

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

**M. A. No. 3648 of 2019
in
C. P. No. 4321 of 2018**

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

In the matter of

Central Bank of India

... Financial Creditor

V/s.

Loyal Motors Pvt. Ltd.

... Corporate Debtor

M.A. No. 3648/2019

Mr. Jitender Kumar Jain

... Applicant/
Resolution Professional

Order delivered on 05.03.2020

Coram:

**Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)
Hon'ble Shri Shyam Babu Gautam, Member (Technical)**

Appearance:

For the Applicant: Ms. Sheetal H. Pandya, Advocate

Per Shri Shyam Babu Gautam, Member (Technical)

ORDER

1. It is an application filed by the Resolution professional seeking liquidation of the Corporate Debtor namely (Loyal 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. *"The Corporate Debtor be liquidated in terms of the provisions of section 33 of the Insolvency and Bankruptcy Code, 2016;"*
 - b. *To appoint the Applicant/ Resolution Professional as the liquidator of the Corporate Debtor as per the provisions of the I&B Code."*

2. The Adjudicating Authority vide its order dated 28.01.2019 on a Petition filed by the Financial Creditor under Section 7 of the Code directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely Loyal Motors Pvt. Ltd. The Mr. Tejas Jatin Parikh, was appointed as Interim Resolution Professional (IRP). Thereafter on 10.06.2019 in the 3rd Committee of Creditors (CoC) meeting Applicant was resolved to be appointed as Resolution Professional (RP) and the same was approved by this Bench.
3. The RP submits that the public announcement was made on 31.01.2019, one in "Free Press Journal" in English and "Navshakti" in Marathi, fixing 13.02.2019 as the last date for submitting the claims.
4. The CoC in its meeting held on 22.07.2019 decided not to appoint a Valuer due to attachment over the assets where the valuers are required to inspect the properties.
5. It is further submitted that an advertisement, inviting Expression of Interest (EoI) in Form G was not published, for the reasons given in the additional affidavit filed by the Applicant as below:
 - a. *"That the Corporate Debtor was engaged in trading (dealership) of two wheelers, vehicles accessories and spare parts.*
 - b. *That the Corporate Debtor was not carrying on any business since 01 April, 2014.*
 - c. *That after taking over as the Resolution Professional, the Applicant, as first priority, moved MA 2813 of 2019 for release of the assets of the corporate debtor from the attachment under the provisions of the Maharashtra protection of interest of Depositors (in Financial Establishment) Act, 1999 ("MPID Act") by the Government of the State of Maharashtra.*
 - d. *That tis Hon'ble Tribunal, vide its order dated 25.09.2019 in MA 2813 of 2019, released the immovable properties of the corporate debtor from attachment under the provisions of MPID Act.*
 - e. *That as per section 25(2)(h) of the I&B Code, the Resolution Professional is required to invite prospective resolution applicants, having regards to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the board, to submit a resolution plan or plans.*
 - f. *The issue relating to the evaluation matrix and invitation of expression of interest was discussed in the 6th CoC meeting*

held on 14.10.2019. the relevant extract of the minutes of 6th CoC meeting on this issue is as under:

“3(c) Evaluation matrix for issuance of invitation for Expression of interest

The Chairman informed the meeting that 270 days of the CIRP are expiring on 26 October, 2019 and as Hon’ble NCLT has now released the assets of the Corporate Debtor, the Chairperson after taking possession of the properties can arrange the valuations for further process under the I&B Code. Therefore, the chairperson requested the CoC about the proposed evaluation matrix for issuing the invitation for expression of interest (“EOI”).

Mr. S.K. Garg-AGM of Central Bank of India stated that the purpose of the I&B Code is to make a company going concern. However, under prevailing circumstances, it is not possible to go for EOI because the Corporate Debtor is not a going concern and, now, according to police report even all records, stocks, etc. of the Corporate Debtor have been lost. Thus, any attempt in such a short time to make the corporate debtor a going concern is not possible.”

6. Hence, the CoC in its 6th meeting held on 14.10.2019, having 100% voting rights passed a resolution for liquidating the company in view of the fact that no Resolution Plan was received. Accordingly, the Resolution Professional filed this application for liquidation of the Company as provided u/s. 33 of the Insolvency & Bankruptcy Code, 2016 (Code).
7. The Applicant/ Resolution Professional Mr. Jitendra Kumar Jain, has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator.
8. 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 Code Regulation made thereunder. 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 Jitender Kumar Jain, Registration No. IBBI/IPA-002/IP-N00033/2016-2017/10070, 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. 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.
- f. 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.
- g. 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.
- h. that on having liquidation process initiated, 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.

- i. 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.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)