

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

**I.A (IBC) No.109 (KOB)/ 2021  
&  
Ivn.P-5 (KOB)/ 2021  
in  
IBA/25/KOB/2020**

(Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016)

**Order delivered on: 18.11.2021**

**Coram:**

**Shri. Rajesh Sharma,  
Hon'ble Member (Technical)**

**Shri. Ashok Kumar Borah,  
Hon'ble Member (Judicial)**

**Applicant/Financial Creditor:**

**Satiq Buhari**  
Resolution Professional  
Red. No. IBBI/IPA-001/IP-P00758/2017-2018/11307  
Sargeen Law Chamber,  
Mathrubhoomi Road, Vanchiyoor,  
Trivandrum – 695 035

**Versus**

**Respondent/Corporate Debtor:**

**Platino Classic Motors (India) Pvt. Ltd,**  
CIN U50100KL2007PTC020847  
No. II, 6B, NH47, Bypass Road,  
Maradu P O, Kochi- 682 304



**Appearance:**

For Applicant : Shri. Sathiq Buhari, Resolution Professional  
For Respondent : No appearance

**ORDER**

***Per: Rajesh Sharma, Member (Technical)***

1. This Application has been filed under Section 33(2) of the I& B Code, 2016 by **Sathiq Buhari**, Insolvency Resolution Professional in the matter of **Platino Classic Motors (India) Pvt. Ltd** for initiation of Liquidation Process of the Corporate Debtor and to appoint the Resolution Professional as the Liquidator of the Corporate Debtor.

2. The brief facts are: -

This Tribunal vide order dated 08.03.2021 admitted the application filed by the Financial Creditor **FEDERAL BANK LIMITED** and initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor **Platino Classic Motors India Pvt. Ltd.** and appointed the Applicant, herein as the Interim Resolution Professional to carry out the CIR Process. The Applicant published a public Announcement in Newspapers on 13.03.2021 and verified the claims received and also formed the Committee of Creditors (CoC) consisting of the two Financial Creditors as its members.

3. It is stated in the application that a total claim of Rs.7,89,73,198.58 (Seven crore eighty-nine lakhs seventy-three thousand one hundred and ninety-eight and fifty-eight paise.) was admitted. It is further stated that the Corporate Debtor- **Platino Classic (Motors) India Pvt. Ltd** was acting



as the dealer of BMW cars manufactured and marketed by BMW India Pvt. Ltd under a dealership agreement. The Corporate Debtor is not a going concern or doing any business and the establishment was closed down for the last more than one and half years.

4. The learned IRP submitted that after complying with the processes provided in Section 21 of IBC, 2016 and Regulation 17 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the 1<sup>st</sup> CoC meeting was convened on 12/04/2021 and the 2<sup>nd</sup> CoC meeting was convened on 06/05/2021 in which the financial Creditor- Dhanalaxmi Bank Ltd stated that the-

*"CD is not a going concern or doing any business. Therefore, it is not advisable to invite resolution plans by publishing Form-G and a final decision to go for liquidation can be taken by the CoC meeting to be convened on 14/05/2021."*

1. The 3<sup>rd</sup> CoC meeting was convened on 18/05/2021. The Agenda Item No.4 of Annexure -5 was to discuss publication of Form-G on or before the 21<sup>st</sup> day of May, 2021 or to go for liquidation in the light of the decision taken under Agenda-6 of the 2<sup>nd</sup> CoC meeting convened on 06/05/2021. Under Agenda Item No.4, the Financial Creditor Federal Bank Ltd stated that-

*"..as decided in the 2<sup>nd</sup> CoC meeting, CD has not come forward till today to settle the matter as proposed by them earlier or suggested any concrete possible restructuring plans to settle the matter. It is submitted that CD is not a going concern or doing any business and the establishment was closed down for the last more than 1 1/2 years and their sole dealership with BMW India Pvt. Ltd is already*





*terminated. In this situation, it is not at all feasible to invite resolution plans by publishing Form-G. Except the security property with a building having an approximate built up area of 33000 sq.ft at Trivandrum, as asset, nothing is available with CD. Therefore, to avoid physical deterioration of the building and diminishing of market value it is advisable to go for liquidation as contemplated under Section 83(9) of IBC2016."*

5. The 3<sup>rd</sup> CoC meeting unanimously decided by 100% voting to go for liquidation under Section 33(2) of IBC, 2016 and authorized the IRP to file a liquidation application and to appoint the present RP as Liquidator under Section 34 to discharge the functions mentioned in Chapter III of IBC, 2016.
6. We have heard the Interim Resolution Professional who appeared through video conferencing and have also thoroughly perused the whole case records including the minutes of 2<sup>nd</sup> and 3<sup>rd</sup> CoC meetings.
7. On verification of records of this case, it is seen that, only three meetings of Committee of Creditors took place, and without making any endeavour for inviting Expression of Interest, the CoC unanimously resolved to liquidate the Corporate Debtor.
8. The submission of the IRP is that the CoCs have given the direction to the IRP not to issue an Expression of Interest (EoI) but to take recourse for liquidation. It is further stated that there is no insolvency to resolve and the Corporate Debtor has no threat to the going concern assumption.



9. In this connection, Section 33 of the Code is relevant, which is extracted as under:

***“33. Initiation of liquidation. –***

*(1) Where the Adjudicating Authority, -*

*(a) before the expiry of the insolvency resolution process period does not receive a resolution plan ..... or*

*(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall –*

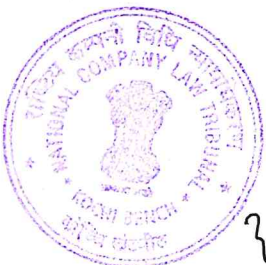
*(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*

*(ii) ...*

*(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....*

*(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order ....”*

From the above, it is clear that a Code enables a stakeholder to file an application for initiating Corporate Insolvency Resolution Process. Only



after a resolution fails to yield Resolution Plan, the CD is ordered into liquidation, by an application filed by the Resolution Professional.

10. For further clarification, we have considered the following case laws:

i. The Hon'ble Supreme Court in the matter of *Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta & Ors.*, it is observed that:

"83. .... The only reasonable construction of the Code is the balance to be maintained between timely completion of the corporate insolvency resolution process, and the corporate debt or otherwise being put into liquidation. We must not forget that the corporate debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the corporate insolvency resolution process. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible."

ii. The Hon'ble Supreme Court in the matter of *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. Writ Petition (Civil) No.99 of 2018 dated 25.01.2019*, it is observed that:

"What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern. ... It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation."





iii. *The Hon'ble NCLAT in the matter of Jayanta Banerjee v. Shashi Agarwal and another, Company Appeal (AT) (Insolvency) No. 348 of 2020 dated 4th June, 2021, it is observed that:*

*"80. It is important to mention that all the statutory provisions for the conduct of CIRP are interlinked; it doesn't leave any scope to the IRP/RP to skip any of the provisions. CIRP regulations are exhaustive and include a provision to deal with all the eventualities that may arise in the conduct of the CIRP."*

The aforestated case laws clearly depicts that, this Tribunal is firmly rooted in the jurisprudence of '*Actus curiae neminem gravabit*' - the act of the Court shall harm no man.

11. In the Minutes of the 2<sup>nd</sup> CoC meeting, it is stated that the IRP apprised CoC to discuss the viability and feasibility of a resolution, matters relating to publication of Form-G (before 75<sup>th</sup> day) and formulation of criteria and evaluation matrix. It is relevant to quote above resolution (Agenda 6), which is as under:

*"Agenda-6- Since the CIRP commenced on 08/03/2021 Form-G inviting resolution application is to be published on or before the 21<sup>st</sup> day of May 2021 (75<sup>th</sup> day). To discuss the viability and feasibility of a resolution, matters relating to publication of Form-G and formulation of criteria and evaluation matrix. It was submitted by the representative of the Financial Creditor Federal Bank Ltd that so far the CD has not come forward to settle the matter as proposed by them earlier or suggested any concrete possible restructuring plans to settle the matter. It is submitted that CD is not a going concern or doing any business and the establishment was closed down for the last more than 1 1/2 years and it is also understood that their sole dealership with BMW Motors is*



*already terminated. In this scenario, it is not at all feasible to invite resolution plans by publishing Form-G. Nevertheless, CoC can wait till 13/05/2021 for a concrete settlement plan from the CD and a final decision can be taken by the CoC meeting to be convened on 14/05/2021. It was submitted by the representative of the Financial Creditor Dhanalaxmi Bank Ltd that CD is not a going concern or doing any business. Therefore, it is not advisable to invite resolution plans by publishing Form-G and a final decision to go for liquidation can be taken by the CoC meeting to be convened on 14/05/2021."*

12.As discussed in the decision in **Jayanta Banerjee v. Shashi Agarwal and another (Supra)**, all the statutory provisions for the conduct of CIRP are inter connected and it doesn't leave any scope to the IRP/RP to skip any of the provisions. For example, during CIRP, after receiving and collating the claims, the IRP has to form the Committee of Creditors. However, on giving through the averments in this IA, it is found that the claim filed by BMW India Pvt. Ltd. in Form C was rejected by the IRP stating that it does not fall within Section 5 (8) of I & B Code. We also found that during the CIRP, only three meetings of the Committee of Creditors took place and without publishing Form- G on 75<sup>th</sup> day, the CoC resolved to file an application for liquidation as per the advice of the IRP. The procedure adopted by the IRP was against all the statutory provisions, fully knowing well that compliance with the statutory requirements of the Code was mandatory. We have also noticed that the IRP/RP has not prepared the Information Memorandum.

13.The minutes of all the three 'CoC' meetings, makes it clear that the entire CIR proceedings was conducted & completed even without any valuation of the Corporate Debtor. Without complying the provisions,





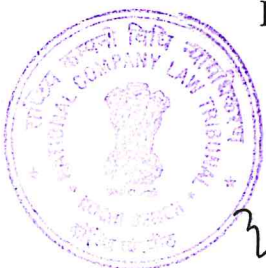
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the committee of creditors resolved to liquidate the Corporate Debtor ignoring the mandatory requirements of determination of fair market value, liquidation value and preparation of Information Memorandum. As already stated there was no publication of Form 'G' for inviting Expression of Interest.

14. The provisions of the I & B Code, 2016 are unambiguous and the vires of the same have already been upheld by the Hon'ble Supreme Court in the case of **Swiss Ribbons Pvt. Ltd. & Anr. (Supra)**. The CoC does not appear to be clothed with the powers to stop the IRP/RP from issuance of the EoI. Liquidation is like a death knell for the corporate entity/corporate person. It is also pertinent to mention that when the Constitution of the Committee of Creditors itself is found to be tainted, then the decision of that COC cannot be validated on the pretext of exercise of commercial wisdom.

15. This Tribunal is conscious of the situation that the CoC may be disagreeing to the conditions on the basis of which the issuance of the EoI proposed by the IRP. In such a situation, the CoC can give the suggestions for improving the basis for issuance of EoI, but cannot stop the issuance of EoI, because the IRP/RP has to follow Model time-line as prescribed under Regulation 40A of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

16. In this connection, it is necessary to mention the application filed by BMW India Pvt. Ltd. Before the IRP, which has been rejected by the IRP stating:



*“20. In the light of the above discussion, it is manifestly evident that the Form-C claim application dated 07/05/2021 preferred by BMW India Pvt. Ltd styling as a Financial Creditor will not come under the ambit of a Financial debt as defined under Section 5 (8) of IBC, 2016 or cannot claim the status of a Financial Creditor as defined under Section 6 (7) of IBC, 2016 entitling to submit a Form-C application as contemplated under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 and hence the claim submitted by BMW India Pvt. Ltd is hereby rejected.”*

Hence, the BMW India Pvt. Ltd. filed IA (IBC) 100 / (KOB) 2021, which is also being considered and disposed of vide separate orders today.

17. Therefore, this Adjudicating Authority thinks it fit to direct the IRP/RP to proceed with the EoI expeditiously in order to complete the CIR Process and the members of the CoC are directed to cooperate with the IRP/RP. We have also noticed that the role played by the IRP/RP in this matter was not impartial in the conduct of the Corporate Insolvency Resolution Process. Hence, we are of the view that a direction to change the Resolution Professional is necessary. The above discussions show that the IRP/ Resolution Professional failed to discharge his duties and responsibilities under the IBC and its Regulations'. It appears in the interest of justice that the time spent till now before the Adjudicating Authority after the application under Section 33 (2) of the IBC was filed till now should be excluded from calculating the period under Section 12 (1), (2) & (3) of the IBC. Parties and Corporate Debtor need not suffer

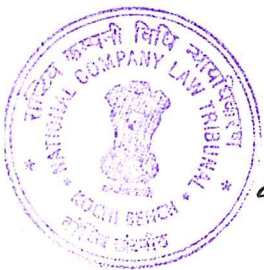


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for time spent during this period before the Adjudicating Authority, as a proper and correct Resolution to be carried out in the matter.

18. For the aforesaid reasons, this Tribunal order as under: -

- i. This **application for Liquidation is rejected.**
- ii. This Tribunal hereby appoints **Shri. Reuben George Joseph** having Registration No. **IBBI/IPA-001/IP-P-02134/2020-2021/13326**, office at 37/2038, 1st Floor, Mangalathu Building, Muttathil Lane, Kadavanthra, Ernakulam, Kerala, 682020 from the panel for Kochi Bench during the period July 1, 2021 to December 31, 2021, as IRP replacing Mr. Sathiq Buhari, the present IRP. Registry is directed to communicate the order to IRP Shri. Reuben George Joseph, who shall file his consent in Form 2 as per Regulation 9 of IBBI (Application to Adjudicating authority) Regulation, 2016 within 7 days.
- iii. The present IRP- Shri. Sathiq Buhari will immediately hand over the complete charge of the Corporate Debtor to the new IRP/ Resolution Professional. Registry shall also issue a copy of this order to the present IRP Shri Sathiq Buhari for handing over the charges to the new IRP.
- iv. The new IRP **Shri. Reuben George Joseph** is directed to collate all the claims submitted by Creditors before the earlier IRP and, depending on the claims admitted by CoC including the applicant of IA (IBC) 100 / (KOB) 2021 and if any other person and proceed further with the CIRP, from the stage of constitution of CoC.
- v. The time spent before this Tribunal from 01.07.2021 till date of this order is excluded from the period of CIRP.





- vi. Registry is directed to send the copy of this order to the IBBI for information and further action, if any, called for in the matter with regard to the default on the part of the present IRP.
- vii. The new RP is directed to file status report in the progress of the CIRP after publication of EoI on or before next date of hearing.

**IVNP/5/KOB/2021:**

The applicant in IVNP/5/KOB/2021, who is an erstwhile Director and promoter of Platino Classic Motors (India) Private Limited, the Corporate Debtor in IBA/25/KOB/2020 has filed this application with a prayer to permit him to intervene in this IA (IBC)/ 109/ KOB/2021 and other reliefs.


In view of the aforesaid order in IA(IBC)109/KOB/2021 rejecting the prayer of the Interim Resolution Professional for liquidation of the Corporate Debtor, IVNP/5/KOB/2021 has become infructuous and thus stands disposed of.

Dated 18<sup>th</sup> November, 2021

Sd/-  
(Rajesh Sharma)  
Member (Technical)

Cimy

Sd/-  
(Ashok Kumar Borah)  
Member (Judicial)

Certified to be True Copy-  
  
Deputy Registrar  
National Company Law Tribunal  
Kochi Bench

23/11/2021

IA(IBC)/109/KOB/2021/1410

To

1. ✓ The Insolvency and Bankruptcy Board of India, New Delhi (with covering letter)
2. Shri. Reuben George Joseph, Registration No. IBBI/IPA- 001/IP-P-02134/2020-2021/13326, office at 37/2038, 1st Floor, Mangalathu Building, Muttathil Lane, Kadavanthra Ernakulam, Kerala ,682020 (Interim Resolution Professional-now appointed).
3. Shri Satiq Buhari, Red. No. IBBI/IPA-001/IP-P00758/2017-2018/11307, Sargeen Law Chamber, Mathrubhoomi Road, Vanchiyoor, Trivandrum – 695 035 (present IRP)

