

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH  
KOCHI**

**IA(IBC)/139/KOB/2023**

**IN**

**IA(IBA)/176/KOB/2022**

**IN**

**IBA/25/KOB/2020**

*(Under Section 60(5) read with Rule 11 of the NCLT Rules, 2016)*

***In the matter of:***

The Federal Bank Limited having its registered office at Federal Towers, Bank Junction Aluva, Ernakulam District, Kerala and one of the Branch Office at Main Avenue, Near K C Abraham Master Road, Panampilly Nagar, Ernakulam, Kerala, India- 682 036 Represented by its Vice President and Authorised Officer Mr. Pradeep. G.

**...Applicant**

**-Versus-**

Ruben George Joseph, Liquidator, M/s. Platino Classic Motors (India) Pvt Ltd  
37/2038, First Floor, Muttathil Road, Kadavanthra, Kochi – 682 020

**... Respondent**

***In the matter of:***

The Federal Bank Limited : Financial Creditor.

**-Versus-**

M/s. Platino Classic Motors (India) Pvt Ltd. : Corporate Debtor.

***Coram:***

Shri. P. Mohan Raj : Member (Judicial)  
Shri. Satya Ranjan Prasad : Member (Technical)

***Parties / Counsel present (through video conference):***

For Applicant : Mr. Leo George, Adv.,

For Respondent : Mr. Anil D. Nair, Adv.,  
Mrs. Telma Raju, Adv.,  
Mrs. Anjana A., Adv.,  
Mr. Aaditya Nair, Adv.

**Order reserved on: 27.04.2023  
Order pronounced on: 23.06.2023**

**ORDER**

1. The present application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016, by the Applicant who is the Secured Creditor of Corporate Debtor M/s. Platino Classic Motors (India) Pvt Ltd. seeking the time extension of 180 days from 29.03.2023 for effecting the sale of secured asset under the SARFAESI Act, and remit the excess amount, over it's admitted claim etc;
2. The facts as narrated in the application and explained by the Applicant are summarized hereunder:
  - i. The Applicant being a secured creditor opted to realize its security as provided in Section 52(1)(b) of the Insolvency and Bankruptcy Code (for short code) and informed the Liquidator of its security interest and identified the asset subject to such security interest to be realised. The Applicant has submitted Form- D as provided under Regulation 21A (1) of the IBBI (Liquidation Process) Regulations 2016 on 28.10.2022. The Liquidator has verified the security interest and permitted the Applicant to realize its security interest which has been proved before him. The Applicant has paid the amount payable under Section 53(1)(a) & 53(1)(b)(i) to the Liquidator as it would have shared in case it had relinquished the security interest within the time allotted.
  - ii. Thereafter on 15.11.2022 the Liquidator directed the Applicant to inform him of the Value of its Secured asset. Accordingly, the Applicant informed on 29.11.2022 the Value of its Secured asset as Rs, 15,00,00,000/-. The Liquidator on 23.12.2022, informed the Applicant that he could not find a buyer for a better price and permitted the Bank to proceed under the SARFAESI Act and the Possession of the secured Asset was surrendered to the Applicant on 27.12.2022.
  - iii. It is stated that the fixed Reserve Price of the Secured asset being Rs 19,00,00,000/-, they issued a sale notice dated 07.01.2023 as provided

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under the SARFAESI Act and Enforcement of Security Interest Rules 2002 fixing the sale on 08.02.2023. There were several inquiries from various quarters and the same was known to the erstwhile Directors of the Corporate Debtor as well. One of the erstwhile Directors of the Corporate Debtor approached the Honourable High Court of Kerala challenging inter alia the sale notice issued by the Applicant by filing WP(C)No. 3780/2023, contending that a Financial Creditor who has initiated CIRP under Section 7 of the code cannot opt to realise its security interest as provided under Section 52(1)(b) of the Code. The Honourable High Court admitted the Writ Petition without staying the sale to be held on 08.02.2023. However, the sale proposed to be held on 08.02.2023 could not be undertaken for want of bidders. In this circumstance, the Applicant has again notified the sale on 01.03.2023 by issuing a sale notice dated 10.02.2023 fixing the reserve Price at Rs. 17,00,00,000/-. Based on that the Writ Petition was amended by incorporating certain additional allegations to the effect that the bank has not submitted Form-D within the time allowed and hence it is not entitled to realize its security independently and moved again on 28.02.2023 and pressed for an interim order. But the Hon'ble High Court declined the Interim Order sought for as per Order dated 28.02.2023. It is further stated that the Petitioner in WP(C)No. 3780/2023 challenged Annexure A1 before the Division Bench by filing Writ Appeal No. 485/2023. The Petitioner in WP(C)No. 3870/2023 has made wide publicity regarding the pendency of the Writ Petition and that of the Writ Appeal among the prospective buyers and ultimately the sale proposed to be held on 01.03.2023 also could not be successful for want of bidders. In the circumstances, the Applicant again brought notified a sale to 17.03.2023 by issuing the sale notice dated 01.03.2023 fixing the Reserve Price at Rs.15,00,00,000/-. When the Writ Appeal came up for hearing the fact that the sale notified on 01.03.2023 could not be successful and that a

new sale notification has been issued for sale on 17.03.2023 has been brought to the notice of the Hon'ble Court on 06.03.2023. The Appellant withdrew the Writ Appeal leaving open the legal and factual contentions raised by them in the Writ Appeal and without prejudice to their right to challenge the fresh sale notice at appropriate proceedings.

- iv. It is stated that by amending the WP(C) No. 3780/2023 the Petitioner pressed for an interim relief to stay the sale to be held on 17.03.2023. Even though the Hon'ble High Court did not stay the sale proceedings, passed an order that if any sale is held the same shall be subject to the result of the Writ Petition. However, the sale slated on 17.03.2023 also could not be held due to the availability of bidders.
  - v. It is further stated that the time limit provided under Regulation 21A(2)(b) of IBC, 2016 to remit the excess if any of the realized value of the asset over the admitted claim of the Applicant is to expire on 29.03.2023. The reason is not attributable to the Applicant as it has made all earnest efforts to realize its security interest for the maximum price to the benefit of the entire creditors. However, this is due to the tactics of the erstwhile Directors of the Corporate Debtor. Ultimately it is the time for making the remittance as provided under Regulation 21A(2)(b) extended by this Adjudicating Authority, the asset which is subject to the security interest of the Applicant shall become part of the liquidation estate which would cause irreparable injury and prejudice to the Applicant.
3. On 26.04.2023, the Respondent/Liquidator filed his reply statement and stated that the prayer is beyond the scope of the statute and hence cannot be granted, as there is no provision for an exclusion of time under the statute. Therefore, he has stated that the application is not maintainable.

**The Point for consideration is:**

1. Whether the period of 180 days prescribed under Regulation 21A (2) (b) of IBBI (Liquidation Process) 2016 can be extended?

4. The corporate debtor was ordered to liquidation by this Adjudicating Authority on 30.09. 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 immovable secured asset from the respondent liquidator on 27.12.2022. The applicant could not realize the amount as expected on or before 29.03.2023 i.e., within 180 days from the date of commencement of liquidation. Even though the applicant narrated about the pending of writ petitions filed by the erstwhile director of corporate debtor, admittedly there was no stay and applicant also thrice issued notification to auction the property but sale could not be succeeded because of want of bidders. Now the applicant filed this application for extension of time.

5. 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.

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

6. 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.

7. In our case 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. Thus, this point is answered.

In the result the application is **DISMISSED**.

8. The Registry is directed to communicate this order to the respective parties through email.

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

10. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD  
Date: 2023.06.23 15:36:12 +05'30'

**(Satya Ranjan Prasad)**  
**Member (Technical)**

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN  
RAJ  
Date: 2023.06.23 16:37:45 +05'30'

**(P. Mohan Raj)**  
**Member (Judicial)**

Signed on this 23<sup>rd</sup> day of June, 2023.

Rajasree R. Nair/Kaushal P.S.