

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH: C-IV**

IA-98(MB-IV)/2024

Under Section 33 of Insolvency & Bankruptcy
Code, 2016.

Mr. Jayanti Lal Jain

...Resolution Professional/
Applicant

In the matter of

C.P.(IB)/503(MB-IV)2021

Ashok Leyland Limited

...Operational Creditor

Vs.

Windals Auto Private Limited

...Corporate Debtor

Order pronounced on: **09.12.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Shri Kishore Vemulappalli
Hon'ble Member (Judicial)

Appearances:

For the Applicant/RP/Liquidator : Ms. Khushboo Shah Rajani i/b AKR
Legal, Ld. Counsel for Applicant.

ORDER

1. This is an application filed by **Mr. Jayanti Lal Jain**, Resolution Professional of the Corporate Debtor seeking liquidation of **Windals Auto Private Limited** under Section 33 of Insolvency and Bankruptcy Code, 2016 (hereinafter called as the “Code”).
2. **Brief facts of the Application are as follows:**
 - 2.1. This Tribunal vide an order dated 28.04.2023, in Company Petition bearing C.P.(IB)/503(MB)2021 filed under Section 9 of the Code, by **Ashok Leyland Limited** (hereinafter referred to as the “**Operational Creditor**”), admitted the Company Petition and Corporate Insolvency Resolution Process (“**CIRP**”) was initiated against **Windals auto Private Limited** (hereinafter called as the “**Corporate Debtor**”) and appointed **Mr. Jayanti Lal Jain** as Interim Resolution Professional by this Tribunal.
 - 2.2. Pursuant to the above said Order, the Applicant herein issued a Public Announcement on 03.05.2023, in FORM-A, for which notice was published in Buisness Standard (English) and Navshakti (Marathi) newspapers.
 - 2.3. The Applicant had issued Form-G Invitation for Expression of Interest (EoI) dated 19.07.2023. The EoIs were to be submitted by 03.08.2023.
 - 2.4. The Applicant submits that in response to Form G only one Resolution Plan was received and hence the CoC had decided to commence a second

round of Form G dated 02 November 2023 with last date of submission of EoI being fixed as 21 November 2023 and last date of submission of Resolution Plan fixed as 04 January 2024. The list of Final Prospective Resolution Applicants (PRAs) was circulated on 01.12.2023.

- 2.5. The Applicant submits that in the 6th CoC meeting held on 28 December 2023, he informed the CoC that PRAs while conducting due diligence were unable to access the assets of immovable property located at Pune – Talawade, Survey No. 90 and Survey No. 189, Jyotiba Nagar, Talawade, Tal.: Haveli, Dist.: Pune – 412114 since the premises is sealed by Pimpri Chinchwad Municipal Corporation (PCMC). For the purpose of de-sealing the property Applicant filed an application bearing IA no. 4379 of 2023 on 21.09.2023 and the said IA was allowed vide order dated 02.02.2023.
- 2.6. The Applicant further submits that PCMC had filed an appeal with Hon'ble NCLAT against the order of de-sealing the premises of Corporate Debtor. The said appeal was dismissed and Hon'ble NCLAT directed for handover the premises to the Applicant. The property was handed over on 10.05.2024. Accordingly, the last date for submission of resolution plan extended till 17.06.2024 as approved by CoC with 99.33% votes.

2.7. The Applicant submits that he had filed an application bearing IA No. 3168 of 2024 seeking extension of 98 days on account of period lost in de-sealing the entire factory at Talwade Plant, Pune.

2.8. The Applicant submits that in 9th CoC meeting was held on 09.06.2024, the CoC was of the considered view that since no Plans were received, the Corporate Debtor shall be liquidated and the CoC with 99.33% votes approved the liquidation of the Corporate Debtor. The relevant extract of the Resolution is reproduced below;-

“RESOLVED THAT, in line with section 33(1)(a) of IBC, 2016, the CoC hereby approves the Liquidation of the CD and directs the Resolution Professional RP to file an application for seeking the Liquidation of Windals Auto Private Limited”

2.9. The Applicant submits that during 10th CoC meeting held on 19 September 2024, the resolution was approved with 99.34% votes for appointment of Mr. Rajan Garg having IBBI No. IBBI/IPA-001/IP-P-02397/2021-2022/13624 to act as the liquidator.

3. Hence, the present Interlocutory Application has been filed for seeking Liquidation of the Corporate Debtor.

4. In that view of the matter, having considered the submissions and on perusal of averments made in the present Interlocutory Application; this Bench is satisfied and is of the considered opinion that the present Interlocutory Application is in consonance with Section 33(2) of the Code. Accordingly, this Authority has left

with no option except to pass an order for Liquidation of the Corporate Debtor Company in the manner laid down in Chapter III of the Code considering the fact there is no Resolution Plan for consideration and CoC does not foresee any possibility of getting Plans for the Corporate Debtor. Hence ordered.

ORDER

- a) The Present Application viz. IA/98/2024 in Company Petition no. 503(MB)/2022 stands allowed. The Corporate Debtor, **Windals Auto Private Limited**, shall be liquidated in the manner as laid down in Chapter-III of the Code.
- b) It is to be noted that, as per IBBI vide its circular no. *LIQ-12011/214/2023-IBBI/840 dated 18.07.2023* in the exercise of its powers conferred u/s 34(4)(b) of the Code had recommended that an IP other than RP/ IRP may be appointed as a liquidator in all the cases where the Liquidator (read liquidation) order is passed henceforth. In view of this circular of IBBI, we hereby appoints **Mr. Rajan Garg**, having Registration No. **IBBI/IPA-001/IP-P-02397/2021-2022/13624**; as the Liquidator to conduct liquidation process of “**Windals Auto Private Limited**” as provided under Section 34(4) of the Code.
- c) That the Liquidator for conduct of the Liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.

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- d) The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate here from.
- e) Liquidator shall issue public announcement stating that Corporate Debtor is in liquidation.
- f) The Liquidator shall endeavour to sale the Company as a going concern during the liquidation in terms of Regulation 32A of the Liquidation Process Regulations. In case, he is not able to do so within a period of 90 days from this date, he shall proceed in accordance with clauses (a) to (d) of Regulation 32 of the Liquidation Process Regulations.
- g) Subject to Section 52 of the Code no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- h) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- i) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code read with the Liquidation Process Regulations.

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- j) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- k) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
- l) The Liquidator shall submit Progress Reports as per Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, and shall apprise the Bench about the Liquidation Process of the Corporate Debtor.
- m) The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.
- n) Registry shall furnish a copy of this Order to:
- i. Insolvency and Bankruptcy Board of India, New Delhi;
 - ii. Regional Director (Western Region), Ministry of Corporate Affairs;
 - iii. Registrar of Companies & Official Liquidator, Maharashtra;
 - iv. Registered Office of the Corporate Debtor; and
 - v. Liquidator, Mr. Rajan Garg.

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5. With the aforesaid observations and directions, the Interlocutory Application bearing IA No. 98 of 2024 IN C.P.(IB)/503(MB)2021, stands disposed of as **Allowed**. There would however be no order as to costs. Ordered Accordingly

Sd/-
ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

Sd/-
KISHORE VEMULAPPALLI
MEMBER (JUDICIAL)