

IA No. 709/2020

This application has been filed by Mr. Ravinder Kumar Goel, the Resolution Professional of M/s Ram Hari Motors Private Limited (Corporate Debtor) under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation in the matter of M/s Ram Hari Motors Private Limited (Corporate Debtor).

2. CP (IB) No. 631/Chd/HP/2019 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by "Ashish Dhillon" to initiate Corporate Insolvency Resolution Process (in short CIRP) against M/s Ram Hari Motors Private Limited was admitted on 14.02.2020 and Mr. Ravinder Kumar Goel was appointed as IRP. Subsequently, in the 2nd meeting of CoC held on 28.05.2020, it was resolved to appoint the IRP as Resolution Professional by 67.17% voting share. Copy of the minutes of 2nd meeting of CoC is attached as Annexure A-4 of the application.

3. It is submitted that the Resolution Professional had appointed two registered valuers for each category of assets. However, the process of valuation could not be started due to situation arising out of Covid-19. Form-G was published inviting expression of interest from prospective applicants in two newspapers namely "Financial Express" and "Amar Ujala" on 29.07.2020. However, only one EOI was received but no resolution plan was submitted by prospective Applicant till the last date of the submission of Resolution Plan i.e. 27.09.2020.

4. In the 3rd meeting of CoC held on 12.10.2020, it was discussed that no useful purpose will be served by continuing the CIRP as there is no

business of the corporate debtor and the ownership of the assets is disputed by IDBI. It was resolved in the said meeting to not to republish the Form-G for inviting expression of interest. The CoC in the same meeting has further decided to liquidate the corporate debtor and the following resolution was passed:-

“Resolved that the Resolution Professional is hereby authorized to file an application with the Adjudicating Authority, under Section 33 of the Insolvency and Bankruptcy Code, 2016 seeking order of liquidation of the Corporate Debtor and the matters relating to fee of the liquidator, liquidation cost and its contribution, the manner of sale shall be decided in consultation with the liquidator appointed by NCLT and the Resolution Professional is hereby authorized to take all steps necessary in relation to filing of the application.”

5. The Hon'ble NCLAT, in Praveen Kumar Nand Kumar Vs. VSL Securities Pvt. Ltd. in CA No. 1/2020 in CA No. 308/2000, dated 09.06.2020, observed as under:-

“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review.”

6. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

7. The relevant provisions of Section 33 (2) of the Code are as follows:-

“33. Initiation of liquidation. –

(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 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).”

8. **Prescribed period for filing application** - In the present case, the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 was admitted on 14.02.2020 and the present application is filed by the Resolution Professional on 23.10.2020. The period of 180 days was completed on 11.08.2020. As per notification No.IBBI/2020-21/GN/REG059 dated 20.04.2020 issued by IBBI, the period of lockdown is to be excluded for the purpose of calculating the timelines of CIRP period. In view thereof, after excluding the lockdown period from 23rd March, 2020 to 31st July, 2020, the present application is filed within the prescribed period.

9. **Appointment of Liquidator** – Section 34 provides for appointment of the Liquidator. Section 34 (4) (c) of the Code states that if the RP fails to submit written consent under Section 34 (1) of the Code, the AA shall by order replace the RP. In the present case, it is stated in the application that the RP showed his unwillingness to continue as Liquidator and thus did not submit his consent to act as the Liquidator. Sub Section (7) of Section 34 of the Code says that the Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an Insolvency Professional as Liquidator by an order appoint such Insolvency Professional as Liquidator.

10. In this regard a letter bearing **File No.25/02/2020-NCLT dated 24.11.2020** has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. **IP-12011/1/2020-IBBI dated 23.11.2020** along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid from 26.11.2020 to 31.12.2020. We select Mr. Nishant Garg appearing at Serial No.2 of the panel to be appointed as Liquidator.

11. The Law Research Associate of this Tribunal has checked the credentials of **Mr. Nishant Garg** and there is nothing adverse against him. In view of the above, we appoint, Registration No. **IBBI/IPA-001/IP-P00373/2017-2018/10630**, E-mail: **canishantgarg@rediffmail.com**, as the Liquidator.

12. Regulation 39B, 39C and 39D in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019.

13. **Liquidation Cost (Regulation 39B of IBBI (IRP for CP) Regulations, 2016)-** The CoC has not made compliance of Regulation 39B of the CIRP Regulations, 2016 regarding meeting of liquidation costs. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.

14. **Assessment of Sale as a going concern (Regulation 39C of IBBI (IRP for CP) Regulations, 2016) –** The CoC has not made any assessment of sale as a going concern under Regulation 39 C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Liquidator will, therefore, take necessary action under Regulation 32A (3) of the IBBI (Liquidation Process) Regulations, 2016.

15. **Fees of the Liquidator (Regulation 39D of IBBI (IRP for CP) Regulations, 2016) –** The RP proposed to be appointed as Liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of liquidation estate assets as may be specified by the Board. Rule 4 of Insolvency and Bankruptcy Board of India (Liquidation Process)

Regulations, 2016 provide for Liquidator's fee. Regulation 4(2) thereof states that the Liquidator shall be entitled to such fee and in such manner as has been decided by the CoC.

16. **Pending Applications, if any, and its effect-** The learned counsel for the applicant has stated that there is no pending applications which has any bearing on the order of liquidation.

17. In view of the satisfaction of the conditions provided under Section 33(2) of the Code, the corporate debtor M/s Ram Hari Motors Pvt. Ltd. is directed to be liquidated in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:-

(i) That as per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted against the corporate debtor;

Provided that a suit or other legal proceedings may be instituted by the liquidator on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority;

(ii) That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and

(iii) That this order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the liquidator; and

(iv) That all the powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator; and

(v) That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.

(vi) That the Liquidator shall publish public announcement in accordance with Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

(vii) That the announcement shall be published in accordance with Regulation 12(3) of the IBBI (Liquidation Process) Regulation, 2016.

(viii) That in accordance with Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 every fortnightly thereafter.

18. Thus, IA No. 709/2020 stands disposed of.

Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Himachal Pradesh forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

Sd/-

(Raghu Nayyar)
Member (Technical)

Sd/-

(Ajay Kumar Vatsavayi)
Member (Judicial)

December 22, 2020
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