IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

IA No.368/2023 IN CP (IB) No.57/ALD/2019

(An application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 R/w Rule 11 of NCLT Rules in 10 IBC (IN CIRP).

IN THE MATTER OF:

BENARA AUTOMOTIVES PVT. LTD.
E-87, Site-C, UPSIDC, SIKANDRA AGRA, U.P.-282007

.... PETITIONER/CORPORATE DEBTOR

AND IN THE MATTER OF:

MR. ARUN CHADHA
Resolution Professional of
Benara Automotives Private Limited
Registered office at E-87, SITE-C, UPSIDC
Sikandra Agra, U.P.-282007

...APPLICANT/RESOLUTION PROFESSIONAL

Versus

MR. PRATHAM BENARA

1/205 Professors Colony, Hariparvat, Agra- 282002, U.P.

.... RESPONDENT/RESOLUTION APPLICANT

Order Pronounced on: 11th December, 2024

Coram:

Mr. Praveen Gupta.	:	Member (Judicial)
Mr. Ashish Verma	:	Member (Technical)

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Appearances:

Sh. Ahsan Ahmad, Adv. : For the Applicant/RP

NONE : For the Respondents

ORDER

1. The present application has been filed by the Resolution Professional (RP) of the Corporate Debtor/Person (as CIRP has been ordered u/s 10 of the Insolvency & Bankruptcy Code) for seeking the following reliefs:

a. *Pass an order/direction allowing the Applicant Resolution Professional to withdraw the Interlocutory Application No. 370/2022 as approval of CoC to the Resolution Plan dated 12.09.2022 has been cancelled as being non responsive;*

b. *Pass an Order/ direction for the initiation of liquidation process of the corporate debtor i.e. Benara Automotives Private Limited, under section 33 (2) of the lnsolvency and Bankruptcy Code, 2016;*

c. *Pass an Order for the appointment of the Resolution Professional, Mr. Arun Chadha, as the Liquidator of the corporate debtor under Section 34 of the lnsolvency and Bankruptcy Code, 2016;*

d. *pass any such order(s)/direction(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case.*

2. The facts of the present case are that petition for initiation of Corporate Insolvency Resolution Process ("ClRP") was filed by the Corporate Person, i.e. Benara Automotives Private Limited ("BAPL"), under Section 10 of the Insolvency & Bankruptcy Code (hereinafter referred as “the Code”) read with Rule 7 of the insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as "the Rules") and the same was admitted by this Tribunal, thereby imposing moratorium vide order dated 29.01.2020 and appointing Mr. Arun Chadha as Interim Resolution Professional (hereinafter referred as “the IRP”)under Section 16 (1) of the Code with directions to take all necessary actions. In compliance with the directions of this Tribunal, public announcement was made by the IRP thereby inviting claims from the Creditors of the Corporate Debtor pursuant to which the IRP received total seven claims and the same were verified and Committee of Creditor (hereinafter referred as "the CoC") was constituted by him.

3. The Applicant submitted that in the 1st meeting of the CoC held on 16.03.2020, decisions of appointing Mr Arun Chaddha as Resolution Professional (hereinafter referred as the RP) was taken. Thereafter, Mr. Arun Chaddha performed the functions of the RP.

4. After being appointed as RP, Mr. Arun Chaddha took steps for running and management of the affairs of the Corporate Debtor as going concern and appointed total four Registered Valuers on 06.04.2020; in which Two Registered Valuers, Mr. Prateek Mittal (Registered Valuer: lBBl/RV/0512018110021) and Mr. Chandan Bhatia (Registered Value: lBBl/RV/0612019111431) were appointed for the purpose of ascertaining the Fair Market and Liquidation Value of the Securities and Financial Assets; and Mr. Sanjay Chopra (Registered Valuer: IBBI/RV/O212018/10001) and Mr. Brahmpal Bharadwaj (Registered Valuer:

IBBI/RV/O212019111177) were appointed for the purpose of ascertaining the Fair Value of Plant and Machinery of the Corporate Debtor. No Forensic Auditor was appointed as decided by the CoC.

5. It is submitted that in the 3rd CoC meeting conducted on 27.07.2020, the majority voting rights holder, Pegasus Assets Reconstruction Private Limited (PARPL), requested review of the claim amount of Rs. 1,39,59,969.261/- to Rs. 1,55,31,998.36/- on the basis of statement of accounts submitted by them. The same was reviewed and updated before this Tribunal.

6. In the 4th CoC meeting held on 25.08.2020, the RP discussed about the management of affairs and placed the draft Expression of lnterest (Form -G as under Regulation 36A) ("the EOl") before the members of the CoC for consideration and the same was approved for publication with 98.06% votes by the majority voting rights holder. Pursuant to the receipt of EOI from one Resolution Applicant which consisted of the Suspended Board of Directors of the Corporate Debtor and no objections from the Committee of Creditors, the Final List of Prospective Resolution Applicants was sent on 03.10.2020 for submission of Resolution Plan on 27.10.2020.

7. The 180th day of the CIRP period which was getting expired on 04.11.2020, after exclusion of period of lockdown in accordance with Regulation 40C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 as inserted by Notification No. IBBI/2020-21/GN/REG059 dated 20.04.2020 w.e.f. 29.03.2020, was further extended by three months as approved in the 5th CoC meeting held on 16.10.2020, as per Section 12 of the Code. The same has been allowed by this Tribunal vide order dated 14.12.2020 and the CIRP period was accordingly got extended up to 02.02.2021

8. It is submitted that pursuant to the publication of the EOI, the list of Prospective Resolution Applicants was sent to all CoC members on 03.10.2020. Thereafter, on 27.10.2020, a Resolution Plan was received from

Resolution Applicants, Mr. Pratham Benara & Mr. Rajesh Benara who are both Suspended Board of Directors, which was scrutinized and Objections to the same were communicated to the Resolution Applicant on 04.11.2020. Subsequently, 3 weeks extension was provided for the removal of the objections in the Resolution Plan as requested by the Resolution Applicant due to the reason that both Mr Pratahm Benara and Mr. Rajesh Benara were hospitalised on account of getting infected by Corona, thus the dead line for submission of rectified Resolution Plan was extended by a period of three weeks till 09.112.2020. Therefore, subsequent dates of submission of the Resolution Plant also stood modified.

9. The Resolution Plan which was placed before the CoC for its consideration in the 8th CoC meeting held on 24.12.2020, was rejected with 98.06% votes with the condition that fresh Expression of interest (EOI) will be invited for the effective resolution of the Corporate Debtor. In pursuance to this decision, a Second EOI was published on 30.12.2020 in Times of lndia (English) and Dainik Jagran (Hindi), both Agra Edition for receipt of EOI till 14.01.2021. After the said publication, one EOI was received again from Prospective Resolution Applicant, Mr. Pratham Benara (Suspended Board of Directors of the Corporate Debtor) by the Resolution Professional.

10. Further, on 19.01.2021, provisional list of the Prospective Resolution Applicant was sent to all the stakeholders in accordance with the Regulation for want of objections. Subsequently on 29.01.2021, Final List of Prospective Resolution Applicant is prepared, thereby directing the PRA to submit the Resolution PIan by 28.02.2021 as per the EOI published in the prescribed Form – G.

11. It is submitted that in the 9th CoC Meeting, the RP placed the Resolution Plan received on 28.02.2021 as per the Expression of interest published on 30.12.2020 from the Resolution Applicant, Mr. Pratham Benara. The CoC was informed that the Average Fair Value of the Securities &

Financial Assets is Rs.147.62 Lacs, Average Liquidation Value of the Securities & Financial Assets is Rs. 103.92 Lacs, Average Fair Value of the Plant & Machinery is Rs. 15.99 Lacs and Average Liquidation Value of the Plant & Machinery is Rs. 11.72 lacs.

12. In the Ninth CoC meeting, the revised version of the Plan dated 28.02.2021 submitted by the Resolution Applicant was scrutinised as per the provisions of Section 30(2) of the Code. It has been pointed out by the RP that as apprised by the Legal Counsel that changes which were asked to be made in the Plan and objections which were raised earlier were still pending rectification. It has been observed that it would not be appropriate for the RP or the CoC to give more time to the Resolution Applicant to rectify the resolution plan.

13. It is apprised by the RP to CoC members that voting on the agenda of the Resolution plan has already been deferred thrice when the Seventh, Eighth & Ninth meetings of the CoC were held. When the first resolution plan dated 09.12.2020 was being considered, it was deferred twice, first in the CoC meeting held on 19.12.2020 and then in the CoC meeting held on 24.12.2020. Thereafter, when the second resolution plan dated 28.02.2021 was being considered, it was deferred third time in the CoC meeting held on 05.03.2021. EOI in Form G was also published twice. In this process, 270 days have already passed, thus the CIRP period has already been completed on 02.02.2021 as per the extension and exclusion granted vide order dated 14.12.2020 of this Tribunal. Therefore, it has now been mandated by the CoC that the CIRP of the Corporate Debtor is to be completed within 330 days otherwise a going concern Corporate Debtor would slip under liquidation.

14. Subsequently, the RP once again placed the Resolution Plan before the CoC and apprised them about the Valuation Reports already submitted. A last opportunity was given to the Resolution Applicant to rectify and negotiate the Resolution Plan by 16.03.2021 to examine it for the successful resolution of the Corporate Debtor.

15. It is submitted that in the 11th CoC meeting, which was scheduled to be held on 24.03.2021 got deferred to 25.03.2021 automatically due to non- participation of the majority stakeholders of the CoC, the RP informed the CoC members that the Resolution Plan received on 28.02.2021 from Mr. Pratham Benara has been scrutinized and found to be non-compliant of Section 30(2) of the Code. Thereafter, modified Resolution Plan was submitted by Mr Pratham Benara on 16.03.2021 after removal of certain objections in terms of Section 30(2) and put up for the CoC's consideration in Eleventh CoC meeting held on 25.03.2021 and was put to e-voting as requested by the CoC, which was passed by the CoC. The RP then gave his confirmation that the Resolution Plan is not in compliance of all the requirements of clauses (a) to (f) of sub - section (2) as under Section 30.

16. However, the Resolution Professional filed IA 182/2021 under Section 30(6) of the Code seeking approval of the Resolution Plan, wherein vide Order dated 22.03.2022 this Tribunal held:

"It appears that the Resolution Plan does not contain the full particular as required in terms of section 30(2) IBC, nor about the applicability or non-applicability of Section 5 of the Competition Act, 2002.

In the first instance, compliance with these provisions may be made and the matter be placed before the CoC once again for its consideration and approval. The CoC will consider the question of relief and concession and whether the granting or such relief and concession is central to the plan and make recommendation accordingly. RP is directed to call the meeting of the CoC after receipt of the application and the Regulations compliance chart from the Successful Resolution Applicant and raise the same before the CoC for its consideration."

17. In pursuance to the Order dated 22.03.2022, the Resolution Professional took steps to get the Resolution Plan rectified further and after receipt of the revised resolution plan along with Regulations compliance chart from the successful resolution applicant, he convened 12th meeting of COC on 17.11.2021 for considering the revised Resolution Plan as per the direction of this tribunal.

18. Thereafter, this Tribunal vide Order dated 09.05.2022 while acknowledging that the revised resolution plan had been received, ordered for approval of the revised resolution plan if and when the same is approved by the CoC. Accordingly, the earlier IA No. 182/2022 vide which the defective resolution plan was filed as discussed in previous para, was dismissed.

19. As per the direction of this Tribunal, the revised Resolution Plan submitted by the SRA is put up before the CoC for consideration in the 13th CoC meeting held on 06.05.2022. the RP presented the revised resolution Plan. Subsequently on 23.08.2022, the 14th CoC meeting of the CoC was held to confirm and approve the changes as requested in the Resolution Plan.

20. Finally, Modified Resolution Plan dated 10.09.2022 was put up for the CoC's consideration in the 15th meeting of the COC as per the provisions of Section 30(2) and voting was conducted through Ballot Paper as requested by the CoC. The following resolution which was put to voting, was passed:

"RESOLVED THAT pursuant to Section 30(4) of the lnsolvency and Bankruptcy Code, 2016 read with Regulation 39(2) & (3) of the lnsolvency and Bankruptcy Board of lndia (lnsolvency Resolution Process for Corporate Persons) Regulation, 2016 and other applicable provisions, if any, the Resolution Plan submitted by Mr. Pratham Benara as placed before the Committee of Creditors be is hereby approved."

"RESOLVED FURTHER THAT pursuant to section 30(6) of the lnsolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of the lnsolvency and Bankruptcy Board of lndia (lnsolvency Resolution Process for Corporate Persons) Regulation, 2016, the Resolution Professional of Benara Automotives Private Limited be and is hereby authorized to submit the Resolution Plan before the Hon'ble Adjudicating Authority for its approval."

"RESOLVED FURTHER THAT the Resolution Professional of Benara Automotives Private Limited be and is hereby also authorized to do all such acts, deeds and things that may be deemed incidental and ancillary thereto to give effect to the aforesaid Resolution."

RESOIVED FURTHER THAT the Resolution Professional be and is hereby authorized to take appropriate action to give effect to this resolution and *to do all such acts, deeds and things as may deem necessary and incidental thereto."*

21. Resolution Professional filed an IA No. 370/2022 for approval of Resolution Plan submitted by Resolution Applicant, Mr. Pratham Benara, as approved by the Committee of Creditors of the Corporate Debtor with 100% voting under Section 30(4) of the Code vide Item B1 of the 15th CoC Meeting held on 11.10.2022.

22. Further, in terms of clause 1.9.1 of the Request for Resolution Plan, the SRA was required to submit Performance Bank Guarantee of 10% of the amount of the Resolution Plan within 10 days of the approval of the Resolution Plan by the CoC. However, the SRA failed to provide the Performance Guarantee and accordingly, in terms of clause 1.9.1. of the Request for Resolution Plan (hereinafter referred as "RFRP"), the present Resolution Plan became non responsive. Therefore, in the 16th Meeting of the CoC dated 17.07.2023, the members decided to cancel the approval accorded to the Resolution Plan and to initiate the Liquidation process of the

Corporate Debtor as approved with 98.06% voting by the Committee of Creditors. In this regard, two resolutions i.e. B1 and B2 were passed. They are as under:

"ITEM NO. B-1

To consider and cancel the approval granted to Resolution Plan submitted by the Resolution Applicant, Mr. Pratham Benara on 12.09.2022 as the Resolution Plan has become non responsive.

The following resolution is proposed for e-voting:

To consider and, if thought fit, to pass with or without modification the following resolution:

"RESOLVED THAT pursuant to Clause 1.9.1 and 1.9.5 of RFRP read with Regulation 36(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 and other applicable provisions, if any, approval granted to the Resolution Plan submitted by Mr. Pratham Benara, Successful Resolution Applicant, as placed before the Committee of Creditors be is hereby cancelled."

"RESOLVED FURTHER THAT the Resolution Professional of Benara Automotives Private Limited be and is hereby also authorized to file application before the Hon'ble Adjudicating Authority seeking withdrawal of IA 370/2022 filed for seeking approval of the Resolution Plan

dated 12.09.2022 and to do all such acts, deeds and things that may be deemed incidental and ancillary thereto to give effect to the aforesaid Resolution."

RESULT:

All the members of the CoC present in the meeting sought casting of votes in favour of Agenda No. B-1 through e-voting.

The representative of Pegasus Assets Reconstruction Private Limited representing 98.04% voting rights in the CoC voted in favour of the resolution while Shriram City Union Finance Ltd representing 1.94% voting rights did not vote. As the votes cast in favour of the Agenda Item B-1 are 98.04% ile. more than 51% of the voting share of the member of CoC, hence the resolution/ agenda item is taken as PASSED by the Committee of Creditors.

ITEM NO. B-2

To discuss and consider the filing of Interlocutory Application with the Hon'ble National Company Law Tribunal under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for the initiation of liquidation of the Corporate Debtor

The following resolution is proposed for e-voting:

"RESOLVED THAT in pursuant to Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 and the rules

made thereunder, the consent of members of the Committee of Creditors be and is hereby accorded for filing of application with Hon'ble National Company Law Tribunal seeking initiation of liquidation of corporate debtor and to appoint the existing RP. subject to his consent to act as liquidator in prescribed form, as the liquidator of the Corporate Debtor.

RESOLVED FURTHER THAT pursuant to Regulation 4 of IBBI (Liquidation Process) Regulations, 2016, the liquidator shall be entitled to a fee of Rs.1,00,000/- per month plus applicable taxes and out of pocket expenses for the period of liquidation process.

RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorized to submit an application before the Hon'ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto."

RESULT:

All the members of the CoC present in the meeting sought casting of votes in favour of Agenda No. B-2 through e-voting.

The representative of Pegasus Assets Reconstruction Private Limited representing 98.04% voting rights in the CoC voted in favour of the resolution while Shriram City Union Finance Ltd representing 1.94% voting rights did not vote. As the votes cast in favour of the Agenda Item B-2 *are 98.04% i.e. more than 51% of the voting share of the member of CoC, hence the resolution/ agenda item is taken as PASSED by the Committee of Creditors."*

23. The Applicant/RP, Mr Arun Chaddha submitted that he consented to act as the liquidator of the Corporate Debtor. His IBBI registration number is IBBI/IPA-001/IP-P00165/2017-18/10334, address EB 184, Maya Enclave, South West, National Capital Territory of Delhi-110064 and email chadharun@yahoo.com. Also, the AFA of the Applicant/RP which is sought to be proposed as Liquidator is going to be valid until 19.12.2024.

24. Accordingly, the present Application IA No.368/2023 has been filed under Section 33(2) of the Code, seeking rejection of the Resolution Plan as it is contended by the Applicant that that it is not in conformity with the RFRP and further to initiate the Liquidation Process of the Corporate Debtor.

25. In response to the present Application, the Respondent Resolution Applicant filed a reply on 30.11.2023 wherein it is submitted that this Tribunal vide order dated

09.05.2022 acknowledged that the revised resolution plan was placed before the CoC, and therefore IA No.182/2021 stood dismissed, and accordingly, it was directed to file afresh application for approval of resolution plan. However, as further stated by the Respondent that the Applicant asked for deposit of 100% Performance Bank Guarantee of the amount equivalent to the resolution plan payment amount as per clause 1.9.1 of RFRP, which was subsequently revised to 10%.

26. On insistence of the CoC for deposit of 10% performance guarantee, the Respondent requested for Performance Bank Guarantee to be waived vide communication dated 22.07.2022 and 25.07.2022 but as contended by the Respondent, this request was neither considered nor even placed before the CoC and deposit of the same was kept on being insisted.

27. It has been contended by the Respondent that the only reason for the liquidation of the Corporate Debtor is that the Respondent requested for waiving of Performance Bank Guarantee and getting the Resolution Plan

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approved by this tribunal only on the basis of the deposit of an amount of Rs. 5 lacs, which was deposited at the time of submission of the Resolution Plan. It is also pointed out that at the time of approving the Resolution Plan by the CoC, no such objection was raised.

28. The Respondent further contended that the Applicant called CoC meeting on his own and circulated the agenda on 13.07.2023 for cancellation of Resolution Plan and starting the liquidation of the Corporate Debtor without putting forward the arguments before this tribunal in the IA no. 370/2022, which was pending at that time before this tribunal for consideration.

29. The Applicant/RP filed a written submission on 30.01.2024 wherein the Applicant relying on the provision of Section 33 (2) of the Code submitted that the Application for liquidation must be submitted prior to the confirmation of the Resolution Plan submitted under Section 30(6) of the Code and the resolution seeking liquidation must receive the approval of the Committee of Creditors (CoC) with a majority of not less than sixty-six per cent under Section 33(2) of the Code. In the instant case, both conditions as stipulated by the wisdom of the Legislature encoded in the Code are complied with as this Tribunal had not confirmed the Resolution Plan which was submitted on 17.10.2022 in IA No. 370/2022 and the resolution to liquidate the corporate debtor was approved with 98.06% voting in its favour.

30. Further, the CoC, in its 16th meeting held on 17.07.2023, passed a resolution seeking liquidation of the Corporate Debtor on the ground(s) that the SRA failed to comply with the terms of the RFRP. The non-fulfilment of the condition as outlined under clause 1.9.1 of the RFRP, the Resolution Professional convened and held 16th Meeting of the CoC on 17.07.2023 which resulted into a conclusive decision to rescind the approval granted to the Resolution Plan in terms of clause 1.9.5 of the RFRP. It is further submitted that the CoC, after exercising its due wisdom, decided with a majority of 98.06% to initiate the Liquidation process for the Corporate Debtor in the instant case. Moreover, the Respondent's failure to adhere to the prescribed condition of payment of Performance Bank Guarantee of 10% of the amount of the Resolution Plan within 10 days of approval of the Resolution Plan led to decision of the CoC voting for liquidation.

31. The Respondent filed written submission dated 13.02.2024 wherein reliance has been placed upon the judgement of Hon'ble Supreme Court in the matter of *Ebix Singapore Private Limited Vs Committee of Creditors of Educomp Solutions Limited & Anr.*, in which it was held that once the Resolution Plan submitted by the Successful Resolution Applicant and approved by the COC, there is no scope of withdrawal/modification in terms of the Resolution Plan. In the present case, the matter was approved by COC and resultantly IA No. 370/2022 was filed for approval of this Authority.

32. As the Resolution Applicant stated that the final decision on the Resolution Plan is to be taken by this Adjudicating Authority, we heard the Ld. Counsel for the Applicant as well as the Ld. Counsel for the Respondent Resolution

Applicant and thereafter, a detailed order was passed on 02.04.2024 in which the undertaking given by the Resolution Applicant that the Performance Bank Guarantee would be furnished within a period of two weeks, was recorded. This order is reproduced as below

"**IA No.368/2023**

1. This application has been filed for seeking withdrawal of the IA No.370 of 2022 which is stated to have been approved by the COC, in view of the fact that the Resolution Plan dated 12th September, 2022 has already been cancelled in the meeting of COC.

2. It is averred in the application as well as submitted by the Ld. Counsel representing the RP that earlier an Agenda Item was discussed in the meeting of the COC held on 14th July, 2023, whereby vide Agenda Item No. B1 at Page No.45, it was observed that the Successful Resolution Applicant has failed to comply with the relevant clauses of the RFRP as till date the Successful Resolution Applicant has not furnished the requisite performance bank guarantee.

3. Item No. B1 considered by the COC in the aforesaid meeting is as under:

Item No. B1 *To consider and cancel the approval granted to Resolution Plan submitted by the Resolution Applicant, Mr. Pratham Benara on 12.09.2022 as the Resolution Plan has become non responsive. The Chairman apprised the members of the Committee of Creditors that he had* *received a Resolution Plan dated 12.09.2022 submitted by Mr. Pratham Benara, prospective Resolution Applicant. The said resolution plan was passed with 100% voting in favour in the Fifteenth meeting of the COC of the Corporate Debtor (through ballot paper dated 15.10.2022). ln accordance with the agenda passed in the Fifteenth meeting of the COC dated 15.10.2022, the Resolution Professional filed the Application IA 370/2022 seeking approval of the Resolution plan. Next date for hearing for approval of Resolution plan is 25.07.2023. That the Chairman appraised that the Successful Resolution Applicant must comply with the terms and conditions of the RFRP issued by the Resolution professional. However, unfortunately, the Successful Resolution Applicant has failed to comply with clause 1.9.1 of the RFRP as till date the Successful Resolution Applicant has failed to submit Performance Guarantee equivalent to 10% of the Resolution Plan payment amount. Clause 1.9.1 of the RFRP is extracted below – "Within 10 days of the date of approval of the Successful Plan by the CoC, the Successful Resolution Applicant(s) shall provide a Performance Guarantee of amount equivalent to 10% of the resolution plan payment amount in favour of Benara Automotives Private Limited, ("Performance Guarantee"). The Performance Guarantee should be payable at Agra, U.P. and should be executed from Scheduled Bank located in India. The form of the Performance Guarantee shall be in the form provided in Appendix-4. The Performance Guarantee shall have a claim period of 180 days after the Performance Guarantee Validity Period." Further, clause 1.9.5 of the RFRP reads* *as under: "Non-submission of the Performance Guarantee by the Successful Resolution Applicant(s), as per the provisions of the Clause 1.9.1. will lead to rendering of resolution Plan by such Resolution Applicant(s) as non-responsive, and the CoC shall have the right to reject the Resolution Plan."*

4. The said Resolution has been approved by the COC in terms of the resolution passed which is at Page No.46, wherein it has also been resolved that an appropriate application may also be filed for seeking withdrawal of the IA No.370 of 2022, which in fact was filed for seeking approval of the Resolution Plan dated 12th September, 2022, the resolution passed thereto is at Page No.46, which reads as under:-

*"**RESOLVED THAT** pursuant to Clause 1.9.1 and 1.9.5 of RFRP read with Regulation 36(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 and other applicable provisions, if any, approval granted to the Resolution Plan submitted by Mr. Pratham Benara, Successful Resolution Applicant, as placed before the Committee of Creditors be is hereby cancelled."*

*"**RESOLVED FURTHER THAT** the Resolution professional of Benara Automotives Private Limited be and is hereby also authorized to file application before the Hon'ble Adjudicating Authority seeking withdrawal of IA 370/ 2022 filed for seeking approval of the Resolution Plan dated 12.09.2022 and to do all such acts, deeds and*

things that may be deemed incidental and ancillary thereto to give effect to the aforesaid Resolution."

5. In continuance of the aforesaid meeting, another meeting of the COC was held on 17th July, 2023, whereby an Agenda Item No. B1 was considered for cancellation of the approval granted to the Resolution Plan submitted by the Resolution Applicant on 12th September, 2022 and the said Resolution has been passed by a majority of 98.04% voting, the Resolution as well as the result is at Page No.39 in the present application reads as under:-

RESULT: *All the members of the CoC present in the meeting sought casting of votes in favour of Agenda No. B-1 through e-voting. The representative of Pegasus Assets Reconstruction Private Limited representing 98.04% voting rights in the CoC voted in favour of the resolution while Shriram City Union Finance Ltd representing 1.94% voting rights did not vote. As the voters cast in favour of the Agenda Item B-1 are 98-O4% i.e. more than 51% of the voting share of the member of CoC, hence the resolution/agenda item is taken as PASSED by the Committee of Creditors.*

6. Further vide another Agenda Item No. B2 was considered in the aforesaid meeting dated 17th July, 2023 for moving an appropriate application for initiation of the liquidation of the Corporate Debtor.

7. Said Agenda Item No. B2 has also been approved by the 98.04% voting and the Agenda Item No. B2 and the result thereof is at Page No. 40 reads as under:-

> ***RESULT:*** *All the members of the CoC present in the meeting sought casting of votes in favour of Agenda No. B-2 through e-voting. The representative of Pegasus Assets Reconstruction Private Limited representing 98.04% voting rights in the CoC voted in favour of the resolution while Shriram City Union Finance Ltd representing 1.94% voting rights did not vote. As the votes cast in favour of the Agenda item B-2 are 98.04% i.e. more than 51% of the voting share of the member of CoC, hence the resolution/agenda item is taken as PASSED by the Committee of Creditors.*

8. The Ld. Counsel representing the RP states that in view of the aforesaid situation, where the Resolution Applicant has not responded to the plan submitted by it and has not even furnished the requisite performance bank guarantee, in the COC wisdom it has been decided to cancel the said Resolution Plan and has also further decided to move an application for seeking initiation of the liquidation process.

9. It is further stated by the Ld. Counsel representing the RP that in view of the subsequent facts, the application filed vide IA No.370 of 2022 which was initially filed for seeking approval of the Resolution Plan does not survive any longer. According to him, it is by virtue of the present IA No.368 of 2023 that the withdrawal of the IA No.370 of 2022 has been prayed for.

10. Ld. Counsel, Sh. Rajesh Bohra representing the Resolution Applicant however at this stage makes a statement and furnishes an undertaking that the performance guarantee would be furnished within a period of two weeks.

11. In view of the statement made by the Ld. Counsel representing the Resolution Applicant, the aforesaid applications are kept in abeyance and the issue be considered by the CoC after furnishing of the Bank guarantee by the RA in an objective manner.

12. With this, both the IA No.370/2022 & IA No.368/2023 are adjourned for further hearing on 30th April, 2024."

33. In compliance of the order dated 02.04.2024, it is submitted by the Resolution Applicant in the hearing held on 29.07.2024 that as envisaged in RFRP, the Members of the Suspended Board of Directors being part of Resolution Applicant have furnished the Performance Bank Guarantee to the RP though belatedly and a soft copy of the same has been provided to the RP only on 25.07.2024. It has been further contended during the hearing that the Performance Bank Guarantee now submitted meets the requirements of the Resolution Plan which could not be submitted earlier due to some unavoidable circumstances. In this regard, it has been stated by the Ld. Counsel for the RP that the scanned copy of the Performance Guarantee was supplied only on 25.07.2024, therefore the agenda for considering the same could not be brought before the CoC, and hence a short adjournment was sought to take the matter before the CoC for its consideration to comply with our order dated 02.04.2024 for considering the Performance Bank Guarantee in an objective manner.

34. The RP stated that a meeting of the CoC took place to consider the Performance Bank Guarantee being sent by the Resolution Applicant, who also happens to be the Ex-Director of the Corporate Applicant (as CIRP was initiated u/s 10) himself. A supplementary affidavit comprising of the resolution passed by the CoC to this effect, has also been filed in the registry of the Tribunal on 20.08.2024, giving the details of the 17th meeting of COC held on 08.08.2024 to finally consider the Resolution Plan moved by the Resolution Applicant. It has been decided in the resolution of the 17th CoC meeting that the Resolution

Plan furnished by the Resolution Applicant be cancelled forthwith as no Performance Bank Guarantee was furnished by the Resolution Applicant, and therefore in the same very meeting another agenda item was taken up for initiating and pursuing the application under Section 33 of the Code for liquidation of the Corporate Debtor. The Resolution passed by the CoC in its 17th meeting held on 08.08.2024 as discussed above has been considered by us in the hearing held on 18.09.2024. In this hearing, no representation has been made from the side of the Resolution Applicant. The relevant part of the resolution passed in 17th meeting of the CoC is reproduced as under: -

> ***"Item No. BI***
> ***To consider and withdraw cancellation approved on 17.07.2023 to the Resolution Plan submitted by the Successful Resolution Applicant, Mr. Pratham Benara on 12.09.2022.***
>
> *The Chairman apprised the members of the Committee of Creditors that he received a Resolution Plan dated 12.09.2022 submitted by Mr. Pratham Benara, prospective Resolution Applicant. The said*

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resolution plan was passed with 100% voting in favour in the Fifteenth meeting of the COC of the Corporate Debtor (through ballot paper dated 15.10.2022).

In accordance with the agenda passed in the Fifteenth meeting of the COC dated 15.10.2022. the Resolution Professional filed Application IA 370/2022 seeking approval of the Resolution plan.

That the Chairman further apprised that the Successful Resolution Applicant failed to submit the Performance Bank Guarantee equivalent to 10% of the Resolution Plan payment amount in terms of clause 1.9.1 of the RFRP.

That as the Successful Resolution Applicant, Mr. Pratham Benara failed to submit Performance Guarantee equivalent to 10% of the Resolution Plan payment amount the committee of creditors in its 16" meeting held on 14.07.2023 passed a resolution thereby cancelling the approval granted to the Resolution Plan dated 12.09.2022 with 98.06% votes in favour The committee of creditors also resolved to pass a resolution seeking initiation of liquidation of the corporate debtor Accordingly, the Resolution Professional flied an Interlocutory Application No. 368 of 2023 seeking withdrawal of Interlocutory

Application No. 370 of 2022 and initiation of liquidation process of the corporate debtor.

The Chairman also informed the members of the CoC that the Successful Resolution Applicant has now submitted scanned copy of the Performance Guarantee by way of Bank Guarantee vide email dated 26.07.2024 and accordingly, the Resolution Professional, during the hearing held on 29.07.2024, duly apprised the Hon'ble Adjudicating Authority about submission of scanned copy of Performance Guarantee. After hearing the parties, the Hon'ble Adjudicating Authority directed the Resolution Professional to convene a meeting of the committee of creditors to consider the matter and pass an appropriate resolution/ recommendation. It may be noted that till date, the Successful Resolution Applicant has not provided original copy of the Performance Guarantee

Mr. Ramakant Pandey, Sr. Manager, Pegasus Assets Reconstruction Pvt. Ltd. (Voting Share: 98.06%) stated that the Successful Resolution Applicant submitted the first Resolution Plan on 28.02.2021. However, the said Resolution Plan was rejected as the Success Resolution Applicant failed to comply with relevant provisions of the Insolvency and Bankruptcy Code, 2016 and regulations made thereunder. Further.

despite the sufficient time was granted to Successful Resolution Applicant, he failed to rectify the Resolution Plan.

That the Successful Resolution Applicant submitted second Resolution Plan on 12.09.2022 and the committee of creditors in its 15th meeting held on 11.10.2022 passed a resolution for approval of the Resolution Plan. However, despite approval of the Resolution Plan, the Successful Resolution Applicant failed to submit the Performance Guarantee resulting into non-compliance of the terms of the Request for Resolution Plan. He emphasized that as the Successful Resolution Applicant did not provide Performance Guarantee for almost one year, the committee of creditors in its 16th meeting held on 14.07.2023 resolved to cancel the approval granted to the Resolution Plan dated 12.09.2022 and resolved to liquidate the corporate debtor.

Mr. Ramakant Pandey further stated that after filing of Interlocutory Application No. 360 of 2023 seeking liquidation of the corporate debtor, the Successful Resolution Applicant further for almost one year did not provide the Performance Guarantee and finally on 26.07.2024 provided scanned copy of the performance guarantee which showed that he has no intention/ sufficient resources to implement the

Resolution Plan. Accordingly, providing him opportunity for pursuing the Resolution Plan would be wastage of time and value of the corporate debtor and therefore, he reiterated that the corporate debtor must be liquidated. He also stressed that the Performance Guarantee submitted by the Successful Resolution Applicant should not be accepted. RESOLUTION:

The following resolution was placed before the CoC for voting:

*"**RESOLVED THAT** pursuant to Clause 1.9.1 and 1.9.5 of RFRP read with Regulation 36(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 and other applicable provisions, if any, cancellation granted to the approved Resolution Plan submitted by Mr. Pratham Benara, Successful Resolution Applicant is hereby withdrawn."*

***RESOLVED FURTHER THAT** the Resolution Professional of Benara Automotives Private Limited be and is hereby also authorized to withdraw Interlocutory Application No. 368 of 2023 seeking initiation of liquidation process of the corporate debtor and pursue Interlocutory Application No. 370/ 2022 filed for approval of the Resolution Plan dated 12.09.2022 and to do all such acts, deeds and things* *that may be deemed incidental and ancillary thereto to give effect to the aforesaid Resolution."*

Result: *Pegasus Assets Reconstruction Private Limited having 98.06% voting share voted against the agenda item and Shriram City Union Finance Ltd. having 1.94% voting share did not participate in the meeting. Accordingly, the agenda item was put for e-voting for the voting of Shriram City Union Finance Ltd.*

Item No. B2

To consider and confirm cancellation approved on 17.07.2023 to the Resolution Plan submitted by the Successful Resolution Applicant, Mr. Pratham Benara on 12.09.22.

The Chairman apprised the members of the Committee of Creditors that he had received a Resolution Plan dated 12.09.2022 submitted by Mr. Pratham Benara. prospective Resolution Applicant. The said resolution plan was passed by 100% voting in favour in the Fifteenth meeting of the COC of the Corporate Debtor (through ballot paper dated 15.10.2022).

In accordance with the agenda passed in the Fifteenth meeting of the COC dated 15.10.2022, the

Resolution Professional filed the Application IA 370/2022 seeking approval of the Resolution plan.

That the Chairman appraised that the Successful Resolution Applicant must comply with the terms and conditions of the RFRP issued by the Resolution professional. However, unfortunately, the Successful Resolution Applicant failed to comply with clause 1.9.1 of the RFRP as the Successful Resolution Applicant did not submit Performance Guarantee equivalent to 10% of the Resolution Plan payment amount within the time. Now, the Successful Resolution Applicant has provided scanned copy of Performance Guarantee vide email dated 26.07.2024. Clause 1.9.1 of the RFRP is extracted below-

"Within 10 days of the date of approval of the Successful Plan by the CoC, the Successful Resolution Applicant(s) shall provide a Performance Guarantee of amount equivalent to 10% of the resolution plan payment amount in favour of Benara Automotives Private Limited, ("Performance Guarantee"). The Performance Guarantee should be payable at Agra, U.P. and should be executed from Scheduled Bank located in India. The form of the Performance Guarantee shall be in the form provided in Appendix-4. The Performance Guarantee shall have a claim

period of 180 days after the Performance Guarantee Validity Period.”

Further, clause 1.9.5 of the RFRP reads as under:

"Non-submission of the Performance Guarantee by the Successful Resolution Applicant(s), as per the provisions of the Clause 1.9.1, will lead to rendering of resolution Plan by such Resolution Applicant(s) as non-responsive, and the CoC shall have the right to reject the Resolution Plan”

That the Resolution Plan became non responsive as the Successful Resolution Applicant did not submit the performance guarantee within 10 days as inscribed Clause 1.9.5 in the RFRP. Further, the Resolution Professional also informed the Successful Resolution Applicant to submit the Performance Guarantee to comply with the RFRP but the Successful Resolution Applicant did not comply with the same till 14.07.2023 and therefore, the Resolution Plan dated 12.09.2022 became non responsive. Accordingly, the RP convened 16 meeting of the committee on 14.07.2023 wherein the committee of creditors with 98.06% voting resolved to cancel the approval granted to the Resolution Plan. The committee of creditors also resolved to pass a resolution seeking initiation of liquidation of the corporate debtor. Accordingly, the Resolution

Professional filed an Interlocutory Application No. 368 of 2023 seeking withdrawal of Interlocutory Application No. 370 of 2022 and initiation of liquidation process of the corporate debtor.

That the Successful Resolution Applicant has now submitted scanned copy of the Performance Guarantee by way of Bank Guarantee vide email dated 26.07.2024 and accordingly, the Resolution Professional, during the hearing held on 29.07.2024, duly apprised the Hon'ble Adjudicating Authority about submission of scanned copy of Performance Guarantee. After hearing both the parties, the Hon'ble Adjudicating Authority directed the Resolution Professional to convene a meeting of the committee of creditors to consider the matter and pass an appropriate resolution/ recommendation. It may be noted that till date, the Successful Resolution Applicant has not provided original copy of the Performance Guarantee.

Mr. Ramakant Pandey, Sr. Manager, Pegasus Assets Reconstruction Pvt. Ltd. (Voting Share: 98.06%) stated that the Successful Resolution Applicant submitted the first Resolution Plan on 28.02.2021. However, the said Resolution Plan was rejected as the Success Resolution Applicant failed to comply with relevant provisions of the Insolvency and Bankruptcy Code, *2016 and regulations made thereunder. Further, despite the sufficient time was granted to Successful Resolution Applicant, he failed to rectify the proposed Resolution Plan.*

That the Successful Resolution Applicant submitted second Resolution Plan on 12.09.2022 and the committee of creditors in its 15th meeting held on 11.10.2022 passed a resolution for approval of the Resolution Plan. However, despite approval of the Resolution Plan, the Successful Resolution Applicant failed to submit the Performance Guarantee resulting into non-compliance of the terms of the Request for Resolution Plan. He emphasized that as the Successful Resolution Applicant did not provide Performance Guarantee for almost one year, the committee of creditors in its 16th meeting held on 14.07.2023 resolved to cancel the approval granted to the Resolution Plan dated 12.09.2022 and resolved to liquidate the corporate debtor.

Mr. Ramakant Pandey further stated that after filing of Interlocutory Application No. 368 of 2023 seeking liquidation of the corporate debtor, the Successful Resolution Applicant further for almost one year did not provide the Performance Guarantee and finally on 26.07.2024 provided scanned copy of the

performance guarantee which showed that he has no intention/ sufficient resources to implement the Resolution Plan. Accordingly, providing him opportunity for pursuing the Resolution Plan would be wastage of time and value of the corporate debtor and therefore, he reiterated that the corporate debtor must be liquidated. He also stressed that the Performance Guarantee submitted by the Successful Resolution Applicant should not be accepted.”

35. In view of the above resolution passed by the CoC and no compliance having been made by the Resolution Applicant to submit proper Performance Bank Guarantee in compliance of our order dated 02.04.2024 and only a scanned copy was provided, which was not accepted by the CoC and nobody appeared on behalf of the Resolution Applicant in the hearing held on 18.09.2024 to explain about their failure to comply with our order dated 02.04.2024, we were satisfied that the Resolution Applicant who was also the Ex Director of the Corporate Applicant/Debtor was not found serious about complying with the terms of RFRP of the Resolution Plan for its implementation. Therefore, we passed order dated 18.09.2024 allowing withdrawal of the IA No.370/2022 as per the prayer no. (a) made in IA 368/2023 to that extent of withdrawing the said Resolution Plan. Subsequently, hearing was carried out in IA 368/2023 for approval of liquidation proposal of CoC and the matter was finally heard on 19.11.2024.

36. We have heard the Ld. Counsel for the Applicant and perused the material available on record.

37. After allowing in order dated 18.09.2024, the withdrawal of IA 370/2022 in respect of submitting the Resolution Plan as prayed in the present application i.e. IA No.368/2023, we considered the prayer (b) and (c) for initiating the liquidation proceedings for the Corporate Applicant/Debtor and appointing the Liquidator for which a resolution has been passed by the CoC in its meeting held on 14.07.2023 in which after the e-voting, the resolution has been passed by the CoC to move an appropriate application for initiating the liquidation proceedings of the assets of the Corporate Debtor. The RP further submitted that the liquidation cost is to be born in accordance with the provisions of the Code and the liquidation proceedings is proposed to be initiated for sale of the Corporate Person/Business of Corporate Person as a going concern under Regulation 32(e) & (f) thereof of the Liquidation Regulations, 2016.The agenda Item No. B4 to this effect has been recorded at Page No.42 of the application and the Resolution to that effect has been passed.

38. The Hon'ble Supreme Court in the matter of ***K. Sashidhar Versus Indian Overseas Bank & Ors*** in ***Civil Appeal No. 10673*** of ***2018*** has held that the commercial decision of CoC is non- justiciable. In this case, it is seen that CoC with 98.06% majority has passed the resolution seeking liquidation of the Corporate Debtor. Moreover, the Hon'ble Supreme Court of India, in the recent ruling of ***Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors***, held as under: -

> *"21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for*

ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts."

39. The CoC with requisite voting as given under section 33(2) of IBC, 2016 have approved liquidation of Corporate Debtor in view of not getting any viable and acceptable resolution plan, despite repeatedly considering revised resolution plan as submitted by the Ex Director of the Corporate Applicant and was required to be modified on a number of occasions. The Corporate Debtor could not even fulfil the requirement of Resolution Plan even during the course of the hearing by not depositing the Performance Bank Guarantee while considering the Resolution Plan filed before us vide IA No.370/2022, hence same was allowed to be withdrawn by the Applicant RP as it has already been discussed in para no.35 of this order.

40. In light of the above facts and circumstances, the decision of liquidation of the Corporate Debtor has been taken by the CoC with 98.06% voting share in the 16th meeting held on 17.07.2023 and further affirmed in the 17th CoC meeting held on 08.08.2024 (*held as our direction vide order dated 29.07.2024 of this tribunal*), particularly in view of the fact that no viable resolution plans have been received. Therefore, the present application deserves to be allowed for the initiation of the liquidation process. In this regard, we order that the Liquidator shall first sell the Corporate Debtor as a going concern in terms of Regulation 32A read with Regulation 32(e) and (f) of the IBBI (Liquidation Process) Regulations, 2016 and carry out the liquidation process strictly in terms of the provisions of the Code and IBBI (Liquidation Process) Regulations, 2016 made thereunder.

41. Further, Mr. Arun Chadha has been considered for appointment as Liquidator in this case after considering his consent as discussed in Para 23. The Law Research Associate of this Tribunal, Mr. Sarim Husain, has

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checked the credentials of Mr. Arun Chadha, and found that there are no disciplinary proceedings pending against the proposed Resolution Professional and also there is nothing adverse against him. Upon verification from the website of IBBI, it is found that Mr Arun Chaddha holds valid authorization till 19-12-2024. After considering these details, we appoint Mr. Arun Chadha, Registration No. IBBI/IPA-001/IP-P00165/2017-18/10334 as Liquidator. It is also directed that the fees of the Liquidator shall be in accordance with Regulation 4(2) of IBBI (Liquidation Process) Regulations, 2016, and this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor.

42. Accordingly, the present I.A. No. 368 of 2023 is allowed and stands disposed of.

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(Ashish Verma)	**(Praveen Gupta)**
Member (Technical)	**Member (Judicial)**

Date: **11th December, 2024**