

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT II**

IA 784 of 2021

In

CP (IB) 1005/MB/C-II/2019

Under Section 33(1)(a) r/w Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016.

In the Application of

Mr. Avil Menezes

Address: 416, Crystal Paradise CHS,
Dattaji Salvi Marg, above Pizza
Express, off Veera Desai Road,
Andheri West, Mumbai – 400053.

**...Applicant/Resolution
Professional**

In the matter of

Indian Overseas Bank

...Financial Creditor
Versus

Varron Autokast Limited

...Corporate Debtor

Order Delivered on 23.12.2021

Coram:

Shri Bhaskara Pantula Mohan : Member (Judicial)

Shri Shyam Babu Gautam : Member (Technical)

Appearance:

For the Applicant : Mr. Aniruth Purusothaman, Advocate

For the Resolution Professional: Mr. Peter Kezhake, Advocate

ORDER

Per: Bhaskara Pantula Mohan, Member Judicial

1. The present application is filed by the Resolution Professional upon the instructions of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, *viz.*, Varron Autokast Limited, on the ground that there is no possibility for resolution of the Corporate Debtor.
2. This Adjudicating Authority, *vide* its order dated 13.12.2019 on a Petition filed by ICICI Bank Limited (*Financial Creditor*) under section 7 of the Insolvency and Bankruptcy Code, 2016 (*the Code*), directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed Mr. Avil Menezes as the Interim Resolution Professional (IRP) of the Corporate Debtor.
3. The Applicant constituted the CoC on 04.01.2020 and submitted the first list of creditors. A public announcement

was published in Hitvada and Loksatta newspapers inviting the claims from the creditors on 17.12.2019.

4. The 1st meeting of the CoC was held on 13.01.2020 in the said meeting the IRP was appointed as the Resolution Professional (RP).
5. The 2nd CoC meeting was held on 03.02.2020 wherein the Applicant apprised the members of the CoC regarding appointment of the Registered Valuers and Transaction Auditors. The Applicant also apprised the members of the CoC regarding opening of a new Bank Account for the Corporate Debtor in ICICI Bank.
6. The summary of the Fair Value and Liquidation Value given by the Registered Valuers of the Corporate Debtor is as under :-

Sr. No.	Fair Value	Liquidation Value
Registered Valuer 1	65,41,17,917	48,24,47,400
Registered Valuer 2	65,40,92,613	48,88,53,802
Average Value	65,41,05,265	48,56,50,601

7. The Applicant issued a public announcement for Expression of Interest (EOI) in Form-G in Business Standard, Loksatta, Hitvada and Financial Express

newspapers on various dates which are mentioned hereinbelow:-

Sr. No.	Date of Publication of Form - G	Last date of Submission of EOI
1.	08.02.2020	23.04.2020
2.	14.03.2020	13.05.2020
3.	30.03.2020	02.06.2020
4.	19.04.2020	25.05.2020
5.	11.05.2020	08.07.2020
6.	25.05.2020	22.07.2020
7.	09.06.2020	16.09.2020
8.	09.07.2020	17.10.2020
9.	27.11.2020	18.02.2021

8. The Applicant submits that the 3rd oC meeting held on 11.03.2020, wherein the Applicant apprised the members of the CoC on finalization of the Evaluation Matrix and Request for Resolution Plan.

9. In the 4th CoC meeting held on 09.06.2020, the Applicant apprised the members of the CoC last date of the completion of the CIRP of the Corporate Debtor Company was 18.09.2020 as due to covid-19 pandemic the period between 23.03.2020 to 30.06.2020 was excluded in calculating the period for completion of the CIRP of the Corporate Debtor.

10. The Applicant submits that in the 5th CoC meeting held on 08.07.2020, the Applicant informed the members of the CoC with respect to the EOI received from KIJ Resources Limited. The Applicant further submits that the timeline for submitting the EoI was extended till 07.08.2020.
11. The Applicant submits that in the 6th CoC meeting held on 11.08.2020, the Applicant informed the CoC regarding the Payment of Rent for machines at Laxmi Engineering Works, Nagpur.
12. Further in the 7th CoC meeting held on 03.10.2020, the Applicant updated the members of the CoC regarding the valuation and the transaction audit conducted by the Valuers and Transaction Auditors respectively. The Applicant also apprised the members of the CoC the list of Provisional Resolution Applicants was issued on 17.08.2020 and the final list of Prospective Resolution Applicant was issued on 01.09.2020 and the last date for submission of the Resolution Plan was 21.09.2020. the Applicant had discussions with KLJ to understand their interest in the Corporate Debtor Company since EOI was received from them prior to the covid-19 pandemic. The Applicant states that no communication was received from KLJ and also the Applicant had not received any resolution plans within the timelines.
13. The Applicant submits that in the 8th CoC meeting held on 17.10,2020, the Applicant gave an update to the

members regarding the Valuation and Transaction Audit carried out by the Valuers and Transaction Auditors respectively. The Applicant also apprised the members of the CoC that after the non-responsiveness of KLJ Resources Limited, the Applicant had approached various entities including the strategic investors, investment bankers, financial investors and companies specialized into investing in distressed assets. However, no concrete interest was received.

14. Thereafter, the Applicant sought views of the members of the CoC, wherein the representatives of State Bank of India opined that keeping in mind the objective of the Code, revival/rehabilitation of the company in a time bound manner for the maximization of the value of the assets of the company all efforts must be made to ensure that the company does not go into liquidation thereafter, inviting fresh expression of interest (i.e. publication of Form G). The members of the CoC agreed to the views of the representative of State Bank of India.
15. The Applicant submits that in the 9th CoC meeting held on 23.11.2020, the Applicant apprised the members about inviting fresh expression of interest (i.e. publication of Form G) by appointing suitable process advisors. The Applicant had reached to 7-8 firms for obtaining the quotation for process advisory but none of the firms had sent their quotes. The Applicant further informed the members of the CoC that some firms opined that they were

not keen to take up the assignment as the company is not operational and also the factory is not fully commissioned. The Applicant further stated that he had informed the same to the members vide email dated 05.11.2020 and sought their suggestions on few investment advisory firms.

16. The Applicant submits that in the 10th CoC meeting held on 22.12.2020, the Applicant apprised the members of the CoC that machinery from Laxmi Engineering Works, Nagpur needs to be shifted to the factory of the Corporate Debtor and that the monthly warehouse charges for Laxmi Engineering Works are due and that the Applicant has taken quotes from various transport providers with respect to moving the machinery of the Corporate Debtor to the factory. The Applicant apprised the members that an advocate based in Nagpur has been appointed to carry out the Title search and ascertain the ownership of the land area owned by the Corporate Debtor. The Applicant further apprised the members of the CoC that no EoI had been received by the Applicant and the last date for submission of EoI was on 27.12.2020.

17. The Applicant submits that in the 11th CoC meeting held on 05.01.2021, the Applicant apprised the members that he had not received EoI for the last Form G which was published on 27.11.2020. The members thereafter deliberated on the matter and discussed that since multiple opportunities were provided for ensuring resolution of the Corporate Debtor and that no Prospective Resolution

Applicants had shown interest to submit a resolution plan, it was deemed fit to initiate the liquidation process so that the assets of the Corporate Debtor Company can be sold in a time bound manner.

18. The Applicant submits that in the 12th CoC meeting held on 08.01.2021, the Applicant apprised the members that based on the discussion in the eleventh meeting of the CoC held on 05.01.2021, the members had opined that since multiple opportunities were provided for ensuring resolution of the Corporate Debtor and that no Prospective Resolution Applicants have shown interest to submit a resolution plan; it was deemed fit to initiate the liquidation process. The Applicant informed the members that resolution for liquidation of the Corporate Debtor needs to be passed with the requisite majority and a liquidator is required to be proposed as per the provisions of the Code.
19. The Applicant submits that in the 13th CoC meeting held on 17.03.2021, the Applicant sought the views of the members of the CoC and the representative of the State Bank of India opined that since multiple opportunities were already given by way of eight extensions to Form-G and yet there were no prospective Resolution Applicants, the Corporate Debtor Company needs to be liquidated.
20. Further the Applicant states that the section 33 (1) (a) of the Code provides for initiation of liquidation in case a resolution plan is not received by the Adjudicating

Authority in accordance with the provisions of section 30 (6) before the maximum period permitted for completion of the corporate insolvency resolution process under section 12 of the Code, the Applicant stated that section 33 (1) (a) of the Code provides for initiation of liquidation in case a resolution plan is not received by the Adjudicating Authority in accordance with the provisions of section 30 (6) before the maximum period permitted for completion of the corporate insolvency resolution process under section 12 of the Code.

21. The Applicant further submits that due to the lock down as imposed by the Central / State Government on account of current pandemic in the nature of COVID- 19, time for completion of CIRP period was excluded and the CIRP completion date was 21.03.2021. The Applicant further stated that since no resolution plan had been received and since the last date for completion of CIRP was 21.03.2021, the Applicant filed an Application to initiate liquidation process of the Company after 21.03.2021. The CoC members opined that voting will not be required and instructed the Applicant to file application for initiation of the liquidation process after 21.03.2021.
22. The Applicant further states that the members of the CoC recommended that the Liquidator should first explores sale of the corporate debtor as a going concern and thereafter explore the sale of assets under slump sale or on piecemeal basis.

23. The Applicant herein has given his Written consent to act as liquidator under section 34 (1) of the Code.

24. This Bench, therefore, hereby orders as follows: -

- a. Upon perusal of the documents, records made available and submissions of the Counsel for the RP in the thirteenth CoC meeting held on 17.03.2021, the CoC decided to Liquidate the Corporate Debtor and directed the RP to file an application under section 33 (1) a of the Code for liquidation of the Corporate Debtor.
- b. In view of the decision of the CoC, we are inclined to admit the IA 784/2021 in CP 1005/2019 to initiate liquidation process against the Corporate Debtor. Accordingly, the Adjudicating Authority Orders for initiation of Liquidation of the Corporate Debtor.
- c. In view of the above this Bench hereby appoints Mr. Avil Menezes as Liquidator having [Reg. IBBI/IPA-001fIP-P00017/2016-20171'10041], having his office at 416, 4th Floor, Crystal paradise, Off. Veera Desai Road, Andheri West, Mumbai _ 400053, as Liquidator in terms of section 34(1) of the Code. Accordingly, **IA 784 of 2021 is allowed disposed of.**

- d. The Fees payable to the Liquidator shall be in compliance with Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.
- e. The Liquidator shall initiate the liquidation process as envisaged under Chapter-III of the Code and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- f. Whenever the Liquidator issues any publication in the newspapers, the said shall be published in widely circulated newspapers in the State in which the Registered office of the Company is incorporated.
- g. Public Notice shall be issued in two newspapers, *viz.*, in *Times of India/ Business Standard* (English) and *Navshakti* (Marathi), stating that the Corporate Debtor is in liquidation, as required in terms of section 33(1) of the Code;
- h. All the powers of the Board of Directors and key managerial persons of the Corporate Debtor shall cease to exist. All these powers shall henceforth be vest with the Liquidator;
- k. The personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor;
- l. On initiation of the liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other

legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso;

- m. This liquidation order shall be deemed to be a 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;
- n. A copy of this order shall be served by the Applicant/ RP on the Registrar of Companies, Maharashtra, Mumbai, within whose jurisdiction the Corporate Debtor has been registered, for updating the Master Data of the Corporate Debtor.
- p. **IA 784 of 2021 is allowed.** File to be consigned to records.

Sd/-
SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-
BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

1. IA 784/2021 In C.P. (IB)/1005/MB/2019

CORAM: SHRI BHASKARA PANTULA MOHAN, HON'BLE MEMBER (J)
SHRI SHYAM BABU GAUTAM, HON'BLE MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 23.12.2021

NAME OF PARTIES:- Indian Overseas Bank

V/s

Varron Autokast Limited

Section: 7 of the Insolvency & Bankruptcy Code, 2016.

ORDER

The matter is taken up through Virtual Hearing (VC). Counsel, Mr. Aniruth Purusothaman appeared for Applicant/Liquidator. **IA bearing no. 784/2021** is **allowed** and **disposed of** vide separate order.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)
23.12.2021

Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)