



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

**IA Nos. 401/2021 & 301/2021
In
CP (IB) No. 259/Chd/Hry/2019**

**Under Section 9 of IBC, 2016 and
Section 33(2) of the Insolvency and
Bankruptcy Code, 2016**

In the matter of:

S K Uni Print Private Limited ...Operational Creditor

Vs.

ADI Automotives Private Limited
.....Corporate Debtor

In the matter of IA No. 401/2021

Sanjay Kumar Dewani
Resolution Professional of
ADI Automotives Private Limited
133, Bhagirathi Apartments,
Plot No.13/1, Sector-9, Rohini
New Delhi

...Applicant/Resolution Professional

and

In the matter of IA No. 301/2021

Sh. Amarjit Singh S/o Komal Singh
Proprietor, Komal Metal Works (Regd.) B-XX-6706
Daba Road, Simlapuri, Ludhiana-141003

...Applicant/Petitioner/Operational Creditor.

Versus

1. ADI Automotives Ltd.
through the Interim Resolution Professional Sh. Sanjay Kumar Dewani
R/o D-55, Defence Colony, New Delhi-110024
Registration No.IBBI/IPA-001/IP-P00423/2017-18/10746
having registered office at
58 KM Milestone, Delhi Jaipur Highway
Binola Industrial Zone, Gurgaon, Haryana



Mob. 98105-71800
email, sanjaydewani@gmail.com

2. Anuj Raheja, Ex-Director, ADI Automotives (P) Ltd.
C-2/81, Sushant Lok-I, Next Vypar Kendra, Gurgaon-12001
Email ID: anuj.raheja@gmail.com
3. Ashish Raheja, Ex-Director, ADI Automotives (P) Ltd.
C-2/81, Sushant Lok-I, Next Vypar Kendra, Gurgaon-12001
Email ID: ashish.raheja@gmail.com

...Respondent/Corporate Debtors

4. M/s Deutsch Motocorp (P) Ltd. A-82, Sector 57, Noida (UP)
through its director.
5. M/s PK Enterprises
Plot No.H-30, Industrial Area, Bhiwadi-301019, Rajasthan
through its partner.

...Performa Respondents.

Order delivered on: 31.03.2023

**Coram: Hon'ble Mr Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr Subrata Kumar Dash, Member (Technical)**

Present :

For Applicant
in IA No.401/2021: : Mr. Milan Singh, Advocate

For Applicant
in IA No.301/2021: : Mr. Rakesh Bhatia, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No. 401/2021

The present application is being filed by Mr Sanjay Kumar Dewani,
Resolution Professional of ADI Automotives Pvt. Ltd. under Section 33(2) of



Insolvency and Bankruptcy Code, 2016 ('IBC') for the initiation of the liquidation process of the Corporate Debtor.

2. It is prayed by the applicant to pass an order in terms of Section 33(2) of IBC for initiation of the liquidation process of the Corporate Debtor under Part-II of Chapter- of IBC, pursuant to a resolution passed by CoC members in their 4th meeting dated 30.04.2021, representing 100% voting share, liquidation the Corporate Debtor and to appoint the Resolution Professional as a liquidator of the corporate debtor.

3. The brief facts of the case, as stated in the application are that

- i) The Corporate Insolvency Resolution Process was initiated against the Corporate Debtor by order dated 08.01.2020, and the applicant was appointed as an Interim Resolution Professional (IRP). Pursuant to the order dated 08.01.2020, IRP made a public announcement on 11.01.2020, inviting the claims from the public.
- ii) The Committee of Creditors (CoC) was constituted, having sole operational creditor. In the first meeting of the CoC held on 06.02.2020, the CoC did not appoint/confirm the IRP to RP nor did they appoint any other professional. As per Regulation 17(3) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), the Applicant continued to manage the control and management of the Corporate Debtor.



- iii) It is further submitted that after conducting few meetings, a nationwide lockdown was declared due to the COVID-19 pandemic. Afterwards, the applicant filed an application IA No. 503/2020 which was disposed of by order dated 14.12.2020, whereby a time-period of 129 days (from 25.03.2020 to 31.07.2020) was excluded from the total period of CIRP. It is also added that the applicant has again filed an application IA No. 33/2021 and Company Appeal (AT)(Insol.) 306 of 2021 before NCLAT wherein the time period from 07.01.2021 to 15.03.2021 and 05.04.2021 to 12.04.2021 was excluded. Thus, the CIRP time period of 180 days was extended upto 07.05.2021.
- iv) It is further submitted that in the 4th meeting of the CoC was convened on 30.04.2021, the following resolution was placed before the CoC members for their consideration which was attended by all the financial creditors/ CoC members, while there was no representation on part of the Operational Creditors. The following resolution was approved by the CoC with 100% voting share:

“RESOLVED THAT pursuant to section 33(2) and other applicable provisions, if any, of the Insolvency and Bankruptcy Code, 2016, approval of Committee of Creditors of Adi Automotives Private Limited (AAPL) for the initiation of the liquidation Process of the Corporate Debtor, be and is hereby accorded.

RESOLVED FURTHER THAT Committee of Creditors be and is hereby authorizing the Resolution Professional to file the application before the Hon’ble National Company Law Tribunal, Chandigarh Bench under Section 33 of IBC, 2016 and Regulations made thereunder.”



v) In the aforesaid 4th CoC meeting held on 30.04.2021, the transaction audit was discussed and deliberated upon and basis the report made by the transaction auditor, the CoC members were of the view that facts of the case did not call for filing an avoidance application. The Applicant is in the process of determining the possible avoidance transactions, as required under Regulation 35A of the CIRP Regulations.

4. Now, coming to the merit of the application, before considering the prayer, we would like to refer the Sections 33(1) and (2) of IBC, and the same is reproduced below:-

"Section 33(1): Initiation of liquidation

(1) Where the Adjudicating Authority, —

*(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or
(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,*

it shall—

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors ¹[approved by not less than sixty-six per cent. 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).

5. A bare perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

- i. Before the expiry of the Insolvency Resolution Process period;
- ii. Maximum period permitted for completion of the Corporate Insolvency Resolution Process under Section 12 or the fast track Corporate Insolvency Resolution Process under Section 56 as the case may be; and
- iii. If does not receive a resolution plan under sub-section (6) of Section 30.

6. The present application has been filed under Section 33 (2) of IBC for the initiation of the liquidation process of the corporate debtor. The members of the CoC are two Financial Creditors holding 51.92% and 48.08% respectively and in the 4th Meeting of COC held on 30.04.2021, it was resolved at Agenda B2 to liquidate the Corporate debtor by 100% Voting Share. In the 3rd CoC meeting dated 20.04.2021, the Applicant requested the CoC to make an estimation of liquidation cost, as per Regulation 39B of CIRP Regulations. Accordingly, it was found that the liquid assets are more than the liquidation cost, hence the question of the applicability of Regulation 2A of Liquidation Regulations did not arise

7. It is noted that the agenda for the appointment of a Resolution Professional as Liquidator has been discussed in the 4th CoC Meeting held on 27.04.2021. It has been decided to appoint the present Resolution Professional as Liquidator subject to the written consent filed by the Resolution Professional. The Resolution



Professional has given his written consent in Form-AA to act as a liquidator of the Corporate Debtor, which is attached at Annexure A-8 of the application.

8. We also note that the Resolution Professional has not abided by the time limit under Regulation 40A of IBBI (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 to make determinations on preferential and other transactions. It is directed that the same should be expedited on priority by the liquidator.

9. After going through the facts, we are of the considered view that no useful purpose would be served by placing the corporate debtor under a lengthy liquidation process as there are no fixed assets except few computers in possession of the corporate debtor and no progress in this regard has been made since the initiation of CIRP on 08.01.2020 Thus, invoking the inherent powers under Rule 11 of NCLT Rules, 2016, we direct the liquidator to complete the liquidation process at the earliest preferably within 45 days of this order, and file an application for dissolution enclosing his final report and the compliance certificate in Form H.

10. The Law Research Associate of this Tribunal has checked the credentials of Mr Sanjay Kumar Dewani, and there is nothing adverse against him. In view of the above, we appoint Mr Sanjay Kumar Dewani Regn No. IBBI/IPA-001/IP-P00423/2017-18/10746 email: sanjaydewani@ gmail.com as the Liquidator.

11. In view of the satisfaction of the conditions provided under Section 33(2) of the Code, the Corporate Debtor i.e. **ADI Automotives Pvt. Ltd** is directed to be liquidated in the manner as laid down in Chapter III of the Code.



12. Accordingly, by exercising our power under Section 33(1) pass the following order:-

- (i) The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016;
- (ii) Mr Sanjay Kumar Dewani bearing Registration No. IBBI/IPA-001/IP-P00423/2017-18/10746 email: sanjaydewani@gmail.com Mobile No. 9810571800, is hereby appointed as liquidator;
- (iii) Mr Sanjay Kumar Dewani shall take over the charge of the entire records and assets of the corporate and perform his duty, as required under the Code and Regulations
- (iv) The liquidator shall constitute a consultation committee, comprising of all creditors of the corporate debtor, at the earliest.
- (v) The Registry is directed to communicate a copy of the Order to the Liquidator;
- (vi) A copy of this order be sent by the Registry to the concerned Registrar of Companies (RoC), for updating Master Data. After updating Master Data, RoC shall send a compliance report to the Registrar, NCLT within a period of 30 days;
- (vii) The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.
- (viii) The liquidator is directed to convene a meeting of Stakeholders within 7 days of it's constitution and form the opinion on the



Treatment of Preferential, undervalued and extortionate Transactions & on avoidance of transactions and file the application, if any, within 15 days of formulating the opinion.

- (ix) The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.

13. Thus, IA No. 401/2021 stands allowed and disposed of.

IA No. 301/2021

14. The present application is being filed by Sh. Amarjit Singh, proprietor of Komal Metal Works against Mr Sanjay Kumar Dewani, the Interim Resolution Professional of ADI Automotives Pvt. Ltd. (Respondent No. 1) and Mr. Anuj Raheja and Mr. Ashish Raheja, Ex-Director of ADI Automotives Pvt. Ltd. (Respondent No. 2 & 3) and M/s Deutsch Moto Corp. Private Ltd. & M/s P K Enterprises (Proforma Respondent No. 4 and 5)

15. It is prayed by the applicant to pass an order to conduct an inquiry and proceed against the directors of the corporate debtor as the directors carried on the business of the corporate debtor with an intent to defraud the creditors and have got CP (IB) No. 259/Chd/Hry/2019 admitted fraudulently.

16. The brief facts of the case as stated in the application that the applicant is one of the operational creditors of the corporate debtor. The corporate debtor and the applicant are also vendors of M/s Hero Moto Corp., Gurgaon. M/s Hero Moto Corp. has issued Vendor to Vendor Memo in which the operational creditor will purchase rubber from proforma Respondent No. 4 and 5 and fix the same in the pipe manufactured by the applicant and supply the same to the corporate debtor.

The applicant operational creditor supplied the material as stated above on



different invoices w.e.f. 19.01.2018 to 19.01.2019 for a sum of Rs. 1,31,42,101 and the total outstanding as per books of account is Rs. 1,28,49,639. and overdue interest upto 30.06.2020 comes to Rs.48,52,658, the total of which comes to Rs. 1,77,02,297/-. The corporate insolvency resolution process was initiated in CP (IB) No. 259/Chd/Hry/2019 by order dated 08.01.2020. Thereafter, the applicant has filed a claim in Form B with Interim Resolution Professional and a claim of Rs. 1,65,99,639/- has been admitted.

17. It is further submitted that The Directors of the Corporate debtor have diverted the funds from accounts of the Company to other accounts for their personal benefit and they have purchased movable and immovable assets from such funds which have been sold to dodge the insolvency proceedings. In para 12 of the order dated 08.01.2020, it is stated that the counsel for Corporate debtor had admitted the default adding that the corporate debtor is not in a position to pay and insolvency can be initiated. It is averred that as per the application, M/s ADI Automotive Pvt. Ltd. has defaulted an amount of Rs. 4,85,839/-. However, the corporate debtor was having crores of turnover. The said order was obtained just to play fraud with the other creditors. Therefore, they are liable under Section 339 of the Companies Act, 2013.

18. The respondent No. 1 has filed a counter affidavit by diary No. 00503/01 dated 22.03.2022 stating that the Resolution Professional constituted CoC after collating and verifying the claims. The CoC has also decided to liquidate the corporate debtor in 3rd Meeting of CoC held on 20.04.2021. In order to form an opinion and determine the Avoidance Transactions, the Resolution Professional has appointed Kashyap Sikdar & Co., Chartered Accountant to conduct a



transaction audit of the Corporate Debtor. It is mentioned that there are no specific allegations against the Resolution Professional in the instant application and the RP came into the picture only after the initiation of CIRP.

19. The respondent No. 2 & 3 have filed a reply by diary No. 00503/01 dated 22.03.2022, stating that the Applicant has made various bald and misleading assertions, which are completely unsubstantiated and are devoid of any documents substantiating the same. The Corporate Debtor was in a dire financial state close to the order of admission passed by this Hon'ble Tribunal on 08.01.2020 and various creditors had already sent notice under Section 8 of the Insolvency and Bankruptcy Code, 2016. The Corporate debtor has availed loan facility with Tata Capital Financial Services Limited ('TCFSL') and pursuant to which it has also suffered losses for consecutive years. The Corporate Debtor was unable to meet its obligation with TCFSL, which resulted in TCFSL initiating recovery action against the Corporate Debtor. Subsequently, the Corporate Debtor has sold off its asset, i.e. industrial land situated at Gurgaon, Haryana in order to settle the dues of TCFSL. The said settlement was arrived at between the parties in November, 2019, just two months prior to the date of the order of admission passed by this Hon'ble Tribunal.

20. It is further contended that the present application is an abuse of process of law as an application for liquidation is already filed by the liquidator and the applicant has an apprehension that he may have to take a haircut in its total outstanding.

21. The applicant has also filed short synopsis vide diary no.00503/4 dated 17.08.2022 wherein, it has been stated that the corporate debtor has sold off its



assets at Gurgaon, Haryana just two months prior to the date of admission and the invoices alleged to be claimed pertains to the period of 27.01.2019 to 10.04.2019. It is further mentioned that the present application is filed on the basis of the demand notice dated 17.04.2019, which was also disputed. Therefore, the applicant is seeking the indulgence of this Tribunal to conduct an enquiry u/s 339 of the Companies Act, 2013.

22. We have heard learned counsel for the applicant and respondents and have perused the record carefully.

23. In the present case, it is noted that Resolution Professional had appointed Kashyap Sikdar & Co., Chartered Accountants (auditor') to conduct a transaction audit of the Corporate Debtor and he has also placed the audit report before the CoC in the 4th meeting held on 30.04.2021. It is also stated by the Resolution Professional that no opinion has been formed by the Committee of creditors to file any application for the preferential transaction before this bench. Section 339 of the Companies Act, 2013 states about Liability for fraudulent conduct of business, if any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose. Even in the Transaction Audit Report, only one transaction has been reported as a related party transaction and the same has been reversed by the suspended directors. Thus, there is nothing on record to justify an order for investigation for the conduct of business in a fraudulent manner u/s 339 of the Companies Act, 2013 as the applicant has neither crystallised the facts and also did not render any prima facie proof in support of allegations. In the result, the prayers of the applicant is not acceded to.



24. Thus, IA No. 301/2021 is dismissed and disposed of, accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

March 31, 2023
VN/SA