



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority
under the Insolvency and Bankruptcy Code, 2016)
Court-II**

**IA No.405/2022
In
CP (IB) No.262/Chd/Hry/2018
(Admitted Matter)**

**Under Section 33(1) of the Insolvency
and Bankruptcy Code, 2016**

In the matter of:-

ARSEC (India) Limited
(Earlier M/s Volkswagen Finance Private Limited)
....Non-Petitioner/Financial Creditor

Vs.

Zenica Performance Cars Private Limited
...Non-Respondent/Corporate Debtor

And in the matter of IA No. 405/2022:-

Mr. Rajender Kumar Jain
Resolution Professional
In the matter of Zenica Performance Cars Private Limited
(Reg No. IBBI/IPA-001/IP-P00543/2017-18/10968)
SCO 818, 1st Floor, NAC Manimajra, Chandigarh-160101
...Applicant-Resolution Professional

Order delivered on: 25.04.2025

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. ASHISH VERMA, MEMBER (TECHNICAL)**

Present:-

For the ASREC (India) Limited :Ms. Usha Singh, Advocate
For the RP-Applicant :Mr. Viren Sharma, Advocate with Mr. R. K. Jain, RP in
person via video conferencing mode.
For the CoC Member-HDFC
Bank Ltd. :Mr. Manish Jain, Ms. Divya Sharma,
Mr. Siddhant Jain and Mr. Manan Jain, Advocates



Per: Harnam Singh Thakur, Member (Judicial)

Ashish Verma, Member (Technical)

ORDER

IA No. 405/2022

The present Application is being filed by Mr. Rajender Kumar Jain, Resolution Professional (RP) of **Zenica Performance Cars Private Limited** (Corporate Debtor) under section 33(1) of Insolvency and Bankruptcy Code, 2016 ('IBC') praying, *inter alia*, for initiation of liquidation of the corporate debtor and under Section 32A for de-attachment of property of Corporate Debtor attached under PMLA,2002 and to appoint RP Mr. Rajender Kumar Jain as liquidator of the Corporate Debtor, issue public announcement stating that the corporate debtor is in liquidation; require such order to be sent to the authority with which the corporate debtor is registered; on appointment of a liquidator all 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 as laid down in sub-section (2) of Section 34 of the Code, 2016.

2. The brief facts as stated in the application are as follows:-

2.1. This Adjudicating Authority vide order dated 22.03.2021 admitted the company petition i.e. CP (IB) No. 262 of 2018 filed by one of the financial creditor namely, Volkswagen Finance Private Limited for initiating Corporate Insolvency Resolution Process (hereinafter referred as CIRP) under the provisions of the Code against the Corporate Debtor vide order dated 22.03.2021 and inter-alia declared Moratorium and appointed Mr. Rajender Kumar Jain, Insolvency Professional having IBBI registration number IBBI/IPA-001 /IP-P00543/ 2017-18/ 10968 as the Interim Resolution Professional (hereinafter referred as to "IRP") of the



Corporate Debtor. The IRP took steps as envisaged under section 15, 17, 18, 19, 20 and 21 of the Code read with underlying rules and regulations and in terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (“CIRP Regulations”), the Interim Resolution Professional made a public announcement in FORM-A in the newspapers i.e. Financial Express - English Language and Jansatta - Hindi Language on 25.03.2021, for inviting claims from creditors. In terms of Regulation 6 (2) (c), the last date for submission of proof of claim was specified as 07.04.2021. A copy of the public announcement was duly uploaded on the website of the Insolvency and Bankruptcy Board of India (IBBI). A copy of Form-A dated 25.03.2021 as uploaded on IBBI website is annexed as **ANNEXURE A-2** of the Application. The Committee of Creditors (hereinafter referred as to “CoC”) was constituted consisting of Financial Creditors and report on constitution of CoC was filed by the IRP before this bench on 13.04.2021.

2.2. The IRP proposed an agenda with regard to the appointment of Resolution Professional in 1st meeting of CoC which was held on 20.04.2021. In due course of discussions and deliberation upon this agenda, representative of HDFC Bank accentuated that since the operations of the Corporate Debtor are closed and no assets are available with the Corporate Debtor, it would be better to move forward for liquidation of the Corporate Debtor whereas, the representative of Volkswagen Finance Private Limited mentioned that they had obtained a quote from another Resolution Professional, so they intend to replace the IRP. After due deliberations. Members of CoC decided that the matter be deferred and be taken up in the next CoC meeting. The IRP got confirmed / ratified as Resolution Professional (hereinafter referred to as the RP) following the decision of CoC members in the 2nd meeting of



Committee of Creditors held on 18.05.2021 through the mode of E-voting which was concluded on 02.06.2021.

2.3. Even after the last date for submission of claims i.e. 07.04.2021, the applicant herein had received several claims from the creditors of the Corporate Debtor. Accordingly, in compliance with the provision of section 25(2)(e) of the code read with regulation 12 (2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the RP reconstituted the Committee of Creditors on 13.05.2021. Copy of reconstitution report of CoC on 13.05.2021 have been enclosed hereto and marked as **ANNEXURE –A-6**. The registered valuers were appointed with the class of assets is as below:

Sr. No.	Name of the Valuer	Asset Class
1.	Sachin Goel (GTech Valuers Private Limited)	Land & Building
2.	Dhiraj Jaiswal	Land & Building
3.	Shagun Gupta	Securities and Financial Assets
4.	Deepak Mangal	Securities and Financial Assets
5.	Mr. Abhay Kumar	Vehicles
6.	Mr. Anubhav Aggarwal	Vehicles

Further, it is submitted that since there is no plant and machinery available at the site of Corporate Debtor, therefore, no registered valuer was appointed by the IRP for the valuation of Plant & Machinery. The registered valuers submitted their valuation report to the RP as per regulation 27 of IBBI (CIRP) Regulations, 2016 on the dates given below:



Sr. No.	Name of the Valuer	Asset Class	Report Submitted on
1.	Sachin Goel (GTech Valuers Private Limited)	Land & Building	23.09.2021
2.	Dhiraj Jaiswal	Land & Building	18.09.2021
3.	Shagun Gupta	Securities and Financial Assets	20.09.2021
4.	Deepak Mangal	Securities and Financial Assets	06.09.2021
5.	Mr. Abhay Kumar	Vehicles	21.08.2021
6.	Mr. Anubhav Aggarwal	Vehicles	02.09.2021

2.4. The Resolution Professional prepared the information memorandum on the basis of information & documents received by him from the erstwhile management of the corporate debtor and the same has been shared with those members of Committee of Creditors who have submitted confidentiality undertaking. The Form – G i.e. Invitation for Expression of Interest has not been published by the RP since the same was not approved by the members of CoC in their 3rd CoC meeting convened by the RP on 17.06.2021 even after the creditors were informed by the RP that it is a statutory process in accordance with the provisions of IBC, 2016 with underlying rules and regulations and it is RP's duty to publish the same. However, the members of the COC did not appreciate the request of the RP and decided to liquidate the corporate debtor. Thereafter, an appeal was filed by Mr. Rashpal Singh Todd (Member of suspended Board of Directors) bearing Company Appeal No. 312/2021 before the Hon'ble NCLAT contesting the CIRP admission order dated 22.03.2021 and prayed for quashing of the said order. The said appeal was listed for hearing on 27.07.2021 whereby the CoC was directed that ***“Liquidation agendas cannot be moved or the CoC has to maintain status quo as it exists today till this appeal get disposed of”***. The said appeal



got dismissed by the Hon'ble NCLAT and the stay from the liquidation proceedings has been vacated vide its final order dated 10.02.2022.

2.5. The RP has appointed M/s M K Aggarwal & Co., Chartered Accountants, New Delhi as the transaction/ forensic auditor to conduct the transaction/ forensic audit of the Corporate Debtor for a period of 5 years i.e. from 01.04.2016 up to insolvency commencement date i.e. 22.03.2021 to which members of CoC were of opinion that the RP should re-negotiate with the auditor for extension of the Transaction/ Forensic audit period starting from 01.04.2014 and up to insolvency commencement date i.e. 22.03.2021. Accordingly, the RP re-negotiated with the transaction/forensic auditor for extension of the transaction/ forensic audit period and upon the request of the RP, the Auditor agreed to conduct the audit for the requisite time period. The fee of the transaction/ forensic auditor was ratified by the members of CoC. Further, the RP in 5th CoC Meeting apprised to the member of CoC that the prescribed period of 180 days of CIRP as per the code were going to expire on 18.09.2021. Thereafter, in pursuance to the direction given by the creditors in the 5thCoC Meeting, the RP had filed an application bearing IA No. 518/2021 for seeking an extension for a further period of 90 days of CIRP period starting from 18.09.2021. The said application vide order dated 07.03.2022, got disposed of by this Adjudicating Authority by mentioning that ***“In view of the order of status quo passed by the Hon'ble NCLAT and in the interest of justice, period of 90 days w.e.f. 10.02.2022 is extended beyond the period of 180 days”***.

2.6. In the 9th CoC Meeting held on 16.12.2021, the RP updated the status of various applications/ appeals filed before the Hon'ble NCLT/ NCLAT and thereafter it was put forward before the members of CoC that the RP is in receipt of a summon in the matter of **Directorate of Enforcement Vs. Zenica Performance Cars Private Limited & Ors.** to mark



his presence before the Hon'ble Court of Additional Sessions Judge (PMLA), Tis Hazari Court, New Delhi.

2.7. In the 11th CoC meeting held on 17.02.2022 as adjourned to 21.02.2022, the RP apprised to the members of CoC that the Hon'ble NCLAT pronounced the order in the appeal filed by the ex-director (312/2021) wherein the Hon'ble NCLAT dismissed the said appeal and the stay to pursue the liquidation proceedings of the Corporate Debtor has been vacated. After detailed discussions and deliberation, the members of CoC opined to file an application for initiation of liquidation of the Corporate Debtor. Accordingly, the resolution for liquidation was put for e-voting and the members of CoC approved this resolution by 95% voting share and authorized the RP to take further necessary actions. Resolution approved by the members of CoC is reproduced hereunder:

“RESOLVED THAT the CoC hereby resolves to liquidate the Corporate Debtor under the provisions of section 33 of IBC, 2016 due to the reason that there are no operations in the company and hardly any assets, and therefore no possibility of its revival. Further the CoC authorizes the Resolution Professional Mr. Rajender Kumar Jain to move an application under section 33 on behalf of the CoC for obtaining an order for liquidation of the Corporate Debtor from Adjudicating Authority.”

Further in the aforesaid meeting, the RP proposed the resolution for appointment of Mr. Rajender Kumar Jain as Liquidator along with the resolution of filing an application to liquidate the Corporate Debtor. Thereafter the said resolution was also passed by the creditors through E-Voting by 84% voting. Resolution approved by the members of CoC in this regard is reproduced hereunder:

“RESOLVED THAT Mr. Rajender Kumar Jain, be and is hereby appointed to act as Liquidator in the matter of M/s Zenica Performance Cars Private Limited subject to approval of Adjudicating Authority.”



Further, in 11th CoC Meeting, the RP informed to all the CoC Members that he has received final transaction/forensic audit report from the auditor on 22.12.2021. Earlier, a draft report was received on 19.08.2021 and after incorporating some updated information, another draft report was received on 09.11.2021. However, the auditor deleted all the qualifications mentioned in the 1st Draft report. Thereafter, the Auditor was called in the meeting to explain the reasons for removal of all the qualifications. However, no changes as discussed in CoC Meetings have been incorporated in the audit report by the auditor. Thereafter, due deliberations were held upon this and the CoC Members decided that they are not satisfied with the present report submitted by the Transaction cum Forensic Auditor. Therefore, they were of the opinion that a fresh appointment to be made of in replacement of the present transaction cum forensic auditor and the CoC passed the necessary resolution in this regard and accord their consent to appoint M/s B M Varma & Co as the Transaction cum Forensic Auditor. Copy of the minutes of 11th CoC Meeting has been enclosed as **ANNEXURE – A-12** with the Application

2.8. In 12th CoC Meeting held on 13.04.2022 as adjourned to and held on, 18th April, 2022, the Applicant again put forward some of the agendas with respect to the liquidation proceedings of the Corporate Debtor which were not approved by the members of Committee of Creditor with requisite voting rights therefore, the same were put up for e-voting again. After detailed discussions, it was decided that the agenda will be put on e-voting and all the members will endeavour to complete the e-voting within 2-3 days so as to save time. The Applicant started E Voting on 22.04.2022 (Friday) at 11:00 AM and e-voting window remained open till 11:00 A.M. on 25.04.2022, Further at the request of Federal Bank Limited, the voting



period is extended till 29th April, 2022 by 5:00 P.M wherein the remaining liquidation agendas were approved by the members of Committee of Creditor with requisite voting rights.

2.9. As regards the action taken by the Enforcement Directorate against the Corporate Debtor, It is submitted that HDFC Bank Limited, one of the Financial Creditors has filed a writ petition bearing No. 10242/2019 challenging the provisional attachment of mortgaged properties by Directorate of Enforcement vide its order dated 16.10.2019, and the Hon'ble Delhi High Court, as an interim measure, was pleased to allow the bank to take steps towards the sale of the properties in question. However, it was made clear by the Hon'ble High Court that the bank shall not finalize the transaction without seeking prior approval of the High Court. Pursuant to the direction, the HDFC Bank Limited had filed an IA seeking bearing No. 10048/2019 before Hon'ble Delhi High Court seeking permission to sell both commercial properties under private treaty under the provisions of SARFAESI Act. The RP was also made a party in the said matter. During the hearing dated 04.06.2021, the factual position with respect to the Zenica Performance Cars Pvt Ltd's admission into Insolvency was apprised before the Hon'ble Delhi High Court and the matter is subjudice before Hon'ble Delhi High Court. The Hon'ble Delhi High Court till date, has not dealt with the issue of attachment of Corporate Debtor's property.

2.10. It is further submitted that the following applications are pending with this Adjudicating Authority for disposal:

1. **Application u/s 19(2)**: The Resolution Professional has filed an application under section 19(2) read with section 60(5) and section 70 of Insolvency and Bankruptcy Code, 2016 read with rule 11 of the NCLT Rules, 2016 bearing IA No. 387/2021 against the Directors of the Corporate for non-cooperation to give



directions to the respondents to cooperate and give access to all documents and details of the Corporate Debtor.

2. **Application u/s 45**: The Resolution Professional has filed an application bearing IA No. 647/2021 before this Hon'ble Tribunal titled as ***Mr. Rajender Kumar Jain, Resolution Professional of M/s Zenica Performance Cars Private Limited Vs. Rashpal Singh Todd &Ors.*** with respect to the undervalued transactions.

3. **Application u/s 60(5)**: This application has been filed by the RP titled as ***Mr. Rajender Kumar Jain, Resolution Professional of M/s Zenica Performance Cars Private Limited Vs. Dhingra Motors Private Limited &Ors.*** for issuance of necessary directions to respondent to pay differential rent amounting to INR 54,79,263/- (Fifty-Four Lakh Seventy-Nine Thousand Two Hundred Sixty-Three Only).

4. **Application u/s 60(5)**: This application has been filed by the RP against the sole respondent namely, Monika Infrastructure Private Limited for issuance of necessary directions to allow the RP to tangibly move and shift cars owned by the Corporate Debtor from the basement of the tower owned by the respondent.

5. **Application u/s 66**: This application has been filed by the RP u/s 66 with respect to the fraudulent transactions and the said application is yet to be listed before this Adjudicating Authority.

3. The short note has been filed vide Dairy No. 00840/2 dated 09.09.2022 in compliance of the order dated 15.07.2022 of this Adjudicating Authority wherein it is stated that the corporate debtor has the following assets:



- a. Land situated at village Khandsa, Tehsil & Distt. Gurgaon, Haryana.
Khwat no
603 Khata no 730 Khasra no 1171/1 min (0-6-6), Khwat no 878 Khata no
1050 Khasra no 1170/2 min (0-8-16) & Khwat no 459 Khata no 575
Khasra no 1169 (0-15-4), Measuring 3831.835 sqm 0.947 acres
(Industrial). (Freehold- Hypothecate with J&K Bank).
- b. At Tapasya Corporate Height, Golf course Road, Sector 53, Tehsil & Distt.
Gurgaon, Haryana. (Commercial) Measuring Unit no (G-01) 8299 sq ft
covered area & Unit no (F-01) 5173 sq ft covered area with 13 car parking
in the basement. (Freehold- Hypothecate with HDFC Bank)

Further, it is stated that corporate debtor is not a going concern and there are no operations in the corporate debtor, the compliance under Regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was not required.

4. The short note on behalf of Resolution Professional has been filed vide Dairy No. 00840/3 dated 29.12.2022 wherein it is stated that the sale of assets as per Regulation 32 of the CIRP Regulations was rejected in the 12th CoC meeting held on 23.03.2022 via e-voting, with 57.56% voting share. The relevant extract from the minutes of the 12th meeting is reproduced herein below for ready reference:

"AGENDA ITEM NO-12.11
TO CONSIDER FOR RECOMMENDATION OF THE SALE OF ASSETS,
ETC UNDER CLAUSE (a) to (d) OF REGULATION 32 OF IBBI
(LIQUIDATION PROCESS) REGULATIONS, 2016
The agenda seeking approval of the sale of assets, etc under clause (a) to
(d) of regulation 32 of IBBI was put to e -vote for the members. The e-voting
result is as follows:



S. NO.	NAME OF MEMBER	VOTING SHARE	VOTING IN FAVOUR	VOTING AGAINST	ABSTAIN
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1.	<i>HDFC Bank Limited</i>	57.56	-	57.56	-
2.	<i>Jammu and Kashmir Bank Limited</i>	26.00	26.00	-	-
3.	<i>Volkswagen Finance Private Limited</i>	11.58	11.58	-	-
4.	<i>The Federal Bank Limited</i>	4.86	4.86	-	-
	<i>Total</i>	100	42.44	57.56	-

The resolution was put forward for voting and was not approved by the members of Committee of Creditor with requisite voting rights. Therefore, in view of the above, the Applicant, also the proposed Liquidator, and the CoC have considered, under Regulation 39C of CIRP Regulations, and decided to attempt a sale as a going concern in terms of Regulation 32 (e) and (f) before moving forward to liquidate the Corporate Debtor in terms of Regulation 32 (a) to (d).

5. The short note on behalf of Resolution Professional has been filed vide Dairy No. 00840/4 dated 01.06.2023 wherein it is stated during 11th meeting of CoC dated 17.02.2022, the agenda for liquidation of corporate debtor was approved by members of CoC with 95.14% of voting share rights. Further, it is stated that the agenda to appoint Mr. Rajender Kumar Jain as liquidator was approved by member of CoC with 86% of voting shares. During the twelfth



meeting of CoC dated 18.04.2022 (originally scheduled on 13.04.2022 and adjourned to 18.04.2022), the Applicant/RP in compliance of Regulation 39B of IBBI (CIRP) Regulations, 2016 apprised the members about the provisions and put forth the following agendas for voting and same have been approved by CoC as follows:-

S.No.	Regulation	Resolution passed (Ad verbatim)	Agenda item no	approved by Voting share rights (in percentage)
1.	Regulation 39 B (1) of IBBI (CIRP) regulations 2016	<i>"RESOLVED THAT, the COC hereby approves the estimated liquidation cost amounting to Rs. 2,689,146/- , detailed as per Annexure No. 12.06 , attached with minutes and as per the provisions of Regulation 2 of IBBI (Liquidation Process) Regulations 2016</i>	12.06	100%
2.	Regulation 39 B (2) of IBBI (CIRP) regulations 2016	<i>"RESOLVED THAT, the COC hereby approves the estimated value of liquid assets of Corporate Debtor amounting to Rs. Nil to meet liquidation costs, as per regulation 39 B (2) of IBBI (CIRP) regulations 2016."</i>	12.07	100%
3.	Regulation 39 B (3) of IBBI (CIRP) Regulations 2016	<i>"RESOLVED THAT, the COC hereby approves the estimated value of liquid assets of Corporate Debtor amounting to Rs. Nil to meet liquidation costs, as per regulation 39 B (2) of IBBI (CIRP) regulations 2016."</i>	12.08	100%
4.		<i>"RESOLVED THAT, the COC hereby approves that a designated escrow account be opened and maintained in any member bank within seven days of passing of the liquidation order and the contributions as mentioned in the plan be deposited in the said escrow account."</i>	12.09	100%
5.		<i>RESOLVED THAT, the COC hereby approves that a designated escrow account be opened and maintained in any member bank for depositing the proceeds of liquidation of Corporate Debtor".</i>	12.10	100%

**LIQUIDATION COST:**

In the above-mentioned agenda, the liquidation cost was approved by the CoC as follows -

*Liquidation Cost as per Regulation 4 is separate.				
Estimated Liquidation Cost*				
S.No.	Particulars	Expenses (monthly)	Expenses (onetime)	Total (Inclusive ofGST)
1.	Liquidator Professional fee (3months)	118,000	-	354,000
2.	Publication expenses (approximately 5 insertions) including invitation of claims and for compromise scheme if it is there	-	200,000	200,000
3.	Tour & Travelling(for 6 months)	5,000	-	30,000
4.	Security Expenses (For 6 months)	56,640	-	339,840
5.	E-voting –Approximately 6	5,900	-	35,400
6.	Application Filing Charges (with NCLT)of all the applications	-	150,000	150,000

	1.LiquidationApplication- Rs.1,00,000/-			
	2.OtherApplication- Rs.50,000/-			
7.	Record Keeping (for 8years)	-	200,000	200,000
8.	Miscellaneous expenses	-	50,000	50,000
	TOTAL	185,540	600,000	1,359,240

The brief summary of total estimated cost is as follows:-
i. Estimated Liquidation cost=Rs. 13,59,240/- Plus fee of Liquidator as per Regulation 4 of IBBI (Liquidation Regulation) , 2016
ii. Unpaid CIRP incurred and to be incurred=Rs. 739,906/-
iii. RP Fee=Rs. 590,000/-
iii. Grand Total= Rs. 2,689,146/-



During the twelfth meeting of CoC dated 18.04.2022 (originally scheduled on 13.04.2022 and adjourned to 18.04.2022), the Applicant/RP in compliance Regulation 39D of IBBI (CIRP) Regulations, 2016 apprised the members about the provisions and the members of CoC after deliberations, approved the agenda (item no. 12.12 of minutes of meeting) pertaining to the fee of the liquidator as per Regulation 39 (D) of IBBI (CIRP) Regulations 2016. The relevant extract is reproduced herein below for ready reference of this Hon'ble Tribunal: -

"fee at the rate of Rs. 1, 00,000 /- plus GST for the first three months of the Liquidation period w.e.f. the date of the Hon'ble NCLT's order of Liquidation of the Corporate Debtor shall also be paid to the Liquidator which shall be over and above the fee specified in the Regulation 4 of IBBI (Liquidation regulations) 2016 read along with Regulation 39 (D) of IBBI (CIRP) Regulations 2016"

Therefore, the Resolution Professional/ the proposed Liquidator placed the Agendas and the COC has approved liquidation cost, estimated value of liquid assets, plan for providing for contribution for meeting the difference of liquidation cost and value of liquid assets during the twelfth meeting of CoC dated 18.04.2022.

6. The additional documents including the minutes of the 13th, 14th and 15th meeting have been placed on record vide IA No. 891/2024 vide Dairy No. 01097 dated 27.03.2024.

7. The affidavit on behalf of Resolution Professional has been filed in compliance of order dated 07.10.2024 vide Dairy No. 00840/6 dated 14.10.2024 wherein it is deposed that the applicant prepared the Balance Sheet of Corporate Debtor as on 22.03.2021 based on the information/date/records pertaining to the corporate debtor available with the applicant. Thereafter, the applicant prepared the reconciliation statement between the last audited balance sheet for the FY 2016-17, Balance sheet as on CIRP date and assets considered in the valuation reports to identify the missing assets in the matter of corporate debtor. The applicant



has further bifurcated the transactions provided in the PUFЕ applicants into missing assets and other transactions.

8. The affidavit on behalf of Resolution Professional has been filed in compliance of order dated 09.12.2024 vide Dairy No. 00840/7 dated 06.01.2025 wherein it is deposed that the Applicant convened the 24th COC meeting on 11.12.2024, wherein the agenda with regard to the missing assets and the view of the COC with regard to the Liquidation Application was placed before the COC members. The following Resolution was placed before the COC members for voting:

"Resolved that, the Committee members are aware of the pending PUFЕ application which involves certain missing assets as per the last available balance sheet and authorise HDFC Bank to file an affidavit stating the view of the COC Members to adjudicate/ decide liquidation application irrespective of pendency of PUFЕ Applications so that steps can be taken to realise assets in possession of the Resolution Professional.

Further Resolved That, the Committee members thereby authorize HDFC Bank, one of the Financial Creditors to file a affidavit on for and on behalf of all the Committee members before the Hon'ble NCLT, Bench Chandigarh"

The said Resolution was placed for voting before the COC members which concluded on 27.12.2024 at 6 pm and the Resolution was approved with 100% voting share by all COC members. Copy of the minutes of the 24th COC meeting convened on 11.12.2024 along with the voting results are attached as Annexure A-2 of the affidavit. Thereafter, the Applicant convened the 25th COC meeting in the matter of the Corporate Debtor on 30.12.2024 wherein the COC members once again deliberated on the issue in view of the Order passed by the this Adjudicating Authority and the COC members reiterated the stand as resolved in the last COC meeting unanimously with 100% voting share. Copy of the minutes of the 25th COC meeting convened on 30.12.2024 are annexed herewith and marked as ANNEXURE A-3. In view of the aforementioned facts and circumstances, the COC members are of the opinion that the



Liquidation Application be adjudicated irrespective of the pendency of the PUFÉ Applications so that steps can be taken to realise the assets in possession of the Resolution Professional in terms of Section 18 and Section 25 of the Code.

9. The compliance affidavit has been filed on behalf of CoC in terms of order dated 09.12.2024 vide Dairy No. 00840/8 dated 07.01.2025 wherein it is stated that the RP convened the 24th CoC Meeting of the Corporate Debtor on 11.12.2024, wherein the CoC took note/cognizance of the missing assets of the corporate Debtor as on the CIRP date and assets as per the last balance sheet of the Corporate Debtor under Agenda Item 24.11 to 24.12. Further, it is stated that in the 24th CoC Meeting, the coc members have collectively authorized HDFC Bank Ltd. to file the present affidavit on behalf of the CoC in terms of the order dated 09.12.2024. The said resolution has been passed under Agenda Item 24.13. A copy of the e-voting result of the 24th CoC meeting is annexed as ANNEXURE A-3 wherein it was *inter alia*, discussed that the assets available as per the last audited balance sheet and the assets which were handed over to the RP or not by the corporate Debtor and accordingly, an application has already been submitted to the Bench stating specifically which assets are missing and which have been made a part of the PUFÉ application.

10. The short written submissions have been filed vide Dairy No. 00840/09 dated 13.03.2025 on behalf of the Resolution Professional reiterating the above-mentioned facts.

11. Now, coming to the merit of the application, before considering the prayer, we would like to refer the Section 33(2) of IBC and the relevant provision is reproduced below:

"Section 33(2): 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 percent, 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).

[Explanation. - For the purpose of this sub-section, it is hereby declared that the Committee of Creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of Section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

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

13. The Ld. counsel appearing for the liquidator submits that the CoC in its 11th Meeting held on 17.02.2022 resolved to liquidate the corporate debtor and the said resolution has been passed with 95.14 per cent voting share by the members of the CoC. Further, it is submitted that the CoC in its 11th meeting dated 17.02.2022 has approved the name of Mr. Rajender Kumar Jain, Insolvency Professional having IBBI registration number IBBI/IPA-001 /IP-P00543/ 2017-18/ 10968 as liquidator. However, in view of the guidelines dated 18.07.2023 issued by the Insolvency and Bankruptcy Board of India, Mr. Navneet Gupta bearing Registration No. IBBI/ IPA-001/ IP-P00361/ 2017-18/ 10619, Mobile No.- 9814333213, email Id:- navguptaca@gmail.com is hereby appointed as liquidator from the list provided by the Insolvency and Bankruptcy Board of India; subject to his written consent to be filed within 7 days of this order. The law research associate of this Adjudicating Authority has checked the credentials of Mr. Navneet Gupta and nothing adverse has been found against him. In terms of the above, the corporate debtor is ordered to be liquidated and Mr. Navneet Gupta is appointed as liquidator of the Corporate Debtor. He is directed to carry out the liquidation process inter alia in terms of the following directions:



- i. The Corporate Debtor shall be liquidated with immediate effect as on date of this order in the manner provided under Chapter III, Part II of the IBC 2016 and other relevant rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date, enjoined upon him.
- ii. The liquidator is directed to take custody and control of the assets, property of the Corporate Debtor with immediate effect and make 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;
- iii. The provisions of sections 33 (5), (6), and (7) of the IBC, 2016 shall come into force with immediate effect. The Order of Moratorium passed under section 14 of the Code shall cease to have its effect, and a fresh Moratorium under section 33(5) of the Code shall commence;
- iv. This Order shall be deemed to be a notice of discharge to the officers, employees, and workmen of the Corporate Debtor as per section 33(7) of the Code;
- v. 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;



- vi. The Liquidator shall file regular progress reports as per Regulation 15 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016, every fortnightly thereafter;
- vii. The Liquidator shall take necessary legal action to recover the trade receivables and other credits, such as loans and advances from the parties, which are reflected in the latest Balance Sheet of the Corporate Debtor, if any. This direction is hereby given in concurrence with the jurisdiction prescribed under section 33(5) of the Code;
- viii. On initiation of the liquidation process but 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, as provided in section 33(5) of the Code read with its proviso;
- ix. That all the powers of the Board of Directors, key managerial personnel, of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator;
- x. 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;



- xi. The liquidator will be entitled to the protection of action taken in good faith as per the provisions of section 233 of the Code;
- xii. The Liquidator is directed to make efforts to trace the missing assets in the process of Liquidation;
- xiii. The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file a suitable application before this Adjudicating Authority.
- xiv. The liquidator shall make efforts for the sale of the assets of the Corporate Debtor in the manner as provided in the provisions of Regulation 32 read with Regulation 32A of IBBI (Liquidation Process) Regulations, 2016;
- xv. No action shall be taken against the property of the Corporate Debtor in relation to the offence committed prior to the commencement of the Corporate Insolvency Resolution Process of the Corporate Debtor, under section 32A(2) of the Code;
- xvi. The Liquidator is directed to investigate the financial affairs of the Corporate debtor in terms of the provisions of section 35 (1) of the Code read with relevant rules and regulations and also file its response for disposal of any pending Company applications during the process of liquidation;
- xvii. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities that govern the Corporate Debtor, the liquidator shall also duly intimate about the order of liquidation;



- xviii. The Registry is directed to communicate a copy of the Order to the Corporate Debtor immediately;
- xix. A copy of this order should be sent by the Registry to the concerned Registrar of Companies for updating the Master Data. After updating Master Data, the Registrar of Companies shall send a compliance report to the Registrar, NCLT, within a period of 30 days;
- xx. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record;
- xxi. The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.
14. Although Resolution Professional has sought relief under Section 32A of the Code for de-attachment of property of Corporate Debtor attached under PMLA,2002. However, this relief cannot be granted as the provisional attachment of mortgaged properties has been done under the order dated 16.10.2019 passed by the Director of Enforcement, therefore, the applicant is at liberty to approach the Hon'ble Delhi High Court where the matter regarding sale of attached property is stated to be pending.
15. The CoC has stated that the fee of the Liquidator, as rectified by CoC in its 12th meeting held on 08.04.2022, would be payable in terms of the provisions of Section 34 (7) of the IBC, 2016 read with Regulation 4 of IBBI (Liquidation Process) Regulation 2016.
16. Thus, IA No.405/2022 is allowed and stands disposed of accordingly.

Sd/-

(Ashish Verma)
Member (Technical)

April 25, 2025

Tamanna

Sd/-

(Harnam Singh Thakur)
Member (Judicial)