

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-III, MUMBAI BENCH

M. A. No. 3348 of 2019

In

C. P. No. 512 of 2019

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

In the matter of

Opulent Auto Care Pvt. Ltd.

... Operational Creditor

V/s.

DSK Motors Pvt. Ltd.

... Corporate Debtor

M. A. No. 3348/2019

Mr. Snehal Arvind Kamdar

... Applicant/
Resolution Professional

Order delivered on: 17.03.2020

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance:

For the Applicant: Mr. Shyam Kapadia, Advocate, i/b. Shantanu
Deshgawen, Advocate for the Resolution Professional

Mr. Rohit Gupta, Advocate, a/w. Ms. Rubina Khan,
Advocate i/b. Fortis Indai Law for JMFARC Ltd.
(CoC)

Per Shri Shyam Babu Gautam, Member (Technical)

ORDER

1. This Miscellaneous application filed by the Resolution professional seeking liquidation of the Corporate Debtor namely (DSK Motors Pvt. Ltd.) on the ground that no resolution plan has been received by him, hence this application under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016, praying following reliefs:
 - a. "To pass an order of Liquidation of the Corporate Debtor under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016.

- b. *To direct Respondents to pay professional fees of the Applicant and the ratified expenses as incurred by the Applicant during the CIRP.*
 - c. *To appoint a Liquidator under Section 34 of the Insolvency and Bankruptcy Code, 2016.*
 - d. *Direct public announcement of such liquidation as under Section 33(1)(b)(ii) of the Insolvency and Bankruptcy Code, 2016."*
- 2 The Adjudicating Authority vide its order dated 09.04.2019 on a Petition filed by the Operational Creditor under Section 9 of the Code directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely M/s. DSK Motors Pvt. Ltd. wherein Mr. Rajkumar Mahto, was appointed as Interim Resolution Professional (IRP). Thereafter in the 1st meeting of the Committee of Creditors (CoC) Mr. Snehal Arvind Kamdar, was appointed as Resolution Professional (RP) and the same was approved by this Bench by an order dated 01.07.2019.
 - 3 The CoC in its 3rd meeting held on 16.07.2019 decided to appointed Valuers. The RP accordingly appointed two registered valuers as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016 and the Information Memorandum was prepared as provided under Regulation 36(1) of the Code.
 - 4 The RP submits that the public announcement was made on 20.04.2019 for submitting the claims. It is further submitted that an advertisement, inviting Expression of Interest (EoI) in Form G was not published, for the reasons that the Resolution to publish Form G was rejected by 91.78%. Thereafter, no extension has been sought and no EoI was invited and no Resolution plan was received.
 - 5 The Resolution Professional submits that in the 7th CoC meeting held on 13.09.2019, the CoC having 95.41% voting rights passed a resolution for liquidating the company in view of the fact that the no Resolution Plan was received in stipulated time period. Accordingly, the Resolution Professional filed this application for liquidation of the Company as provided u/s. 33 of the Insolvency & Bankruptcy Code, 2016 (Code).

- 6 The Mr. Indrajit Mukherjee, has agreed and given his consent to act as liquidator and to carry on the process of liquidation as enshrined in the Code.
- 7 Upon hearing the submissions of the Applicant and on perusal of the Application and the documents enclosed therein, it is found, the RP has complied with the procedure laid down under, the Insolvency and Bankruptcy code and Regulations made thereunder. The valuation report filed by the valuer has not been disputed by the CoC. On verification of the papers/ documents placed before this Bench, we are of the considered view that this is a fit case to pass liquidation order under sub-section 1 of section 33 of the Code for liquidation in the absence of any resolution plan. Hence ordered.

ORDER

- a. The Miscellaneous Application is hereby allowed.
- b. That the Mr. Indrajit Mukherjee, Registration No. IBBI/IPA-001/IP-P01533/2018-2019/12450, herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4 of the IBBI (Liquidation Process Regulations), 2016.
- d. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e. The Liquidator appointed under section 34(1) of the Code. Will have all 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 with the liquidator.

- f. that the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- g. all the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- h. that 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.
- i. that upon having initiated liquidation process, 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.
- j. That this order for liquidation under this Section 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.

Sd/-

**SHYAM BABU GAUTAM
MEMBER (TECHNICAL)**

Sd/-

**BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)**