03.2023 *vide* Diary No. 876/2023 dated 05.04.2023. The credentials of the proposed Liquidator have been checked from IBBI website ([www.ibbi.gov.in](http://www.ibbi.gov.in)) and nothing adverse is found on record. Thus, Mr. Vijay Kishore Saxena is appointed as the Liquidator.
14. It is also seen that Regulations 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted *via Notification No. IBBI/2019-20/GN/REG/048* dated 25.07.2019 along with Regulation 39BA of the CIRP Regulations, 2016 inserted *vide Notification No. IBBI/2022-23/GN/REG093*, dated 16.09.2022. The relevant aspects in this respect are examined hereunder.
15. Liquidation Cost (Regulation 39B of CIRP Regulations, 2016) – The estimated liquidation expenses were not approved. The estimated liquidation cost is Rs. 30,36,000/- plus GST, if any, excluding Liquidator's remuneration. The COC decided the aforementioned estimated Liquidation Cost shall be presented before the Stakeholder Creditors Committee for due consideration. The Liquidator is directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.



16. ***Assessment of Compromise or Arrangement (Regulation 39BA of CIRP Regulations, 2016)***- As per Regulation 39BA of the CIRP Regulations, 2016 an opportunity to explore the compromise or arrangement may be explored. However, it was discussed by the COC in its 5<sup>th</sup> Meeting dated 18.10.2022 that the Suspended directors have not co-operated with the Resolution Professional for conducting the undergoing corporate insolvency resolution process, therefore, an application under Section 19(2) of the Code, 2016 is already pending before this Adjudicating Authority. It was further considered by the CoC that since there has been no sincere effort of any kind of such proposal from the suspended board of director to RP or CoC, therefore, there was no scope for Compromise & Arrangement in the said matter.
17. ***Assessment of Sale as a going concern (Regulation 39C of CIRP Regulations, 2016)*** – Under Section 35 of the Code, the Liquidator shall have the power and duty to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified. In furtherance to the same, regulation 32A of the Liquidation Regulations, 2016 lays down the mode of sale by the Liquidator and subsequently



Regulation 33 of the Liquidation Regulations, 2016 provides that the Liquidator has powers to sell the corporate debtor by means of private sale with the prior permission of the Adjudicating Authority.

18. ***Fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016)***– The committee is required to approve the fee of the proposed Liquidator in terms of Regulation 4 of the Liquidation Process Regulations, 2016. The remuneration of the proposed liquidator was not approved by the CoC till the date of filing of Liquidation application. The CoC in its 9<sup>th</sup> Meeting of CoC dated 24.03.2023 approved the remuneration of the Liquidator to be Rs. 50,000/- plus GST, if any per month.

19. ***Decision for liquidation (Regulation 40D of CIRP Regulations, 2016)***– The committee to consider the factors including but not limited to non-operational status for preceding three years, goods produced or service offered or technology employed being obsolete, absence of any assets, lack of any intangible assets or factors which bring value as a going concern over and above the physical assets like brand value, intellectual property, accumulated losses, depreciation, investments that are yet to mature. The COC in its fifth meeting dated considered that since the commercial activities of the Corporate Debtor is inoperative and the dealership contract has been ended a while ago, therefore, it was decided by the committee that



the Resolution Professional should proceed with the agenda in respect of the liquidation of the Corporate Debtor.

20. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor, *M/s GRD Trucks 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:

20.1. 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 the Corporate Debtor, with the prior approval of the Adjudicating Authority;

20.2. 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;

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

20.4. 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;

- 20.5. 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 the liquidation process as they apply with CIR process with the substitution of references to the Resolution Professional for the Liquidator;
- 20.6. 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;
- 20.7. 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.
21. In view of the foregoing, IA No. 559/JPR/2022 is disposed of. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies forthwith.



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

**-Sd-**  
**DEEP CHANDRA JOSHI,**  
**JUDICIAL MEMBER**

**-Sd-**  
**ATUL CHATURVEDI,**  
**TECHNICAL MEMBER**