NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

11. IA/1690(MB)2021 & IA/2622(MB)2021 in C.P. (IB)/939(MB)2020

CORAM:

SMT. ANURADHA SANJAY BHATIA, MEMBER (T)

SMT. SUCHITRA KANUPARTHI, MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **18.04.2022.**

NAME OF THE PARTIES: ABHYUDAYA COOPERATIVE BANK LTD
Vs.
MITHILA CARS PVT LTD

SECTION: Sec 7 of IBC 2016

ORDER

1. IA 2622 of 2021-

This is an Application seeking liquidation of the Corporate Debtor. The order of admission of CIRP was passed on 30.04.2021. Post the admission of CIRP against the Corporate Debtor, public announcement was made by the IRP on 06.05.2021. The CoC was constituted, a report certifying the constitution of CoC was submitted.

The First CoC meeting was held on 04.06.2021 and the IRP was confirmed as RP. In the said meeting, the CoC appointed the Transaction Auditor and also appointed two registered valuers to determine fair value and liquidation value.

The Applicant published Form-G for invitation of Expression of Interest on 08.07.2021. The list of Financial Creditors and the admitted claim along with the schedule of properties is set out below:

SR. NO.	NAME OF FINANCIAL CREDITOR	AMOUNT CLAIMED (IN CRORES)	AMOUNT ADMITTED (IN CRORES)	SECURITY INTEREST
1.	ASREC (India) Ltd.*	39,04,92,641	39,04,92,641	Schedule I
2.	State Bank of India	30,84,55,070	30,84,55,070	Schedule II
	Total	69,89,47,711	69,89,47,711	

**Abhyudaya Co-operative Bank Limited assigned its debt to M/s ASREC (India) Limited vide agreement dated 26th August 2020.*

Note: There are clarifications/information sought for claim received from financial creditors and the same is awaited. Pending such clarifications, the claim has been admitted basis the declaration submitted by the Financial Creditors.

SCHEDULE I

1. All that piece and parcel of land known as Survey No. 32 (old Survey NO. 111), Hissa No. 9 (Part), Hissa No. 12 (Part), Hissa NO. 13 (Part), Penkarpada, Off. Western Express Highway, Village Mahajanwadi, Mira Road (East), Taluka and District Thane, admeasuring 1432.23 sq. mtr together with factory Shed/buildings constructed or structured thereon, plant and machineries, fixtures and fittings owned by M/s. Mithila Cars Private Limited.

2. Hypothecation of Stock & Book Debts

3. Hypothecation of Plant & Machineries

4. Personal Guarantee of Mr. Nirbhay Rambahadur Singh, Mr. Mantu Rambahadur Singh, Mr. Subroto Nonigopal Roy, Mr. Bhagwan Umesh Singh and Mr. Natrajan Mahalingam Badulur.

SCHEDULE II

1. 100% Hypothecation of Vehicle stock financed to the dealer by State Bank of India and receivables thereof including the advance remittance made to the company.

2. Hypothecation of stock & receivables.

3. Personal Guarantee of Mr. Nirbhay Singh and Mr. Mantu Singh

The Applicant convened the 4th meeting of CoC on 09.09.2021, wherein the Applicant apprised the members regarding the provisional list and final list of PRAs. The Applicant also informed that only one eligible PRA namely M/S Kundan Care Private Limited. The PRA had sought an extension of last date of submission of Resolution Plan till 20.09.2021. The CoC have refused to grant of extension for submission of Resolution Plan.

The CoC after deliberation have sought to initiate liquidation process, so that assets can be sold in a time bound manner in accordance with the provisions of the Code. The CoC in its fifth meeting held on 22.10.2021 with 100% voting have therefore resolved to seek liquidation of Corporate Debtor. The Resolution is as follows:

(a) *RESOLVED THAT the consent of the members of Committee of Creditors be and is hereby accorded for Liquidation of the Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code, 2016.*

(b) *RESOLVED FURTHER THAT Prajakta Menezes, be and is hereby authorize to make necessary application for Liquidation of the Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code, 2016 in the matter of Mithila Cars Private Limited and to do all such act, deeds and things to give effect to the aforesaid resolution".*

(c) *RESOLVED THAT the consent of members be and is hereby accorded to appoint Mr. Birendra Kumar Agarwal (IBBI Registration No. IBBI/IPA-001/IP-P00564/2017-2018/11040 as the Liquidator's fee shall be mutually decided between the CoC members and the Liquidator as per applicable Liquidation Regulation of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*

The CoC has also resolved to appoint Birendra Kumar Agarwal as the Liquidator and it was decided that the fee of the Liquidator shall be mutually decided by the CoC member as per the Liquidation Rules.

2. This Bench is satisfied with the reasons provided seeking for an order of liquidation of the Corporate Debtor and hence the IA is allowed and approves the liquidation of Corporate Debtor.

3. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, for the RP has complied with the procedure laid under the Code read with Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations), we are of the view that this case is fit to pass liquidation order under sub-section 1 of section 33 of the Code as no resolution plan has been submitted before the

Adjudicating Authority by the Resolution Professional, and accordingly, this Bench orders;

a. that the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
b. that the Resolution Professional herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
c. all the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
d. that the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
e. that the Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.
f. that on having liquidation process initiated, subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the corporate debtor with prior approval of this Adjudicating Authority.
g. This liquidation order shall be a deemed to be notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

4. On the above lines, IA 2622 of 2021 is **allowed** and disposed off.

5. IA 1690 of 2021- List the IA on **01.06.2022.**

Sd/-	Sd/-
ANURADHA SANJAY BHATIA	SUCHITRA KANUPARTHI
Member(Technical)	Member(Judicial)

/z/