

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.108

IA/105(MP)2023 in (MP) CP(IB) 42 of 2020

Proceedings under Section 10 IBC

IN THE MATTER OF:

Sagar Autotech Pvt Ltd

.....Applicant

Order delivered on 21/04/2023

Coram:

Ashok Kumar Bhardwaj, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant : Ld. Adv. Mr. Love S. Modi (IA/105(MP)2023)

For the IRP/RP : Mr. Keyur J. Shah

ORDER

IA/105(MP)2023

1. The prayer made in the application reads thus:-

- (a) *To allow the present application;*
- (b) *To pass an order under Section 33(1)(a) and 33(2) of the IBC, 2016 for liquidation of the Corporate Debtor;*
- (c) *To pass an order under Section 34(1) of the Code for appointment of Liquidator;*
- (d) *To direct the Applicant to make public announcement stating that the Corporate Debtor is in Liquidation;*
- (e) *To direct the Applicant to serve a copy on the Registrar of Companies;*
- (f) *To hold and declare that all the powers of the Board of Directors, Key Managerial Persons, as the case may be, shall cease to have effect and be vested in liquidator of the Corporate Debtor;*
- (g) *To direct the personnel of the Corporate Debtor shall extend full co-operation and assistance to the Applicant in carrying out liquidation process.*

2. Indubitably the CIRP commenced on 23.06.2022. Though a period of more than 180 days has expired, no Resolution Plan has been filed in terms of the provisions of

Section 30(6) of IBC, 2016. It is also not so that the RP has filed any application under Section 12(2) for extension of period of CIRP. It is settled position of law as also specific provision contained in Section 12(2) of IBC, 2016 i.e. the RP can move an application for extension of CIRP period only with the approval of 66% voting members/voting share of the CoC.

3. Learned counsel appearing for the RP as also RP could draw our attention to the minutes of 7th meeting of the CoC held on 20.03.2023 to espouse that neither there is 66% voting share to support filing application for liquidation nor there is any such Resolution for filing an application for extension of CIRP period.

4. For convenient reference, the relevant excerpt of the minutes of CoC is extracted herein below: -

“RESOLVED FURTHER THAT the Resolution Professional is hereby authorized to submit a necessary 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.”

Voting Status on the above Resolution:

Sr. No.	Creditors Name	Percentage on the basis of claim amount	For		Against		Abstain
			Percentage of total debt	Percentage of total votes casted	Percentage of total debt	Percentage of total votes casted	Percentage of total debt
1.	State Bank of India	55.45%	55.45%	55.45%	-	-	-
2.	Ennovis Consultant India Private Limited	45.55%	-	-	45.55%	45.55%	-
TOTAL		100.00%	55.45%	55.45%	45.55%	45.55%	-

5. Apparently, the application is not maintainable under Section 33(2) of IBC. Nevertheless, as no Resolution Plan has been received within 180 days 23.06.2022 i.e. the date of commencement of CIRP or during the extended period, in terms of the provision of Section 33(1)(a), the Corporate Debtor is ordered to be liquidated.

6. The RP is directed to make a public announcement stating that the Corporate Debtor is in liquidation. He shall also make a copy of this order available to the Registrar of Companies with whom the Corporate Debtor is registered.

7. The RP has given his consent to act as Liquidator of the Corporate Debtor and the same is placed on record.

8. As per section 34(1) of the Code, Mr. Keyur J. Shah having registration no. IBBI/IPA-002/IP-N00244/2017-18/10729 is hereby appointed as a Liquidator of the corporate debtor, Sagar Autotech Private Limited, who shall complete the liquidation process as per the provisions of the Code r.w. Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the extent Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date enjoined upon him.

(b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

(c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file a suitable application before this Adjudicating Authority. The financial affairs of the Corporate Debtor shall also be investigated in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.

(d) The Registry is directed to communicate this order to the Registrar of Companies, Gwalior and the Insolvency and Bankruptcy Board of India;

(e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

(f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

(g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.

(h) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further reports as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

(i) Copy of this order be sent to the Financial creditors, Corporate Debtor and the Liquidator for taking necessary steps qua the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

(j) The Liquidator appointed as above may take steps to sell the Corporate Debtor as a Going Concern.

9. **IA/105(MP)2023** stands allowed.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Braj Mohan / Neeraj

Sd/-

ASHOK KUMAR BHARDWAJ
MEMBER (JUDICIAL)