



IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

KOCHI

MA(IBC)/04/KOB/2023

IN

IBA/37/KOB/2020

(Under Rule 11 of NCLT Rules, 2016 read with Section 21A of the IBBI Liquidation Process Regulations, 2016)

In the matter of:

IDBI Bank Limited, Ground Floor, City Plaza, YMCA Cross Road, Kozhikode,
Represented by its Deputy General Manager; **... Applicant**

-Versus-

1. The Liquidator of M/s. Koyenco Autos Private Limited, Chakiath House,
Elavoor P.O., Angamaly, Ernakulam District- 683 572;

2. BMW India Financial Services Private Ltd., The Oberoi Corporate Tower,
Building No. 11, First Floor, DLF Cyber City, Phase II, Gurugram, Haryana- 122
022;

... Respondents

-In-

In the matter of:

M/s. BMW India Financial Services Private Limited;

... Financial Creditor

-Versus-

M/s. Koyenco Autos Private Limited.

... Corporate Debtor

Coram:

Shri. P. Mohan Raj : Member (Judicial)

Shri. Satya Ranjan Prasad : Member (Technical)

Appearance through Video Conferencing

For Applicant : Mr. K.P. Sujesh Kumar, Adv.,

: Mr. Aswin B., Adv.



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For Respondent No.1 : Mr. A.C. Venugopal, Adv.

For Respondent No. 2 : Mr. Diwakar Maheshwari, Adv.

Order reserved on: 12.07.2023
Order pronounced on:02.08.2023

ORDER

1. The present application is filed by the Applicant/Financial Creditor (hereinafter referred to as "Applicant") in the matter of M/s. Koyenco Autos Private Limited under Rule 11 of NCLT Rules, 2016 read with Section 21A of the IBBI Liquidation Process Regulations, 2016 seeking enlargement of the time for enabling the Applicant to dispose of the secured asset, viz., immovable property comprising 29,500 Sq.Ft of a commercial building with a proportionate undivided share in 114.21 cents of land at Resurvey No.26/20 and 26/23 of Maradu Village, Kanayannur Taluk, District Ernakulum in the State of Kerala and to pay the liquidation cost or such other cost as may be finally determined during the process after the completion of the sale

2. The facts as narrated in the application and explained by the Applicant are summarized hereunder:

- i. The Financial Creditor, M/s. BMW India Financial Services Private Limited had filed an application under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as the 'CIRP'), against the Corporate Debtor M/s. Koyenco Autos Private Limited, which was admitted vide order dated 16.10.2021 and Mr. Sankar P. Panicker was appointed as the Interim Resolution Professional (hereinafter referred to as "IRP") and thereafter he was replaced by Mr. Vibin Vincent. Since all the attempts for resolution of



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the Corporate Debtor was failed, in the seventh meeting of the COC, it has been decided to opt for liquidation of the Corporate Debtor and it was further resolved to submit an application under Section 33(2) of the Code seeking liquidation. Accordingly, IA(IBC)/217/KOB/2022 was filed before this Tribunal by the Resolution Professional seeking liquidation of the Corporate Debtor which was allowed by this Tribunal on 04.11.2022 and ordered for Liquidation of the Corporate Debtor.

- ii. The Corporate Debtor had availed the following credit facilities from the Applicant: -
 - a) Loan against Receivables (LAN 0114675100005210) of Rs.5 Crore for the purpose of business improvement.
 - b) Loan against Property (LAN 0114675100006002) of Rs. 3.69 crores for the business purpose.
- iii. In order to secure the amounts falling due under the aforesaid credit facilities, the borrower, M/s Koyenco Autos Private Limited created equitable mortgage in respect of immovable property comprising 29,500 Sq.Ft of commercial building with proportionate undivided share in 114.21 cents of land at Resurvey No.26/20 and 26/23 of Maradu Village, Kanayannur Taluk, District Ernakulum in the State of Kerala and the Applicant is having exclusive charge over the said property. The said security interest is registered with CERSAI. The borrower, M/s Koyenco Autos Private Limited had entered into a lease agreement with M/s Platino Classic Motors India Private Limited who were the BMW dealers for Kerala. Substantial sum of money was advanced by the 2nd Respondent, M/s. BMW India Financial Services Private Limited to



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M/s Platino Classic Motors India Private Limited and M/s Koyenco Autos Private Limited was made as a co-borrower in all the credit facilities granted to M/s Platino Classic Motors India Pvt Ltd. M/s. BMW India Private Limited terminated the dealership agreement with M/s. Platino Classic Motors India Pvt Ltd. and the agreement terminated on 31.12.2018 thus affecting the cash flows of the Company. Both the loan account(s) became NPA on March 31, 2021. The Loan recall notice was issued and demand notice under SARFAESI Act, 2002 was issued on 06.08.2021.

- iv. The Liquidation order was received on 08.11.2022 and the Applicant filed Form D and the claim was admitted for Rs.11,00,00,210.20/- as of 04.11.2022. Applicant as a secured creditor opted to stand outside the liquidation of Koyenco Autos Pvt. Ltd (In Liquidation) and enforce the security interest under SARFAESI Act. The Liquidator handed over possession of exclusive charged assets of the Bank vide letter dated 22.01.2023. A sum Rs.78,35,246/- was remitted by the Applicant in the liquidation account towards CIRP and Liquidation cost on 19.01.2023 as per Regulation 21A(2)(a).
- v. It is stated that the Applicant has already initiated proceedings under the SARFAESI Act before the initiation of CIRP, the mortgaged property taken possession from Liquidator, was brought for public sale twice under the SARFAESI Act. However, as there were no bidders, the sale did not take place. The Applicant has found out some prospective buyers and attempting to dispose of the mortgaged property by way of private treaty under Rule 8 (5) (d) of SARFAESI Rules and also in the process of taking internal decision to acquire the secured assets under Section 13(5A) of SARFAESI Act, if the sale under private treaty fails. In the



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meanwhile, Mr. P.P. Ashique & another, the Suspended Directors of the Corporate Debtor had challenged SARFAESI action and filed SA before DRT-1, Ernakulam.

- vi. It is stated that the liquidation process commenced on 04.11.2022 but the Applicant could not succeed in realizing the security interest within 180 days from liquidation commencement date and deposit the surplus amount with Liquidator as required under Regulation 21 A of 1BB| (Liquidation Process) Regulations, 2016. The possession of the secured asset was handed over to the Applicant only on 20.01.2023, which is after 77 days from 08.11.2022. It is further stated that there are prospective purchasers for purchasing the property and the Applicant is negotiating for a private treaty. The Applicant is also proposing to acquire the secured assets under Section 13(5 A) of SARFAESI Act and the Applicant is waiting for the internal decision which is to be taken at the Board level. In the circumstances, Applicant is required some more time to conclude the transactions. If the time is not extended, the exclusive charged asset of the Applicant would become part of liquidation estate and in that event, Applicant would not be able to realize its entire dues. The 180 days as provided under Regulation 21A of IBBI (Liquidation) Process Regulation, expired on 08.05.2023.

FINDINGS: -

3. We have heard the learned counsel for the Applicant Mr. K.P. Sujesh Kumar and the learned counsel for the 1st Respondent Mr. A.C. Venugopal and the learned counsel for the 2nd Respondent Mr. Diwakar Maheshwari. We have also perused the entire case records/documents.



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4. The Point for consideration is:
- Whether the period of 180 days prescribed under Regulation 21A (2) (b) of IBBI (Liquidation Process) 2016 can be extended?
5. The corporate debtor was ordered to liquidate by this Adjudicating Authority on 04.11.2022. The applicant being a secured creditor opted to realize its security interest by filing form 'D' of Schedule II of IBBI (Liquidation Process) Regulations 2016 and obtained the possession of an immovable secured asset from the respondent liquidator on 20.01.2023. The applicant could not realize the amount as expected on or before 08.05.2023 i.e., within 180 days from the date of commencement of liquidation. Now the applicant filed this application for extension of time.
6. The Regulations 21A (2) (b) and 21(A) 3 of IBBI (Liquidation Process) 2016 are reads as follows:
- b) the excess of the realized value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within one hundred and eighty days from the liquidation commencement date:***
- Provided that where the amount payable under this sub-regulation is not certain by the date the amount is payable under this sub-regulation, the secured creditor shall pay the amount, as estimated by the liquidator:*
- Provided further that any difference between the amount payable under this sub-regulation and the amount paid under the first proviso shall be made good by the secured creditor or the liquidator, as the case may be, as soon as the amount payable under this sub-regulation is certain and so informed by the liquidator.*



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(3) Where a secured creditor fails to comply with subregulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate.

7. The point is whether the time limit of 180 days prescribed in Regulation 21 A (2) (b) is mandatory or directory in nature. To decide whether any provision where the time limit prescribed is mandatory or directory the Madras High court in Shahji Purushottam -vs- Union of India, observed that when there is no consequential result is prescribed it will consider as only a directory, and when there is consequential result is prescribed then the provision is mandatory.
8. The word “shall” has been used in Regulation 21A (2), apart from this Regulation 21A (3) provides the consequences of non-compliance of direction provided in Regulation 21A(2)(b), accordingly on the expiry of 180 days if the secured creditor failed to realize the amount and paid to the liquidator the secured asset automatically shall vests with the Liquidator as part of liquidation estate. Here also the word “shall” have been used. In the scenario it is evident that the period mentioned in Regulation 21A(2)(b) is mandatory, hence the period of 180 days prescribed under Regulation 21A(2)(b) of IBBI (Liquidation Process)2016 cannot be extended.
9. It may be noted that a similar issue came up before this Tribunal in IA(IBC)/139/KOB/2023 IN IA(IBC)/176/KOB/2022 IN IBA/25/KOB/2020 which was dismissed by us vide order dated 23.06.2023.
10. In the scenario this application is **Dismissed**.
11. The Registry is directed to communicate this order to the respective parties through email.



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12. Certified copy of the order be issued on request of the parties as per the procedure

13. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.08.02 14:42:12 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN RAJ
Date: 2023.08.02 15:52:53 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this , the 2nd day of August, 2023.

Rajasree R. Nair.