

**IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CA No.750/2019
IN
CP (IB) No. 130/Chd/HP/2018**

**Under Section 33(2) of Insolvency
and Bankruptcy Code, 2016.**

In the matter of :

Bhagat Ram Motorways Pvt. Ltd.
Rakkar Road, Una,
District – Una,
Himachal Pradesh-174303

...Non Applicant/Corporate Debtor

And

Arvind Kumar,
Resolution Professional,
Bhagat Ram Motorways Pvt. Ltd.,
3rd Floor, Plot D 190, Phase 8B,
Sector 74, Industrial Area,
SAS Nagar, Mohali, Punjab

...Applicant

Order delivered on:24.09.2019

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member(Technical)**

For the applicant
(Resolution Professional):

1. Mr. Atul V. Sood, Advocate.
2. Ms. Niharika Sohal, Advocate

Per: Pradeep R. Sethi, Member(Technical)

ORDER

CA No.750/2019

The present application is filed by the Resolution Professional (**RP**) under Section 33 (2) of the Insolvency & Bankruptcy Code, 2016 (**Code**) for passing an order of liquidation of Bhagat Ram Motorways Pvt. Ltd. (**Corporate Debtor**) pursuant to the decision of Committee of Creditors (**CoC**) in the meeting held on 13.08.2019. The petition filed by the corporate debtor under Section 10 of the Code was admitted by order dated 10.12.2018 and moratorium was declared and Shri Arvind Kumar was appointed as Interim Resolution Professional. The appointment of Shri Arvind Kumar as RP was made by the CoC in its 1st meeting held on 01.01.2019. Pursuant to application by the RP, extension of 90 days for completion of CIRP was granted by order dated 31.05.2019. The last date of CIRP is stated to be 06.09.2019.

2. It is submitted that Form G was published on 19.02.2019 inviting expression of interest (**EOI**) on or before 06.03.2019 and due to poor response the CoC passed a resolution to extend the period to submit EOIs and revised Form G was published on 26.03.2019 and thereafter on 07.06.2019. It is stated that five persons/entities expressed their interest to submit a resolution plan and out of these five personal entities, only two persons/entities submitted complete documents evidencing compliance with the eligibility criteria and were issued invitation to submit resolution plan along with information memorandum and evaluation matrix, Plan Submission Process Note in terms of Regulation 36B.

3. It is stated that one resolution applicant Ms. Indu Walia submitted resolution plan which was considered by the CoC in their 7th to 10th meetings. It is submitted that the CoC members were not satisfied about the specific sources of funds required for implementation of plan and also wanted reduction of the time period of the resolution plan. It is submitted that the other eligible resolution applicant (J S Grover Auto Pvt. Ltd.) to whom invitation to submit resolution plan was issued was contacted but stated that he was not willing to give a resolution plan.

4. It is stated that in the 10th meeting of CoC held on 13.08.2019, it was discussed that the Ms. Indu Walia stated that she was not willing to reduce the plan tenure or to increase the plan value and moreover, the sources of funds of payment of plan amount are also not very specific. Thereupon the resolution plan was rejected with 93.86% votes against the plan.

5. It is stated that in the same 10th meeting of CoC, agenda item No.2 related to liquidation of the corporate debtor and the CoC with 93.86% votes passed resolution authorising the RP to file an application with the Adjudicating Authority (**AA**) under Section 33 of the Code for the liquidation of the corporate debtor.

6. We have carefully heard and considered the arguments of the learned counsel for the RP and have also perused the records. The provisions of Section 33(2) of the Code state that where the RP, at any time during the CIRP but before confirmation of resolution plan, intimates the AA of the decision of the CoC approved by not less than 66% of the voting share to liquidate the corporate debtor, the AA shall pass a liquidation order as referred to in sub clauses (i), (ii) and (iii) of clause (b) of sub section (1) of the Code.

7. As discussed above, the conditions provided in Section 33(2) of the Code are satisfied in the present case since the application by the RP is filed during the CIRP but before confirmation of resolution plan and the application is based upon the decision of CoC approved by 93.86% votes. Therefore, the liquidation order as referred to in sub clause (i), (ii) and (iii) of clause of (b) of sub section (1) of the Code is being passed in the case of the corporate debtor Bhagat Ram Motor Ways Pvt. Ltd.

8. Section 34(1) of the Code states that where the AA passes an order of liquidation of the corporate debtor under Section 33, the RP appointed for the CIRP shall, subject to submission of written consent by the RP to the AA in specified form shall act as the Liquidator for the purposes of liquidation. The written consent of Shri Arvind Kumar RP to act as Liquidator is filed at Annexure A-17 of the application. Therefore, Shri Arvind Kumar Regn. No. IBBI/IPA-001/IP-P00178/10357 email sankhyain@gmail.com is appointed as the Liquidator.

9. Regulations 39B, 39C and 39D in the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulation 2016**) have been inserted by notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. These regulations are as follows:-

“39B. Meeting liquidation cost.

(1) While approving a resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, the committee may make a best estimate of the amount required to meet liquidation costs, in

consultation with the resolution professional, in the event an order for liquidation is passed under section 33.

(2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).

(3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.

(4) The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

Explanation.-*For the purposes of this regulation, 'liquidation costs' shall have the same meaning as assigned to it in clause (s) of sub-regulation (1) of regulation (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*

39C. Assessment of sale as a going concern.

(1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.

(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of

regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(3) The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.”.

39D. Fee of the liquidator

While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional, fix the fee payable to the liquidator, if an order for liquidation is passed under section 33, for –

- (a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;*
- (b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; and*
- (c) the balance period of liquidation.”*

10. It is submitted that compliance of these regulations was made by the CoC in the 10th meeting held on 13.08.2019, except in respect of Regulation 39C (2) of the CIRP Regulation 2016. Reference was made to Regulation 32A(3) of the IBBI (Liquidation Process) Regulations 2016 and it was submitted that it is stated therein that where the CoC has not identified the assets and liabilities under Regulation 39C(2) of the CIRP Regulations 2016, the liquidator shall identify and group the assets and liabilities to be sold as a going concern in consultation with the consultation committee. It was thereby pleaded that the requirements of Regulation 39B, 39C and 39D of the CIRP Regulation 2016 are satisfied in the present case.

11. In view of the satisfaction of the conditions provided for under Section 33(2) of the Code, the corporate debtor Bhagat Ram Motor Ways Pvt. Ltd. is directed to be liquidated in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:-

- (i) That 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 against the corporate debtor;

Provided that a suit or other legal proceedings may be instituted by the liquidator on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority;

- (ii) That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- (iii) That this order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the liquidator;
- (iv) That 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 effect and shall be vested in the liquidator; and
- (v) That 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 in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.

12. The Liquidator shall publish public announcement in accordance with Regulation 12 of the 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 stake holders 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.

13. It is further directed that the announcement shall be published in accordance with Regulation 12(3) as under:-

“(a) In one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;

(b) on the website, if any, of the corporate debtor; and

(c) on the website, if any, designated by the Board for this purpose.”

14. In accordance with Regulation 13 of the Liquidation Process Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and to file regular progress reports as per Rule 15 of the Liquidation Process Regulations 2016 every fortnightly thereafter.

15. It is clarified that the financial credi

tor is not debarred from having recourse to enforce the personal guarantees and to take proper steps in this regard.

16. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Himachal Pradesh at Chandigarh forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

17. In result thereof, CA No. 750/2019 stands disposed of.

Pronounced in open court.

Sd/-

(Ajay Kumar Vatsavayi)
Member (Judicial)

Sd/-

(Pradeep R. Sethi)
Member (Technical)

September 24, 2019
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