

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH - V**

**IA No. 941/2022**

**In**

**Company Petition (IB) No. 577/ND/2020**

**In the matter of:**

**Sections 33(1) read with Section 33(2) of the Insolvency and  
Bankruptcy Code, 2016**

**AND**

**In the matter of:**

**M/s Redhex IT Solutions Private Limited**

**...Operational Creditor**

**Versus**

**M/s Zenith Automotive Private Limited**

**...Corporate Debtor**

**AND**

**In the matter of:**

**Mohd. Nazim Khan**

**Resolution Professional**

**M/s Zenith Automotive Private Limited**

**IP Regd No.: IBBI/PA-002/IP-N00076/2017-18/10207**

**Address: G-41, Ground Floor**

**West Patel Nagar, New Delhi-110008**

**Email: [nazim@mnkassociates.com](mailto:nazim@mnkassociates.com)**

**Ph. No.: +91-9818156340**

**...Applicant**

**ORDER DELIVERED ON: 02.06.2022**

**CORAM:**

**Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)**

**Sh. Hemant Kumar Sarangi, Hon'ble Member (Technical)**

**IA No. 941/2022**

**In**

**Company Petition (IB) No. 577/ND/2020**

**For the Applicant:** Mohd. Nazim Khan, RP in person with Vinod Mandal  
**For the Respondent:** Mr. Rajesh Srivastava, Adv.

**ORDER**

**AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

The present Application is being preferred by the Resolution Professional, Mohd Nazim Khan (hereinafter referred to as "Applicant").

**2. Brief Facts of the case are as follows:**

- i. The present Petition has been filed by the Operational Creditor M/s Redhex IT Solutions Private Limited under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate a Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against the Corporate Debtor and consequently the petition was admitted and the Applicant is appointed as Interim Resolution Professional vide its Order dated 24.09.2021.
- ii. The Applicant submits hereunder the Summary/ brief Report on Activities and adherence of various Time-Lines under IBC and CIRP Regulations as Under:

Description of Activity	Date of Compliance
Commencement of CIRP	24-09-2021
Public Announcement inviting claims	26-09-2021
Last date of Submission of claims	08-10-2021
Appointment of Registered valuer 1 (Naveen Khandelwal)	27-10-2021
Appointment of Registered valuer 2 (Krishna Kumar Mittal)	27-10-2021
Appointment Forensic Auditor	30-10-2021

IA No. 941/2022

In

Company Petition (IB) No. 577/ND/2020

Appointment of RP	30-11-2021
Submission of Information Memorandum to COC	03-11-2021
Second COC Meeting held wherein the publication of Form-G for invitation of Resolution Plan was approved	06-12-2021
Form-G was published for invitation of Resolution Plan	07-12-2021
Last date of submission of Resolution Plan	05-02-2022
Third COC Meeting convened by Resolution Professional	16-02-2022
Resolution passed for Liquidation by COC	16-02-2022

- iii. Pursuant to the provisions of Section 5(14) of the IBC, 180 days of Insolvency Resolution Process Period Commenced on 24.09.2021 and the same is to expire on 23.03.2022.
- iv. The Applicant in the second COC meeting held on 06.12.2021 presented before the sole COC member the eligibility criteria in pursuant to Section 25(2)(h) of IBC for its approval and after approval of eligibility criteria, the draft form-G "Invitation for Expression of Interest" in pursuant to Regulation 36A(1) of IBBI (CIRP) Regulations, 2016 for inviting Resolution Plans from prospective Resolution Applicants (PRA's) was placed for its publication and the same was approved by the sole COC member.
- v. After getting the approval of sole COC member the Applicant initiated to publish the Form-G and the same was published on 07.12.2021 in the newspaper namely, Pioneer English and Hindi, Delhi NCR Edition of 07.12.2021.
- vi. In response to the Form-G published, the Applicant received expression of interest from sole PRA namely Efficacy Finance Services Private Limited on 22.12.2021.
- vii. Thereafter, the Applicant issued the provisional list of PRA's and sent through email dated 31.12.2021 to COC members.

IA No. 941/2022

In

Company Petition (IB) No. 577/ND/2020

- viii. The Applicant has issued information memorandum, evaluation matrix and Request for Resolution Plan on 06.01.2022.
- ix. Thereafter, the Applicant had issued the final list of PRA's and sent through email dated 15.01.2022 to COC members and sole PRA.
- x. As per the timelines provided in the published Form-G, the last date for submission of Resolution Plan was kept 05.02.2022 but the Applicant did not receive the Resolution Plan from the sole PRA namely Efficacy Finance Services Private Limited till the last date i.e. 05.02.2022 or afterwards.
- xi. The Applicant called the Third COC meeting on 16.02.2022 to inform the sole COC member that the sole PRA have not submitted the Resolution Plan till last i.e. 05.02.2022 and as no Resolution Plan has been received, accordingly, pursuant to Section 33(1)(a) the Corporate Debtor may get Liquidated after passing of Resolution of Liquidation of Corporate Debtor.
- xii. The Sole COC members has passed the resolution for the Liquidation of the Corporate Debtor with 100% Voting Rights under Section 33, after perusing the fact of non-receipt of Resolution Plan and the Information Memorandum as sent by the Applicant along with the Annual accounts for last three years of the Corporate Debtor, that the Corporate Debtor is non-operational and assets are not sufficient to cover even CIRP cost as such. Hence in order to save further expenses, the COC Members decided to Liquidate the Corporate debtor.
- xiii. In the aforesaid meeting, the Applicant was authorised to seek the permission from the Adjudicating Authority New Delhi for liquidation of Corporate Debtor in the manner as laid down in Insolvency and Bankruptcy Code, 2016.
- xiv. The expenses of CIRP cost of Rs. 3,26,447/- (Exclusive of GST) which was incurred by Applicant, aforesaid amount has already been approved by the Sole COC member in its meeting with 100% Voting Right.

IA No. 941/2022

In

Company Petition (IB) No. 577/ND/2020



xv. In the aforesaid Third COC Meeting dated 16.02.2022, the existing Resolution Professional Mohd. Nazim Khan (IBBI Regn No: IBBI/IPA-002/IPN00076/2017-18/10207), consented to act as the liquidator, the name of Resolution Professional has also been recommended to act as the Liquidator, in the said Meeting, COC passed the Resolution with 100 % Voting Rights.

3. We have heard the Learned Counsel appearing for the applicant and perused the averments made in the application.

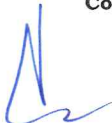
4. The Learned Counsel appearing for the applicant submitted that since the RP has not received any resolution plan, therefore, the matter was placed before the CoC in its meeting dated 16<sup>th</sup> February, 2022 and the CoC as item number – 8 of the Agenda consider the matter and resolved **“that Committee of Creditors of Zenith Automotive Private Limited (Under CIRP) in view of the RP not received any Resolution Plan from Prospective Resolution Applicant (PRA) and insufficient Assets of the Corporate Debtor to cover the CIRP and Liquidation Costs hereby approve, pursuant to the provisions of Section 33 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed thereunder, Zenith Automotive Private Limited (Corporate Debtor) be and is hereby liquidated in the manner as laid down in Insolvency and Bankruptcy Code, 2016.”**

5. He further submitted that Resolution Professional Mohd Nazim Khan (IBBI Regn No: IBBI/IPA-002/IP-N00076/2017-18/10207), also submitted his written consent placed at page 67 of the application and this committee has resolved to appoint him as a liquidator.

6. Before considering the submissions, at this juncture, we would like to refer to relevant provision of Section 33(2) of the IBC and the same is reproduced below:

**Section 33 IBC: Initiation of liquidation**

(1) .....



***(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors 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).***

7. A bare perusal of the provision shows that the Resolution Professional at any time, during the corporate insolvency resolution process but before confirmation of resolution plan, if intimates the Adjudicating Authority of the decision of the committee of creditors 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) of Section 33 IBC.

8. In terms of the provision, now we consider the prayer of the applicant and we observe that the CoC by 100 per cent voting has rejected the Resolution Plan and approved the liquidation of the Corporate Debtor. Under such circumstances, we have no option but to approve the Resolution of the CoC for liquidation of the Corporate Debtor. We also observe the period of CIRP has over and COC has not taken resolution for extension.

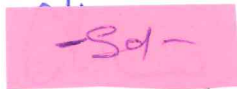
9. Accordingly, by exercising our power under Section 33 sub-Section (1)(2)(a) pass the following order: -

- i. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016.
- ii. Since the CoC as Resolution No. 8 has approved the appointment of Resolution Professional, Md Nazim Khan as liquidator, who has also given his consent, hence, we approved the appointment of Resolution Professional to act as a liquidator u/s 34 (1) IBC, 2016.



- iii. The liquidator is directed to take custody and control of the assets, property of the Corporate Debtor with immediate effect and made a public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- iv. The Provision of Section 33 sub-Section 5,6 and 7 IBC, 2016 shall have come into force with immediate effect. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- v. This Order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- vi. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- vii. The Registry is directed to communicate a copy of the Order to the Financial Creditor, the Corporate Debtor and Liquidator Md. Nazim Khan, immediately;
- viii. A copy of this Order be sent by the Registry and Liquidator to the Registrar of Companies (RoC), NCT of Delhi & Haryana for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT within a period of 30 days;
- ix. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

10. Accordingly, in terms of aforesaid order IA-941/2021 in (IB)-577/ND/2020 is hereby disposed of.

-Sd/-

**(Hemant Kumar Sarangi)**  
**Member (Technical)**

-Sd/-

**(Abni Ranjan Kumar Sinha)**  
**Member (Judicial)**