



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI K.K. SINGH,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 103/JPR/2022
In CP No. (IB) 177/9/JPR/2019

UNDER SECTION 9 OF IBC, 2016

IN THE MATTER OF:

YASH BHARADWAJ (SOLE PROPRIETOR OF M/S YASH PRODUCTIONS)

...Operational Creditor

VERSUS

SAGA AUTOMOTIVE (INDIA) PRIVATE LIMITED

...Corporate Debtor

IA (IBC) No. 103/JPR/2022

MEMO OF PARTIES

Saga Automotive (India) Private Limited
Through its Liquidator, Prashant Agrawal

F-106, First Floor, Sumer Complex,
Gautam Marg, Behind Bagadia Bhawan
C-Scheme, Jaipur- 302001 (Rajasthan)

... Applicant/ Liquidator

Versus

Registrar of Companies, Jaipur
Corporate Bhawan, G/6-7, Second Floor,
Residency Area, Civil Lines,
Jaipur- 302001 (Rajasthan)

... Respondent

IA (IBC) No. 103/JPR/2022
In CP No. (IB)- 177/9/JPR/2019



For the Applicant : Prashant Agrawal, Liquidator
For the Respondent : Pooja Singh, JTA for RoC

Order Pronounced On:29.03.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Interim Application ('IA') has been filed by Mr. Prashant Agrawal ('Applicant'), the Liquidator of M/s Saga Automotive (India) Private Limited ('Corporate Debtor') under Section 54(1) of Insolvency and Bankruptcy Code, 2016 (the 'Code'/ 'IBC') read with Rule 11 of National Company Law Tribunal Rules, 2016 ('NCLT Rules') and Regulations 45(3)(b) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ('Liquidation Regulations') seeking directions for dissolution of the Company.
2. The Adjudicating Authority *vide* Order dated 04.03.2020 admitted the Application under Section 9 of the IBC, filed by the M/s Yash Production ('Operational Creditor') against the Corporate Debtor in the matter mentioned above. The Resolution Professional had effected publication of Form – G on 15.07.2020 and invited Expression of Interest ('EOI') for submission of resolution plan for the Corporate Debtor. Subsequently, eight EOIs were received out of which three EOIs fulfilling the eligibility criteria



to whom Information Memorandum ('IM'), Evaluation Matrix and Request for Resolution Plan ('RFRP') were issued.

3. Given the global pandemic, only one prospective resolution applicant submitted the Resolution Plan. In the sixth Committee of Creditors ('CoC') meeting held on 12.01.2021, the CoC asked the Resolution Applicant to consider increasing the amount of the resolution plan. However, the Resolution Applicant did not agree. In view of this, the CoC resolved and decided to open a voting period for approval of the Resolution Plan.
4. Since the Resolution Plan was not approved by the CoC, the CoC in the seventh meeting conducted on 28.01.2021, unanimously resolved to liquidate the Corporate Debtor. Subsequently, *vide* Order dated 16.03.2021, the Corporate Director was directed to be liquidated.
5. The Applicant has moved the present Application on the following set of facts:
 - a. That Form B of Schedule II was issued and published on 18.03.2021 in Economic Times and Virat Vaibhav, having wide circulation in Jaipur for submission of the claim(s). A copy of the public announcement along with extracts from the newspaper is annexed as Annexure – 2 (Colly) of the IA.
 - b. Further, in compliance with Regulation 12(3)(c) of the Liquidation Regulations, a copy of Form B was uploaded to the website of the Insolvency and Bankruptcy Board of India ('IBBI'). Furthermore, the



Liquidator intimated the initiation of liquidation of the Corporate Debtor *via* Form INC – 28 on 19.03.2021 *vide* SRN No. T09392648 to the Registrar of Companies (‘ROC’). A copy of Form INC – 28 is annexed as Annexure – 3 of the IA. Pursuant to Form B publication, the Liquidator received and verified the claims as per Regulations 30 and 31 of the Liquidation Regulations.

- c. The report of constituting Stakeholders’ Consultation Committee (‘SCC’) under Regulation 31A of the Liquidation Regulations was filed on 05.07.2021 as per Regulations 47 and 47A of the Liquidation Regulations. The First SCC Report is annexed as Annexure – 4 of the IA. Meanwhile, one of the secure financial creditors, State Bank of India (‘SBI’) *vide* email dated 15.05.2021 (‘Intimation Email’) informed the Liquidator of its unwillingness to relinquish its security interest under Section 52 of the Code; the same permitted in accordance with Section 52 (3) of the Code *vide* email dated 15.05.2021 (‘Approval Email’). A copy of the Intimation Email and Approval Email is annexed as Annexures – 6 and 7 of the IA, respectively.
- d. The Preliminary Report under Regulation 13 of the Liquidation Regulations dated 30.06.2021 indicating capital structure, assets and liabilities of the Corporate Debtor, the proposed plan of action for carrying out the liquidation and estimated liquidation cost along with Asset Memorandum under Regulation 34 of the Liquidation



Regulations dated 01.07.2021 detailing the assets and valuation thereof of the Corporate Debtor has been submitted. The copy of the Preliminary Report and Asset Memorandum is annexed as Annexures – 8 and 9 of the IA, respectively.

- e. The First Progress Report for the period 16.03.2021 to 31.03.2021; the Second Progress Report for the period 01.04.2021 to 30.06.2021; the Third Progress Report for the period 01.07.2021 to 30.09.2021 and the Fourth Progress Report for the period 01.10.2021 to 31.12.2021 were taken on record as per Regulation 15 of the Liquidation Regulations *vide* Orders dated 09.09.2021, 08.11.2021 and 07.02.2022. A copy of the First Progress Report, Second Progress Report, Third Progress Report and Fourth Progress Report are annexed as Annexures – 22, 23, 24 and 25 of the IA, respectively.
- f. In the interim, SBI sold the secured assets of the Corporate Debtor under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') situated at Khasra No. 1901 (old), 1987, 1988 and 2589 at Gagwana Village, Ajmer for a total consideration (*GST inclusive*) of Rs. 3,04,00,000/- (Rupees Three Crore Four Lakhs Only). This was informed to the Liquidator *vide* Email dated 11.08.2021. A copy of the email dated 11.08.2021 along with the letter of certificate of sale is annexed as Annexure – 12 of the IA. Accordingly, the



remaining liability under the liquidation process of SBI stood at Rs. 31,29,04,683.89 (Rupees Thirty-One Crore Twenty-Nine Lakhs Four Thousand Six Hundred Eighty-Three and Eighty-Nine Paise Only) as an unsecured liability; the same was informed *vide* Email dated 20.08.2021. A copy of the email dated 20.08.2021 is annexed as Annexure – 13 of the IA.

- g. In addition, the Liquidator modified and reconstituted the SCC under Regulation 31(3) of the Liquidation Regulations twice. Firstly, after the realisation of the security possessed by the SBI, correspondingly classifying the residual interest as an unsecured liability (‘Second SCC Report’); the same was taken on record *vide* Order dated 08.11.2021. A copy of the Second SCC Report is annexed as Annexure – 14 of the IA. Lastly, given the non-responsive behaviour of the Office of Employee Provident Fund (‘EPFO’) in providing the clarification for the balance amount, not until the first SCC meeting was held, the liquidator again reconstituted the SCC. Necessarily, in the interest of justice, the claim of Rs. 7,10,428/- (Rupee Seven Lakhs Ten Thousand Four Hundred and Twenty-Eight Only) was admitted (‘Third SCC Report’); the same was taken on record *vide* Order dated 07.02.2022. A copy of the Third SCC Report is annexed as Annexure – 19 of the IA.



- h. Thus, the SCC in the second meeting unanimously approved the resolution for the dissolution of the Corporate Debtor. A copy of the minutes of the second meetings of SCC is annexed as Annexure – 21 of the IA. The Final Report dated 15.02.2022 has been submitted, giving the details of the liquidation process conducted from 16.03.2021 to 14.02.2022. It is also stated in the report that all assets of the Corporate Debtor have been disposed of. A copy of the Final Report is annexed as Annexure – 27 of the IA.
- i. The liquidation cost in the seventh COC was decided at Rs. 6,20,000/- (Rupees Six Lakhs Twenty Thousand Only) and in addition to that, a remuneration of Rs. 50,000 per month (Rupees Fifty Thousand Only) was fixed for Liquidator. Since, the liquidation expenses, not in the nature of liquidators' remuneration, is Rs. 2,01,602/- (Rupees Two Lakh One Thousand Six Hundred and Two Only) has been fully recovered as per Regulation 2A of the Liquidation Regulations. The separate escrow bank account opened for the CIRP was continued as a liquidation account, which was closed on 06.07.2021 as the bank refused to continue the account given certain RBI guidelines and prepared a demand draft for closing balance of Rs. 3,024/- (Rupees Three Thousand and Twenty-Four Only) closed of the Liquidation Account. The duly certified liquidator's receipt and payment account



for the period of liquidation and Compliance Certificate in prescribed Form – H is annexed as Annexure – 26 and 28 of the IA, respectively.

6. The Liquidator appointed in this regard has submitted during the course of arguments that the Corporate Debtor neither has any realisable assets left to be liquidated nor has any prospects available in respect of sell of the Corporate Debtor as a going concern. As per Section 54 of IBC, the Liquidator can approach the Adjudicating Authority for dissolution of the Corporate Debtor where the assets of the Corporate Debtor have been completely liquidated. The Application for the dissolution of the Corporate Debtor has been moved under proper norms, and in compliance with the directions of this Adjudicating Authority, a final report and Form-H have also been attached in the instant Application.
7. The Registrar of Companies ('ROC') *vide* Diary No. 2341/2022 dated 04.08.2022 has stated that the Corporate Debtor has filed its annual financial statements and returns till 2015-16 whereas the order of liquidation is dated 16.03.2021. The General Circular No. 08/2020 by the Ministry of Corporate Affairs clarified that *'the IRP/RP/Liquidator shall be responsible for filing all the e-forms in the MCA portal and sign the form in the capacity of CEO in order to meet filing protocol in the existing forms architecture. However, this shall in no way affect his legal status as IRP/RP/Liquidator/ for filings of e-forms including AOC-4 and MGT-7 shall be filed through e-form GNL-*



2 by way of attachments till the company is under CIRP.’ Besides, this the ROC has no observation or complaint against the Corporate Debtor.

8. The Liquidator *vide* Diary No. 2799/2022 dated 19.09.2022 filed his response to the aforementioned observation of the ROC and has stated that the financial statement for preceding financial years was received by the Applicant well after the commencement of the Liquidation process. However, the same has been complied and approved with by filing of GNL – 2 (including AOC – 4 and MGT – 7) for the Financial Year 2016-17 to 2019-20. The financial statements for 2020-21 got delayed on the account of delay caused by the SCC while approving financial statements, as a consequence the statutory auditor showed his unwillingness to conduct the audit for the Financial Year 2020-21. Thus, the Applicant had to comply with filing of the relevant forms with an unaudited financial statement whose status is shown as pending. The copy of challans of the aforementioned filings is annexed as Annexure – 1 (Colly) of the Additional Documents.
9. This Adjudicating Authority has perused all the relevant papers and found them in Order. The Registered Office of the Respondent is situated in Jaipur; therefore, this Adjudicating Authority has jurisdiction to entertain and try this Application. The matter is within the purview of the Law of Limitation as the period of limitation.
10. The dissolution of a Corporate Debtor is provided under Section 54 of the Code, which is provided below for ease of reference:



Section 54: Dissolution of corporate debtor. - (1) *Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.*

(2) *The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.*

(3) *A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.*

11. The Final Report submitted by the Applicant shows that all the costs towards E-auction, advertisement, and expenses towards the ongoing proceedings at NCLT, Jaipur and Liquidator's fees were covered as per Regulation 2A of the Liquidation Regulations. However, no monies were left for appropriating debts of the Corporate Debtor's creditors. The liquidation process is completed before the expiry of one year from the commencement of the liquidation process. In the present Application, *prima facie* as there are no tangible assets of realization or commercial value of the Corporate Debtor and it is not doing any business. Therefore, there are no means or sources available with the Corporate Debtor to discharge its liabilities.
12. In the light of the aforementioned facts, it is noticed that since there is no possibility to continue the liquidation process of the corporate debtor in the absence of any assets/documents/records and personnel of the corporate debtor, it is just and equitable to allow the prayer of the Applicant. Furthermore, there are no pending litigations against the Corporate Debtor.



13. Consequently, it is not only just and equitable, but also necessary as no sale proceeds are available to satisfy the creditor's dues (s). The present case falls within the parameters of Section 54 of the Code and is a fit case for an Order of dissolution—the Corporate Debtor M/s. Saga Automotive India Pvt. Ltd. stands 'Dissolved' from the date of this Order and the Liquidator stands discharged from his duties under the Code, Rules and Regulations thereof.
14. Since the Company stands Dissolved *vide* this Order and no proceedings are pending, the Registry is directed that the case file be consigned to records.
15. Copy of this Order shall be forwarded within 15 days to the concerned authorities and the Registrar of Companies having jurisdiction for further necessary action as prescribed under Law.

Accordingly, IA No. 103/JPR/2020 and CP No. (IB) – 177/9/JPR/2019 stands disposed of.

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**DEEP CHANDRA JOSHI,
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