NATIONAL COMPANY LAW TRIBUNAL, COURT-VI,NEW DELHI
I.A. 3918/2020 in Company Petition No. (IB) 659(ND)/2019

In the matter of:

M/S Volkswagen Finance Private Limited Financial Creditor

Vs.

M/S UNJ Import Private Limited

Corporate Debtor

Memo of Parties:
Kamal Agarwal
(Resolution Professional of the Corporate Debtor)

M/S UNJ Import Private Limited
487/27 School Road Peeragarhi
New Delhi-110087

Applicant/Resolution Professional

Versus

M/S Volkswagen Finance Private Limited
(Financial Creditor of the Corporate Debtor)
2nd Floor Enkay Towers Udyog Vihar
Phase V, Gurgaon Haryana.

Under Section ***33(2)*** *of the Insolvency and Bankruptcy Code, 2016 for liquidation of the Corporate Debtor.*

Judgment delivered on: 13.04.2021

Coram:

SHRI. P.S.N. PRASAD

Hon'ble Member (Judicial)
DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

For the Applicant: Mr. Sanjeev Sagar and Ms. Nazia Parveen, Advocates.

For the Respondent: Mr. Geetesh Meena, Advocate for Ex- director Mr. Utkarsh Jain.

For the Resolution Professional: Mr. Kamal Agarwal, RP.

ORDER

SHRI. P.S.N. PRASAD, HON'BLE MEMBER (J)

1. This is an application filed by the Resolution Professional (RP) under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (Code) for issuance of directions for liquidation of the Corporate Debtor (CD), Baldeo Metals Private Limited.

2. The Financial Creditor (FC), M/S Volkswagen Finance Private Limited, had filed an application under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against the CD. The said application was admitted by this Tribunal on 03.02.2020 initiating CIRP against the CD and appointing Mr. Kamal Agarwal as the Interim RP (IRP). On 20.02.2020 public announcement in Form A in Financial Express and Jansatta has been made.

3. IRP made the Public Announcement in respect of initiation of CIRP and intimated to the suspended directors of the CD. Thereafter, the IRP constituted a Committee of Creditors (CoC).

4. Further it is also submitted in the application that no new claims were received from any stakeholders and the updated list of claims till the date of filling of this application stood as follows:

S.NO.	Name of the Financial Creditor	Claim Made	Claim Provisionally admitted	Voting share in %age

1	M/S Volkswagen Financial Private Ltd.	Rs. 24,31,557/-	Rs. 24,31,557/-	100%

5. Further it is submitted in the application that the corporate debtor is not a going concern since October 2019 as was informed by the father of the suspended director Mr Pavitra Jain (Singh) and the accumulated losses has increased to Rs. 2,29,23,620/- as on 31.02.2019 which definitely would have increased till date in view of continuing losses faced by the Corporate Debtor and simultaneous decrease in turnover. Mr Pavitra Jain (Singh) informed that there are no employees working with the corporate debtor as all had left.

6. On 24.02.2020 IRP visited registered office of the Corporate Debtor and handed over copy of order and demanded Balance Sheet and list of assets and Bank accounts. Further on 26.02.2020 IRP mailed to statutory auditors requesting for records and also provisional balance-sheet as on ICD. Statutory auditor replied they won't be able to provide unless they are provided with the records which is there with the company.

7. On 05.03.2020 the Applicant Financial Creditor submits claim of Rs. 24,31,557/-. Further on 14.03.2020 Notices send to suspended directors of First meeting of COC to be held on 19.03.2020 at the registered office of the Corporate Debtor.

8. On 19.03.2020 first meeting was held and IRP appointed by the RP by 100% voting share. On that day the suspended directors were absent. This Tribunal vide order dated 06.07.2020 issued notice to suspended directors for presence and filing of reply. On 17.07.2020 the suspended directors are represented by their counsel and seek time for settlement and the same was granted by this Tribunal. However, the suspended directors have not handed over the custody of assets as well as records pertaining to the Corporate Debtor.

9. The first status report was filed by the IRP by way of IA N0. 2202 of 2020 and the same has been taken on record by this Tribunal on 19.08.2020 and IRP confirmed as RP.

10. On 04.09.2020 the Second COC meeting was held at the registered office of the resolution professional and sole financial creditor was represented in person and none attended the meeting through virtual mode. The COC resolved to liquidate the Corporate Debtor in view of huge accumulated losses, no employees and that the Corporate Debtor is not a going concern.

11. On perusal of the minutes of the 2th meeting of CoC, it is seen that sole financial creditor has decided to liquidate the CD for the reason that '*huge accumulated losses, no employees and that the Corporate Debtor is not a going concern.*

12. In terms of Regulation 18 of the CIRP Regulations, 2016 read with Section 24 of the Code, the RP convened the second meeting of the Committee of Creditors for taking necessary directions and approval from the COC for liquidation. The Copy of notice, agenda and notes to agenda and minutes, attendance sheet and ballot paper of

the second meeting of the COC of the Corporate Debtor is annexed as Annexure-A of the Application IA 3918/2020.

13. It is submitted in the petition that notice and agenda were duly sent to the suspended directors along with all the members of the COC of the Corporate Debtor by way of e-mail dated 31.08.2020 as appearing in the MCA Master Data. However, no director(s) was present in the meeting. Further the Chairperson of the Second COC meeting confirmed that M/S Volkswagen Finance Private Limited being eligible members of the COC, having 100% voting rights, were physically represented in the meeting through Shri Kapil Matta i.e., 100% quorum of the meeting were present and has vote in respect of the resolution set out in the notice of second meeting of the CoC of M/S UNJ Import Private Limited held on 04.09.202 at 4:00p.m at the registered office of the resolution professional at 487/27, school road, near peeeragarhi metro station, New Delhi.

14. Section 33 (2) of Code has authorized CoC to make the decision of liquidation of CD at any stage of CIRP. Section 33(2) is reproduced below:

> *"where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the AA of the decision of the committee of creditors (approved by not less than sixty-six percent of the voting share) to liquidate the corporate debtor, the AA shall pass a liquidation order....*
>
> *Explanation: For the purpose 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."

15. In view of the above, the liquidation has to follow as recommended by the CoC in terms of provisions of Section 33 (2) of the Code.

16. In the factual background and in conformity with the decision of the CoC with 100% voting share, the payer for Liquidation of the CD under Section 33 of the Code is liable to be allowed.

17. The CoC has also approved the appointment of RP as Liquidator. The RP has filed its written consent dated 27.11.2020 to act as a Liquidator (pg 26).

18. In the result, the application is **allowed by ordering liquidation** of the corporate debtor, namely **M/S UNJ Import Private Limited** in the manner laid down in the Chapter III of Part II of the Code, along with following directions:

A. Mr. Kamal Agarwal, Registration No. IBBI/IPA-001/IP-P00868/2017-2018/11466, is appointed as Liquidator in terms of Section 34(1) of the Code;

B. Mr. Kamal Agarwal is directed to issue Public Announcement stating that the CD is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Regulations);

C. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;

D. The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Code shall commence;

E. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Code and in accordance with the relevant Regulations;

F. The Liquidator shall also follow pending application, if any, for its disposal during the process of liquidation including initiation of steps for recovery of dues of the CD as per law;

G. The Liquidator is also directed to take all necessary legal actions to recover pending receivables from the sundry debtors.

H. The Liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (1) of the Code;

19. The Liquidator shall submit a Preliminary Report to the AA within seventy-five days from the liquidation commencement date as per Regulation 13 of the Regulations.

Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

20. I.A. 3918/ND/2020 filed in IB 659 (ND) /2019 is disposed of in the aforesaid terms.

-Sd-

(DR. V.K. SUBBURAJ)

MEMBER (TECHNICAL)

-Sd-

(Shri.P.S.N PRASAD)

MEMBER (JUDICIAL)

NATIONAL COMPANY LAW TRIBUNAL,
COURT-VI, NEW DELHI
IA No. 2207 of 2020 in C.P. NO. (IB) – 659(ND)/2019

In the Matter Of:

M/S Volkswagen Finance Pvt. Ltd. ... **Applicant**

Vs.

M/S UNJ Import Private Limited ...Respondent

In the Matter Of:

Kamal Agarwal (Interim Resolution Professional)

of M/S UNJ Import Private Limited (Under CIRP) ...Applicant

v.

Mr. Utkarsh Jain

(Suspended director of M/S UNJ Import Private Limited)

Mr. Niskarsh Jain

(Suspended director of M/S UNJ Import Private Limited)

.... Non-Applicants

*Under Section **19 (2)** of the Insolvency and Bankruptcy Code, 2016 for directions to the suspended directors of the corporate debtor*

Judgment delivered on: 13.04.2021

Coram:
Shri. P.S.N. PRASAD
Hon'ble Member (Judicial)
DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

For the Applicant: Mr. Sanjeev Sagar and Ms. Nazia Parveen, Advocates.

For the Respondent: Mr. Geetesh Meena, Advocate for Ex- director Mr. Utkarsh Jain.

For the Resolution Professional: Mr. Kamal Agarwal, RP.

ORDER

Per: P.S.N. PRASAD, Hon'ble Member (Judicial)

1. This is an application filed by the Resolution Professional (RP) under Section 19(2) of the Insolvency and Bankruptcy Code, 2016 (Code) for issuance of directions to the suspended Board of Directors (Respondents) to co-operate with RP in smooth Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor (CD).
2. The applicant was appointed as RP by CoC with 100% voting share which was approved by this Tribunal vide order dated 09.01.2020.
3. The case of the Applicant is as follows:

   - The IRP on 21.02.2020 mailed the corporate debtor at its registered e-mail id at chandan1543@gmail.com, informing about commencement of CIRP of the corporate debtor and appointment of IRP and requested the corporate debtor/suspended directors to reply to the mail and also contact the IRP at his given number and address.

(Copy of e-mail to suspended directors is placed on record).

- The IRP when visited the registered office of the corporate debtor on 24.02.2020 and handed over the copy of order of this Hon'ble Tribunal to the suspended directors (duly acknowledged). The suspended directors informed the IRP that the corporate debtor is not a going concern and have been suffering losses for past many years.

- The IRP then demanded the audited Balance Sheet and profit and loss account of the corporate debtor for the last two years however, it was replied that the audited balance sheets are in possession of Sh. Chandan Singh (Statutory Auditor) having his office in Patna. He assured that the balance sheet would be mailed immediately to the IRP. The IRP reminded that it is mandatory that all the books of accounts and records pertaining to the corporate debtor should be maintained and made available at the Registered office of the corporate debtor.

- The IRP then demanded the list of assets of the corporate debtor. It was informed by the suspended directors that the sole assets of the corporate debtor is the CAR financed by the Applicant Financial Creditor (M/s. Volkswagen Finance Private Limited). The IRP then demanded the custody of the CAR in view of the fact that the corporate debtor is not a going concern and it is envisaged under Section 18(1) (f) of the Code that it is the duty of the IRP to take control and custody of asset in possession of the corporate debtor. The suspended director assured that the possession would be handed over without fail on 25.02.2020 but till date the possession is not handed over.

- The IRP then demanded the list of Bank accounts of the corporate debtor. It was informed that the corporate debtor is maintaining a sole account with ICICI Bank. The IRP demanded the latest bank statement and was handed over statement for the month of Nov 19. It was seen from the statement that the base branch of the account is at Santacruz West and not in Delhi. It appeared that the corporate debtor might have office and business dealings at the Mumbai as well as which was not disclosed by the Suspended directors. It was therefore requested to provide a clarification as to how the account of the corporate debtor is being maintained at Santa Cruz West Mumbai. It was further requested to provide the account number as well as the account number is not appearing in the Bank Statement. However, no clarification till date has been provided by the suspended directors.

- The IRP had requested the statutory auditors to provide the provisional balance sheet as on the Insolvency Commencement Date i.e., 03.02.2020. However, the same has not been provided so far.

- The as per the copy of audited balance sheet as on 31.03.2019 made available by way of mail to the IRP the corporate debtor has the following assets of which the custody is immediately required more so in view of the fact that the corporate debtor is not a going concern: -

S. NO.	Description of assets	Written down value as per balance sheet as on 31.03.2019
1.	Motor Care (no description)	2,72,955.00
2.	Audi A6 (hypothecated to applicant financial creditor)	23,00,565.00
3.	Honda City 1.5VX CVT	6,80,756.00
4.	Details of Trade Receivables	41,71,117.00
5.	Inventory	12,45,911.00
6.	Cash in hand	47,406.00
7.	Loan to Director (Nishkarsh Jain)	11,01,803.00
8.	Ledger account and address of Oswal Agencies	48,48,000.00
9.	Details of advance to Hyderabad Airport	12,00,000.00
10.	Ledger Account and address of Vasant Gourment	9,50,000.00
11.	Details of advance given to others	11,01,803.00

	TOTAL ASSETS VALUE	**1,79,20,316.00**

- That the corporate debtor is not a going concern and has suffered huge losses of 2.16 crores against turnover of mere 8.36 lakhs in the preceding year as seen from the audited Balance Sheen as on 31.03.2019.

- That an updated financial statement as on the Insolvency Commencement date is necessary to determine the true positions of the corporate debtor. However, the suspended directors has deliberately failed and avoided to provide access to the statutory records and books of accounts of the corporate debtor.

4. The respondent has not filed any reply. The respondent appeared through counsel had requested to settle the matter. Reasonable opportunities were granted to respondent, however, respondent failed to submit all the required information to applicant.

5. Heard the Ld. Counsels for both the parties, for RP and for Respondents. Perused the documents submitted by the parties.

6. For ready reference, relevant Sections of the Code are given below:

"19. Personnel to extend co-operation to interim resolution professional. -

(1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.

(2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.

(3) The Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to cooperate with him in collection of information and management of the corporate debtor.

20. Management of operations of corporate debtor as going concern. -

(1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority-

(a) to appoint accountants, legal or other professionals as may be necessary;

(b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;

(c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property:

Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.

(d) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and

(e) to take all such actions as are necessary to keep the corporate debtor as a going concern."

7. Sec. 19 (1) of the Code casts a duty on the ex-management and other personnel of the CD to furnish information and all assistance to the RP. In the absence of cooperation, powers have been conferred to the Adjudicating Authority. The provisions of Sec. 19 suggest that directions must be issued to the defaulting personnel of the ex-management to comply with the directions of the RP and to cooperate with him. The provisions of Sec. 19 are mandatory in nature so as to facilitate the RP to complete the CIRP within a timeframe and manage the affairs of the CD as a going concern. Therefore, there is no escape from the conclusion that non-applicant respondents are under legal and moral obligation to comply with the instructions issued by the RP.

8. We observe that RP has been making efforts to compile information especially relating to the assets of CD and has been contacting the employees of the CD at various levels. In terms of the provisions of the Code, the RP has the statutory responsibility to manage day to day affairs of the CD. In order to manage the affairs, the indexing and authentication of the documents of CD is necessary.

9. In view of the above discussion following directions are hereby issued:

   a) The suspended directors are directed to provide audited financials of the CD pertaining to previous years as demanded by applicant along with provisional Financial statement till insolvency commencement date.

b) The suspended directors are also directed to provide details of all bank accounts of CD, list of assets and handover the remaining assets of CD to the applicant.

c) The suspended directors are also directed to co-operate with the applicant and provide all other required information, if any, on demand of applicant without any inordinate delay.

10. I.A No. 2207 of 2020 in C.P. NO. (IB)-659(ND)/2019 stands disposed of with the aforementioned directions.

-Sd-

(DR. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

-Sd-

(P.S.N PRASAD)
MEMBER (JUDICIAL)