

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI**

**IA(IBC)/217/KOB/2022
IN
IBA/37/KOB/2020**

(Under Section 33(1)(b) of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

Mr. Vibin Vincent, The Resolution Professional of M/s. Koyenco Autos Private Limited, Chakiath House, Elavoor P.O., Angamaly, Ernakulam District- 683 572.
Email: vibinvchackiath@yahoo.com;

... Applicant

-And-

In the matter of:

BMW India Financial Services Private Limited;

... Financial Creditor

-Versus-

Koyenco Autos Private Limited.

... Corporate Debtor

Coram:

Shri. P. Mohan Raj : Member (Judicial)

Shri. Satya Ranjan Prasad : Member (Technical)

Appearance through Video Conferencing

For Applicant : Shri. A.C.Venugopal, Advocate

For Suspended Management : Shri. Arjun Sheth, Advocate

**Order reserved on: 19.10.2022
Order pronounced on: 04.11.2022**

ORDER

1. The present application is filed by the Applicant being the Resolution Professional (hereinafter referred to as "RP") under Section 33(1)(b) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") for passing an order of liquidation of the Corporate Debtor, M/s. Koyenco Autos Private Limited and appointment of the applicant Resolution Professional as Liquidator of the Corporate Debtor.



30.05.2022, the members of the COC decided that the suspended director shall submit the Resolution Plan within the time period of 30 days provided to him to enable the members of the COC to negotiate and reach a decision and that no further extension shall be granted to the suspended director to submit the plan beyond that time and the members of the COC, passed a Resolution by way of the majority of voting in favour deciding to extend the last date to submit the Resolution Plan by 30 days from 02.06.2022 till 01.07.2022.

iii. The Resolution Plan was received by the Resolution Professional from the Prospective Resolution Applicant/Suspended Director vide email dated 01.07.2022 at 06:27 PM. which is after the due time prescribed by the COC to submit the Resolution Plan. The Resolution Professional sent an email to the Prospective Resolution Applicant noting the following discrepancies in the Resolution Plan submitted by the Prospective Resolution Applicant: -

- a) Prospective Resolution Applicant (PRA) has not submitted the Resolution plan and Earnest Money Deposit along with all the supporting information, documents and various forms/ affidavits/ authorizations in a sealed cover in triplicate to the Resolution Professional within the stipulated time.
- b) Prospective Resolution Applicant (PRA) not submitted copies of various forms/affidavits/ Authorizations in a sealed cover separately to the Resolution Professional in order to start the Due Diligence process. However, necessary documents and Earnest Money Deposit have been



Though in the meeting when Mr. P.P. Ashique was asked to present its revised financial bid, it was understood that no concrete discussion could take place between the lenders and the PRA for the purpose and hence no revision was offered at that time, even though time was granted from 6.7.2022. The COC took the view that the financial bid offered to them in the Resolution Plan is not acceptable as it is way lower than the Liquidation Value. Subsequently the COC resolved to grant last opportunity to the PRA to make changes in the Resolution Plan (i.e., Financial Bid and other discrepancies) and submit the final Resolution Plan latest by 26.07.2022 till 05:00 PM. and there will be no further extension of time beyond that. The RP informed the members of the COC that the sheet of detailed discrepancies along with the RFRP mapping was shared with the PRA and the members, immediately after the meeting held on 25.07.2022. Pursuant to the same, the RP had received a revised Resolution Plan from the PRA on 26.07.2022. In the revised proposal, the view of the COC members that they are still not comfortable with the revised proposal as there is no substantial change in the revised offer of PRA and other discrepancies in the Resolution Plan were also not corrected.

- vi. The Applicant further submitted that the COC after extensive deliberations and applying their commercial wisdom resolved to reject the revised Resolution Plan submitted by the resolution applicant with 100% voting share. It is further submitted that as there were no other resolution plans available and since time was insufficient for further issue of invitation for EOI and since the previous two invitation for EOI did not yield any positive results, the COC at its meeting held on July 28, 2022 decided to follow the strict process laid down in the IBC and resolved to seek directions



the matter, BMW and BMW FS did not accept their request. They have further stated that they are improving their offer under the Resolution Plan to Rs. 42 Crore. Hence, they prayed that this Adjudicating Authority to pass appropriate order directing the CoC to combine or otherwise qua both the Corporate Debtors to reconsider the revised proposal.

FINDINGS: -

5. We have heard the learned counsel for the Applicant/Resolution Professional Shri. A.C. Venugopal and the learned counsel for the ex-management Shri. Arjun Sheth and perused the entire case records/documents. We have also gone through the evidence on record. It is seen from the records that the CoC of the Corporate Debtor with 100% voting share has resolved to apply to this Adjudicating Authority for liquidating the Corporate Debtor.
6. For the sake of ready reference, the relevant provision of Section 33(2) of the Code, which is applicable is reproduced hereunder:

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [approved by not less than 66% of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of Clause (b) of sub-Section (1).

[Explanation: for the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of Section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum].
7. The joint Resolution Plan submitted by M/s. Platino Classic Motors (India) Pvt. Ltd. and M/s. Koyenco Autos Private Limited was discussed in 7th COC



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- d) This order is deemed to be a notice of discharge to the officers, employees, and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016.
- e) The Liquidator to submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
10. As a consequence of the application being allowed, the moratorium as envisaged 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.
11. The application is allowed and disposed of accordingly.
12. Urgent certified copy of this Order, if applied for, be issued upon compliance with all requisite formalities. A copy of this Order shall also be forwarded to IBBI for its records and ROC for updating the Master Data. ROC shall send a compliance report to this Adjudicating Authority.
13. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2022.11.04 17:54:26 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN Digitally signed by PANDIAN
MOHAN RAJ MOHAN RAJ
Date: 2022.11.04 14:18:04 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this 4th day of November, 2022.

Certified to be True Copy-

Shanmugasundaram
Deputy Registrar

National Company Law Tribunal
Kochi Bench

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Rajasree



9/11/2022