

**THE NATIONAL COMPANY LAW TRIBUNAL**

**COURT VI, NEW DELHI**

**I.A. 3609/2022**

**IN**

**Company Petition No. (IB) – 1499/(PB)/2019**

*Under Section 60(5) of the Insolvency and Bankruptcy  
Code, 2016.*

**IN THE MATTER OF:**

**GIRISH KUMAR SAINI**

.... PETITIONER

**VERSUS**

**M/S RS AJIT SINGH AND CO (AUTOMOTIVES) PVT LTD.**

..... CORPORATE DEBTOR

**AND IN THE MATTER OF-**

**ROHIT SEHGAL**

Liquidator of the Corporate Debtor

.... APPLICANT/LIQUIDATOR

**CORAM:**

**SHRI. MAHENDRA KHANDELWAL, HON'BLE MEMBER  
(JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER  
(TECHNICAL)**

**PRESENT:**

**For the Liquidator/ Applicant:** Mr. Shashwat Anand, Mr. Shashwat Parihar, Mr. Dhruva Vig and Ms. Shruti Goyal, Advs.

## **ORDER**

**PER- MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**

**Order Pronounced on: 18.01.2024**

1. This application has been filed under Section 60(5) of the Code seeking directions for auctioning of the vehicles lying in the premises of the sister concern of the Corporate Debtor (hereinafter referred to CD).

2. The applicant in the present application has prayed for the following reliefs: -

*a) Allow the present application*

*b) To grant permission to the Applicant/Liquidator for the e-auctioning of these dilapidated vehicles, currently in possession of the liquidator and lying at the premises of the sister concern of the Corporate Debtor.*

*c) Issue such other necessary order(s) as may be deemed fit in the matter.*

3. Briefly stated the facts of the case as mentioned in the instant application, which are necessary for adjudication, are as follows:

i. That this Adjudicating Authority vide order dated 31.07.2019 admitted the CP IB 1499/PB/2019 and

appointed Mr. Mohinder Singh as Interim Resolution Professional.

- ii. That in the first meeting of CoC, held on 02.09.2019, a resolution was passed to replace the IRP with Mr. Rohit Sehgal (the applicant herein). The same was confirmed by this Adjudicating Authority vide order dated 25.09.2019.
- iii. That pursuant to publication of Form G, no resolution plan was received till the last date of submission of Resolution Plan.
- iv. That in the 6<sup>th</sup> meeting of CoC, the members of CoC decided to initiate liquidation proceedings against the CD.
- v. The Adjudicating Authority vide order dated 26.06.2020 passed an order for initiation of the liquidation process of the CD and appointed the applicant as Liquidator in the matter.
- vi. That since the initiation of CIRP process, there were a few vehicles that were lying at the Nangli Poona Stockyard of the CD. These vehicles did not belong to the

CD and were of accidental / repair cases, brought for repair at the service center of the CD but the concerned legal owners did not pay any heed for collection of their respective vehicles.

vii. That the premises on which these vehicles were lying was on lease and had to be vacated, therefore these vehicles were shifted to premises of M/s Ajit Automotives Services Pvt Ltd. (Sister Concern of CD). The list of vehicles lying is mentioned below: -

1.	<b>Details of the vehicles on the premises of the Corporate Debtor.</b>	<ol style="list-style-type: none"> <li>1. Container VE Plus 20.16(NL 01Q 4365)- Eicher</li> <li>2. E2 Plus Truck (DL 1LR 8811)- Eicher</li> <li>3. Van Ecco(DL 8CW 3380)- Maruti Suzuki</li> <li>4. E2 Plus 10.75 Truck (DL 1LM 9844)- Eicher</li> <li>5. Pro 1059 Truck (MP 11TR AK 6209)- Eicher</li> <li>6. E2 Plus Truck(UP16AT 1088)(SCRAP)- Eicher</li> <li>7. Truck (DL1LG 9669)(SCRAP)</li> </ol>
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- viii. The Liquidator appointed two valuers to give their opinion on the value of these aforementioned vehicles. The value of these vehicles was estimated as 3.45 lakhs. The physical condition of these vehicles are deteriorating day by day. Also, the liquidator has incurred cost to get these vehicles removed /relocate from the warehouse of the CD to the current Noida premises belonging to M.s Ajit Automotive Services Pvt Ltd.
- ix. The liquidator has also incurred security expenses to safeguard these vehicles. These vehicles do not form part of Liquidation Estate. The cost incurred/to be incurred on these vehicles are as under:

Sr. No.	Particulars	Amount
1	Expenses incurred for shifting from Nangli Poona to NOIDA (Actual)	87,000
2	Security Expenses(Estimated from 01st July 2022 to 30th September 2022)	1,05,000
3	Sale Notice Publication & E-auction Charge (Estimated)	17,830
	<b>TOTAL</b>	<b>2,09,830</b>

- x. That since the initiation of CIRP, none of the owners of these vehicles got in touch with the RP / Liquidator
- xi. That in order to reach out to the owners of these vehicles, the liquidator made a public announcement in two newspapers namely -Financial Express (English) and Jansatta (Hindi) in Delhi- NCR dated 19.03.2022 urging the legal owners of the vehicles to contact the Liquidator for removal of their respective vehicles from the premises of the of the sister concern corporate debtor latest by 5:00 PM of 31.03.2022.
- xii. That pursuant to this Public Announcement, only one the legal owner (M/s Deep Travels) came forward and claimed the ownership of one vehicle having No. DL1PC4686 and produced the ownership document before the Liquidator and after due verification of such documents, the Liquidator handed over this vehicle to M/s Deep Travels on 20.05.2022.
- xiii. That the Liquidation Process of the CD is about to be completed and the Liquidator in lieu of its powers and

duties enshrined in section 35 of the Code will be auctioning rest of the remaining unsold assets of the CD.

xiv. That as per Regulation 46(2) of IBBI Liquidation Process Regulations, 2016, a Corporate Liquidation Account will be maintained by the IBBI wherein the liquidator shall deposit the amount of undistributed proceeds in a liquidation process into the Corporate Liquidation Account before he submits the final report prior to dissolution.

xv. That the Liquidator will be conducting the e-auction process of the vehicles lying on the premises of the Corporate Debtor in terms of the IBBI (Liquidation Process) Regulations, 2016.

xvi. In view of the abovementioned circumstances the Liquidator has sought permission of this Adjudicating Authority for the selling/auctioning of the dilapidated vehicles lying on the premises of the Corporate Debtor in terms of the IBBI (Liquidation Process) Regulations, 2016.

3. This Adjudicating Authority vide order dated 25.08.2023 directed the Applicant to serve notice to all the owners of the vehicles. The Liquidator in compliance of order dated 25.08.2023, served notice to all the owners of the vehicle and filed affidavit of service dated 15.09.2023. However, neither the owners nor the legal representative appeared on behalf of these vehicle owners.

4. We have gone through the application, documents on record and arguments advanced by counsels for the Liquidator.

5. A conjoined reading of Section 36 and Section 53 of the Code would show that the Liquidator can exercise his powers only in relation to the assets which are falling under sub-section (3) of Section 36 of the Code, and the distribution thereof is to be made only in respect of the assets which are falling under Section 36(3) of the Code

6. Section 36(4) of the Code provides the list of assets which are expressly excluded from the meaning of 'Liquidation Estate' under Sub-Section (4) of Section 36 of the Code. The same is reproduced as under: -

### **36. Liquidation Estate**

*(4) The following shall not be included in the liquidation estate asset and shall not be used for recovery in the liquidation: -*

*(a) Assets owned by a third-party which are in possession of the corporate debtor, including –*

***(i) assets held in trust for any third party;***

***(ii) bailment contracts;***

*(iii) all sums due to any workmen or employee from the provident fund, the pension fund and the gratuity fund;*

*(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and*

*(v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;*

7. From the bare reading of section 36 of the Code and on perusal of records, it is clear that the aforesaid vehicles do not form part of Liquidation Estate, however, these vehicles were lying at the premises of the warehouse of CD from the date of initiation of CIRP.

8. The public notice in Financial Express (English) and Jansatta (Hindi) was made 19.03.2022 urging the legal owners of the vehicles to contact the Liquidator for removal of their respective vehicles from the premises of the sister concern of corporate debtor latest by 5:00 PM of 31.03.2022. Further, individual notice was issued to each owner to appear

before this Adjudicating Authority, however, no one appeared on behalf of these owners.

9. Therefore, considering the peculiar facts and circumstances of the present case, because no one came forward to remove these vehicles from the premises, we deem it just to allow the Liquidator to e-auction these vehicles and recover the cost incurred by the Liquidator in managing these assets. After deducting this cost, the remaining proceeds shall be deposited to the Corporate Liquidation Account maintained by IBBI in accordance with Regulation 46 of the IBBI (Liquidation Process) Regulations, 2016.

10. IA 3609/2022 stands allowed in terms of the above.  
Let a copy of the order be served to the parties concerned.

**SD/-**

**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

**SD/-**

**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**