IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – II, CHENNAI

MA(IBC)/95(CHE)/2021
In
IBA/660/2019
(filed under Section 60(5) of The Insolvency and Bankruptcy Code, 2016)

In the matter of ***M/s. Automotive Coaches and Components Limited***

M/s. Agniti Industrial Parks Private Limited
No. 121/3, TTK Road, Manickam Avenue,
Alwarpet,
Chennai- 600 018 ... Applicant/Resolution Applicant

-Versus-

Mr. Subrata Maity
Resolution Professional
M/s. Automotive Coaches and Components Limited
B 202, Jai Gurudeo Complex,
Plot 16-19 & 21-25, sector 17, Kamothe,
Navi Mumbai - 410 209 ...Respondent

Along With

IA(IBC)/848(CHE)/2021
In
IBA/660/2019
(filed under Section 33(1)(a), 34(1) read with section 60(5) of The Insolvency and Bankruptcy Code, 2016)

Mr. Subrata Maity
Resolution Professional
Automotive Coaches and Components Limited
B 202, Jai Gurudeo Complex,
Plot 16-19 & 21-25, sector 17, Kamothe,
Navi Mumbai - 410 209 ... Applicant/Resolution Professional

-Versus-

Committee of Creditors
M/s. Automotive Coaches and Components Limited
C1&D6, SIPCOT Industrial Complex,
Gummidipoondi,
Thiruvallur - 601 201 ...Respondent

Along With

IA(IBC)/1035(CHE)/2021
In
IA(IBC)/848(CHE)/2021
In
IBA/660/2019
(filed under Section 60(5) of The Insolvency and Bankruptcy Code, 2016)

M/s. Agniti Industrial Parks Private Limited
No. 121/3, TTK Road, Manickam Avenue,
Alwarpet,
Chennai- 600 018 ... Applicant

-Versus-

1.Mr. Subrata Maity
Resolution Professional
M/s. Automotive Coaches and Components Limited
B 202, Jai Gurudeo Complex,
Plot 16-19 & 21-25, sector 17, Kamothe,
Navi Mumbai - 410 209

2.M/s. Automotive Coaches and Components Limited
C1&D6, SIPCOT Industrial Complex,
Gummidipoondi,
Thiruvallur - 601 201 ...Respondents

Along With
IA(IBC)/64(CHE)/2022
In
IBA/660/2019
(filed under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 Read with Rule 11 of NCLT Rules, 2016)

Mr. Jai Krishna Sudharsan
Suspended Director,
Automotive Coaches and Components Limited
F9/4, Vasant Vihar,
New Delhi - 110 057 ... Applicant/Suspended Director

-Versus-

Mr. Subrata Maity
Resolution Professional
M/s. Automotive Coaches and Components Limited
B 202, Jai Gurudeo Complex,
Plot 16-19 & 21-25, sector 17, Kamothe,
Navi Mumbai - 410 209 ...Respondents

CORAM

JUSTICE (RETD.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Suspended Director : G. Vaivara Subramanian, Advocate
For Resolution Applicant : Srinath Sridevan, Advocate
Resolution Professional : Venkata Sivakumar, PCA

Order pronounced on 18th March, 2022

COMMON ORDER

Per: **JUSTICE (RETD.) S. RAMATHILAGAM, MEMBER (JUDICIAL)**

Under Consideration are four separate Applications filed in the matter of ***M/s. Automotive Coaches and Components Limited*** seeking reliefs as follows,

MA(IBC)/95(CHE)/2021-

It is therefore prayed that this Hon'ble Tribunal be pleased to direct the Respondent herein to furnish details of the Resolution Process in terms of the Applicants representation dated 06.07.2021 and consequently direct the respondent to convene the CoC to consider all resolution plans received pursuant to, and in compliance with the RFRP dated 06.11.2020 within a time frame to be fixed by this Hon'ble Tribunal and thus render Justice

IA(IBC)/848(CHE)/2021-

1. *Order liquidation of the Corporate Debtor as per Section 33(1) (a) of the Insolvency and Bankruptcy Code, 2016.*
2. *Appoint the Applicant as the Liquidator under Section 34(1) of the Insolvency and Bankruptcy Code, 2016.*
3. *Pass such other further orders, as this Hon'ble Tribunal may deem fit and appropriate and thus render justice.*

IA(IBC)/1035(CHE)/2021-

A. *Implead the Petitioner herein as a Respondent in IA No. 848 of 2021 in IBA/660/2019.*
B. *Direct the Respondent herein to place the Applicant's Resolution Plan dated 05.07.2021 before the Committee of Creditors and inform the applicant on the decision taken by the committee of creditors on the Applicants Resolution Plan*

and pass such further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

IA(IBC)/1035(CHE)/2021-

a. *Allow the Applicant a fair Opportunity to submit their Resolution Plan in the interest of reviving the Corporate Debtor keeping in mind the lives of thousands of employees;*
b. *Direct the Resolution Professional to consider that the Corporate Debtor as an MSME as per the notification dated 01.06.2020 and to direct to apply for the MSME Certification for the Corporate Debtor;*
c. *Direct the Resolution Professional to allow the Applicant a period of 3 weeks from the date of MSME Certification for submission of Resolution Plan along with payment of Earnest Money Deposit and subsequently consider the Resolution Plan of the Applicant.*
d. *Pass such other order as the Tribunal may deem fit.*

2. Corporate Insolvency Resolution Process of M/s. Automotive Coaches and Components Limited

2.1 Originally an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred as the 'Code') was filed by the Financial Creditor viz., Bank of Maharashtra against the Corporate Debtor M/s. Automotive Coaches and Components Limited for initiation of CIRP on the grounds that the Corporate Debtor has defaulted in repayment of Rs. 77,47,49,205/- as on 31.10.2018. This Adjudicating Authority vide order dated 03.09.2019 had initiated Corporate Insolvency Resolution Process against the Corporate Debtor allowing maximum CIRP period of 330 days as per section 12(2) & 12(3) of the Code as on that date and had also appointed one Mr. Madurai Sundaram Sankar as the Interim Resolution Professional. Thereafter the applicant herein was appointed as the Resolution Professional vide order dated 27.11.2019 in MA/1262/2019 filed as per the CoC's decision.

2.2 Thereupon, the applicant herein had approached this Adjudicating Authority by way of Interim Application seeking extension and exclusion of CIRP time upon which this Adjudicating Authority vide order dated 07.04.2021 had excluded 206 days which fell during the covid19 lockdown period subsequently allowing the maximum period of 330 days the last date of completion of CIRP was 02.04.2021. However, due to the covid19 lockdown in the State another application for exclusion of the said period was filed.

2.3 The IRP had issued Form G dated 16.11.2019. During the 2nd CoC meeting held on 06.01.2020 the Committee has authorized the erstwhile Resolution Professional to reissue Form G by 13.01.2020. In the said meeting, discussions were carried out that the erstwhile Promoter Jai krishna Sudharsan had become Director of two Companies on 20.12.2018 i.e., after ACCL becoming an NPA. It was henceforth decided to conduct special audit to see whether any diversion of funds had taken place from ACCL to the other two Companies.

2.4 The Committee of Creditors during their 3rd meeting held on 06.02.2020 had resolved about filing of an application before this Adjudicating Authority for extension of CIRP period and that as discussed in the 2nd CoC meeting Form G was issued on 15.01.2020 with last date as 30.01.2020 for submission of EoI. Further Form G was reissued for the third time on 29.01.2020 with the last date as submission of EoI as 10.02.2020. It was further discussed that the audit against the suspended director shall commence after completion of the accounts in the upcoming days.

2.5 The Committee of Creditors during their 4th meeting held on 18.08.2020 had discussed that accounts till 30.09.2019 were completed and accounts till 31.03.2020 shall be completed once lockdown is lifted. Further discussions about the transaction audits were carried out. During the said meeting the Resolution Professional had reported about the 3 EoIs received out of which one was a verbal EoI. However, no EMD was deposited due to the lockdown existed. Subsequently, it was resolved to move before this Adjudicating Authority for obtaining suitable directions and permission to publish Corrigendum for bringing in more resolution applicants with an intention to maximize the realization to the stakeholders. Discussions to proceed for liquidation were made subsequently in the event of non-receipt of Resolution Plans.

2.6 The Committee of Creditors during their 5th meeting held on 25.09.2020 had discussed that upon finalization of the Bid Advisory process for the successful resolution and turnaround of the Corporate Debtor, the Resolution Professional shall file

Corrigendum to Form G and that the receipt of resolution Plan shall be completed by 31.12.2020.

2.7 The Resolution Professional during the 6th Committee of Creditors meeting held on 26.10.2020 had apprised that Form G was published and that the last date for receipt of EoI was 29.10.2020, which was acknowledged by the CoC. Discussions about fraudulent induction of two Directors carried out by the suspended director of the Corporate Debtor were made. The Resolution Professional further apprised about the application before this Adjudicating Authority for non-cooperation under section 19 of the code against the Suspended directors of the Corporate Debtor.

2.8 The Committee of Creditors during their 7th meeting held on 25.02.2021 had discussed on the 2 plans received one from *M/s. Zulaikha Motors Private Limited* and another one from *M/s. Agniti Industrial Parks Private Limited*, further which discussions on financial aspect of the plans were discussed and suggestions were made as to obtain better offer than the prospective applicants along with those applicants who have expressed their interest initially. The CoC in their 8th meeting held on 15.04.2020 upon consideration of the request of two prospective resolution applicants had allowed a period of seven days for submission of their resolution plan, finalizing three prospective resolutions applicants.

2.9 The Committee of Creditors during their 9th meeting held on 11.06.2021 was brought to know about the transaction based audit findings, for which suggestions were made to file necessary application before this Adjudicating Authority upon receipt of the final report. Thereafter the Resolution Plan submitted by Zulaikha Motors was discussed by the members with the representative of the proponent company, which was concluded by giving five days of time for submission of improved plan as the value quoted was lesser than the Liquidation Value. Finally the meeting was concluded that if Zulaikha Motors fails to enhance the amount of the plan as discussed, then the Corporate Debtor shall be put to vote for Liquidation.

2.10 The Committee of Creditors during their 10th meeting held on 01.07.2021 discussed on the three prospective applicants and the two plans received out of which both the value having been lesser than the liquidation value of the Corporate Debtor and both not being viable, the members suggested for one final opportunity for enhancement of their proposal failing which the members were about to discuss on the Liquidation of the Corporate Debtor.

2.11 The Committee of Creditors during their 11th meeting held on 07.07.2021 had resolved that '*Members hereby approve for filing* *an application for initiation of Liquidation process of Corporate Debtor as per section 33 of the IBC, 2016 as resolution plans received and discussed in CoC are far below the liquidation value.* Further, the CoC had resolved about appointment of the Applicant/Resolution Professional herein as the Liquidator along with fee as per regulation 4, IBBI (Liquidation Process) Regulations, 2016 and authorization to appoint a Legal representative for the purpose of filing application before this Adjudicating Authority. Following which e-voting was conducted on 07.08.2021 as discussed in the 11th CoC meeting. On perusal of the e-voting result annexed at pg. No. 160 of the typed set in IA(IBC)/848/(Che)/2021 it is seen that the sole CoC member had voted in favour of liquidation of the Corporate Debtor. In this event an application for liquidation of the Corporate Debtor was filed before this Adjudicating Authority vide IA(IBC)/848/(Che)/2021 on 18.08.2021.

3. M/s. Agniti Industrial Parks Private Limited had filed the application in MA(IBC)/95(Che)/2021 alleging that the Resolution Process of the Corporate Debtor was not conducted in a transparent manner and that the request letter about the details of the scrap and details about the other resolution applicants were kept in dark by the Resolution Professional. The applicant to the above mentioned application has alleged that the Resolution

Professional has acted in a manner detrimental to the Resolution Process of the Corporate Debtor. The applicant has alleged that he was still under the belief that his plan was under consideration till the date of filling this application. However, on mere perusal of the Minutes of the CoC meetings that too concretely the 10th and 11th CoC meeting minutes held on 01.07.2021 and 07.07.2021 respectively expresses the discussion and resolution passed by the members of the CoC based on their Commercial Wisdom to liquidate the Corporate Debtor, as the two plans available before them were lesser than the Liquidation Value and were not viable as well. The relevant portions of the minutes of above mentioned two meetings are extracted hereunder,

Minutes of 10th COC of ACCL held on 1st July'21

a) To approve to file an application for initiation of liquidation process of CD as per section 33 (1)(a) of the IBC Code 2016 and also approve fee and confirmation of name of liquidator to act as liquidator for conducting liquidation process of Automotive Coaches and Components Ltd

RP apprised again to CoC members that following PRAs have submitted their EOIs and Information Memorandum, RFRP document have been shared with them for submission of the Resolution Plan

SN	Name of Parties:	Remark
1	M/s Agniti Industrial Parks Pvt Ltd	1) EOI document received – meeting eligibility criteria 2) EMD amount of Rs. 5.00 Lacs received 3) Bid Security of Rs. 1.50 Crores deposited as per RFRP document 4) Resolution Plan submitted on 24.02.2021 5) Asked to Submit improved Resolution Plan
2	M/s Zulaikha Motors Pvt Ltd	1) EOI document received – meeting eligibility criteria 2) EMD amount of Rs. 5.00 Lacs received 3) Bid Security of Rs. 1.50 Crores not deposited as per RFRP document 4) Modified Resolution Plan submitted on 29.06.2021
3	M/s Hi-Esteem Pressing and Fabrication	1) EOI document received 2) EMD amount of Rs. 5.00 Lacs received 3) Bid Security of Rs. 1.50 Crores not deposited as per RFRP document 4) Resolution Plan not submitted

As suggested by CoC members, an opportunity has been provided to all the above PRAs to submit the Resolution Plan. Accordingly, M/s Agnity Industrial Parks Pvt Ltd and M/s Zulaikha Motors Pvt Ltd have submitted the resolution plans which was already forwarded to CoC members. RP further apprised that after discussion and rounds of negotiation with CoC members, the following financial proposal received from the PRAs.

kjbzkjKZKJjkkAXKJSXH	Zulaikha Motors Pvt Ltd	Agniti Industrial Parks Pvt Ltd
Date of Submission of Modified / Improved Resolution Plan	29.06.2021	24.02.2021 (Original date 08.12.2020)
Term of the Plan	30 Months	3 Months (90 days)
Total Financial Proposal	Rs. 27.00 Crores	Rs. 18.01 Crores
CIRP Expenses	Rs. 1.00 Crores	Rs. 0.30 Crores
Financial Creditors	Rs. 25.30 Crores	Rs. 15.01 Crores
Operational Creditors	Nil	Rs. 0.68 Crores
Workmen & Employees	Rs. 0.70 Crores	Rs. 2.00 Crores

Other Operational Creditors	*Nil*	*Rs. 0.02 Crores*
NPV of the Financial Proposal	**Rs. 22.36 Crores**	**Rs. 17.82 Crores**
Other Notes	**EMD / Bid Security of Rs. 1.50 Crores not deposited along with the Resolution Plan**	**EMD / Bid Security of Rs. 1.50 Crores deposited along with the Resolution Plan**

Since the value and NPV of the payment proposed in both the Resolution Plans were below the liquidation value and the both the plans are not viable, CoC members suggested RP to provide the final and last opportunity to both the PRAs to improve their offer. In case the above PRAs fails to submit the improved offer, CoC members shall discuss about the liquidation process of CD. RP acknowledge the suggestion of CoC members for giving final opportunity to both the PRAS

(4) To discuss the best estimate of liquidation cost and approval for contribution of meeting the liquidation cost over and above the liquid assets as per regulation 39 B of CIRP Regulation of IBC Code

COC members suggested RP to provide a note on the Estimated Payments during Liquidation before payment to Financial Creditor as per section 53 of IBC Code 2016 and summary of the Resolution Plan proposal for sending proposal to their higher ups for the decision on the liquidation process of CD. RP agreed to provide the same.

(5) To discuss and evaluate liquidation of CD as going concern as per regulation 39 C of CIRP Regulation of IBC Code

RP informed that the Union peoples have restricted the entry in the plant even for maintenance and cleaning activity. Further, due to local political influence, it is very difficult to start the operation. CoC members took note of the same.

(6) To discuss and apprise the sale of scrap at the ACCL Plant

RP informed that the scrap was to sold through sealed tender process approved by COC but since the union people and workers restricted the entry in the plant and not allowed to lift the scrap, the winning bidder was not able to get the possession of the stock. RP then informed to CoC members that in case the union people did not co-operate for lifting the stock and access to the plant, he shall file an application with Hon'ble NCLT to get suitable direction in this

E-Voting Result of 11th CoC Meeting-

VOTING MATTERS FOR THE 11th COC MEETING OF AUTOMOTIVE COACHES AND COMPONENTS Ltd:

Agenda 1: Approval for filing an application for initiating liquidation process against Corporate Debtor M/s Automotive Coaches and Components Ltd as per section 33 of the IBC Code 2016

RP informed during CoC meeting that the matter of status of resolution plan is apprised to CoC members in the tenth CoC meeting. an opportunity has been provided to all the above PRAs to submit the Resolution Plan. Accordingly, M/s Agniti Industrial Parks Pvt Ltd and M/s Zulaikha Motors Pvt Ltd have submitted the resolution plans which was already forwarded to CoC members. Since the value and NPV of the payment proposed in both the Resolution Plans were below the liquidation value and the both the plans are not viable. RP informed in the Eleventh CoC meeting that a detailed note on the Resolution Plans received with comparison of their NPV with the valuation is already sent to CoC members for their approval.

CoC members acknowledged the receipt of the note and informed that they have already sought approval from their office on the liquidation agenda and suggested to start the e-voting for its approval and filing application with Hon'ble NCLT.

The Resolution Professional IP Subrata M Maity has given consent to act as liquidator of corporate debtor.

The following resolution is approved in the CoC meeting for voting of the CoC members for filing an application with Hon'ble NCLT

Resolved that 'Members hereby approve for filing an application for initiation of liquidation process of CD as per section 33 of the IBC Code 2016 as resolution plans received and discussed in COC are far below the liquidation value.

Further resolved that having given his consent, to act as liquidator Insolvency Professional Mr. Subrata M Maity, IBBI Reg. No: IBBI/IPA-001/IP-P00884/2017-18/11481 is hereby appointed to act as liquidator for conducting liquidation process of CD with a fee as per the regulation 4 of Chapter II of liquidation process regulation of IBC Code 2016"

Further resolved that "RP Subrata Maity is hereby authorised to appoint legal counsel and is hereby authorised to make an application before Hon'ble NCLT for initiation of liquidation process of CD under section 33 of the IBC Code 2016"

Voting threshold limit – 66%

Voting details of CoC Member:

SN	Financial Creditors	% Share	Name of Representatives	Email Id	Mobile Number
1	Bank of Maharashtra	100.00%	Mr. Pragati Kumar	brmgr1446@mahabank.co.in	+919595098333

Under the said circumstances and from the above minutes it is evident that the CoC had discussed about the plan submitted by the applicant in MA(IBC)/95(Che)/2021 along with the other plan received, further with respect to the details of the other prospective applicants. As per the minutes of the 8th CoC meeting held on 15.04.2021 a final list comprising of three prospective resolution applicants were accorded and published. The extract of the same is placed below:

(4) **Declaration of Provisional list and final list of PRA**
RP apprised the members that he has received the EOI from M/s Zulikha Motors and M/s Hi-Esteem Pressing and Fabrication and their name in included in the provisional list and on receipt of the documents of eligibility, a final list is published including their name. The final list of PRA includes following:

1. Agniti Industrial Parks Pvt Ltd
2. Zulikha Motors
3. Hi-Esteem Pressing and Fabrication

The Information Memorandum and RFRP document is shared with them and a resolution plan is expected from both the parties. The members acknowledged the information.

The plans received were rejected as it was not viable as a consequence to which, the CoC has preferred liquidation.

The details about the materials sold, if any, as requested by the applicant, it is evident that no such sale had taken place as on date of the request letter. Further, the CoC, during their 11th meeting on 07.07.2021 had only resolved about the final offer for the scrap sale following which LOI was directed to be issued.

Accordingly, the application in ***MA(IBC)/95/(Che)/2021*** sans merits and hence stands ***Dismissed***.

4. The application in IA(IBC)/1035(Che)/2021 in IA(IBC)/848(Che)/2021 was filed seeking the applicant M/s. Agniti Industrial Parks Private Limited to be impleaded in IA(IBC)/848(Che)/2021 and to direct the Resolution Professional to place the improvised plan submitted on 05.07.2020 before the CoC and accordingly communicate the decision of the CoC to the Applicant. The application was filed on 27.10.2021 which is very well after the date of filing of the application for liquidation with 100% voting of the sole CoC member.

> ***The Hon'ble Supreme Court in the case of K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222: 2019 SCC Online SC 257 at page 186*** *has held that; "52. As aforesaid, upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors.*

In this event and in accordance with the facts and circumstances discussed supra the ***IA(IBC)/1035(Che)/2021*** in IA(IBC)/848(Che)/2021 stands ***Dismissed.***

5. The application in IA(IBC)/64(Che)/2022 was filed by the Suspended Director of the Corporate Debtor immediately after the order being reserved in the Liquidation Application, which was filed by the Resolution Professional upon completion of the maximum time period prescribed for the CIRP, based on the resolution passed by the Committee of Creditors in their 11th CoC meeting, seeking directions to the Resolution Professional to consider for application of MSME Certification as per the MSME Notification dated 01.06.2020 and accordingly permit the Suspended Director to file a Resolution plan thereupon. As the facts being the same discussed supra, it is relevant to refer to the Judgment of The Hon'ble Supreme Court in the matter of Arcelormittal India Private Limited *Versus* Satish Kumar Gupta & Ors. Where it was held that,

> 71. What is important to note is that a consequence is provided, in the event that the said period ends either without receipt of a resolution plan or after rejection of a resolution plan ....
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> <u>76. Given the timeline referred to above, and given the fact that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage. A writ petition under Article 226 filed before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage. This is also made clear by the first proviso to Section 30(4), whereby a Resolution Professional may only invite fresh resolution plans if no other resolution plan has passed muster.</u>

77. However, it must not be forgotten that a Resolution Professional is only to "examine" and "confirm" that each resolution plan conforms to what is provided by Section 30(2). Under Section 25(2)(i), the Resolution Professional shall undertake to present all resolution plans at the meetings of the Committee of Creditors. This is followed by Section 30(3), which states that the Resolution Professional shall present to the Committee of Creditors, for its approval, such resolution plans which confirm the conditions referred to in sub-section (2). This provision has to be read in conjunction with Section 25(2)(i), and with the second proviso to Section 30(4), which provides that where a resolution applicant is found to be ineligible under Section 29A(c), the resolution applicant shall be allowed by the Committee of Creditors such period, not exceeding 30 days, to make payment of overdue amounts in accordance with the proviso to Section 29A(c). A conspectus of all these provisions would show that the Resolution Professional is required to examine that the resolution plan submitted by various applicants is complete in all respects, before submitting it to the Committee of Creditors. The Resolution Professional is not required to take any decision, but merely to ensure that the resolution plans submitted are complete in all respects before they are placed before the Committee of Creditors, who may or may not approve it.

The fact that the Resolution Professional is also to confirm that a resolution plan does not contravene any of the provisions of law for the time-being in force, including Section 29A of the Code, only means that his prima facie opinion is to be given to the Committee of Creditors that a law has or has not been contravened. Section 30(2)(e) does not empower the Resolution Professional to "decide" whether the resolution plan does or does not contravene the provisions of law. Regulation 36A of the CIRP Regulations specifically provides as follows:- "(8) The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with- 120 (a) the provisions of clause (h) of sub-section (2) of section 25; (b) the applicable provisions of section 29A, and (c) other requirements, as specified in the invitation for expression of interest. (9) The resolution professional may seek any clarification or additional information or document from the prospective resolution applicant for conducting due diligence under sub-regulation (8). (10) The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest. (11) Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) may be made with supporting documents within five days from the date of issue of the provisional list. (12) On considering the objections received under sub regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee."

78. Thus, the importance of the Resolution Professional is to ensure that a resolution plan is complete in all respects, and to conduct a due diligence in order to report to the Committee of Creditors whether or not it is in order. Even though it is not necessary for the Resolution Professional to give reasons while submitting a resolution plan to the Committee of Creditors, it would be in the fitness of things if he appends the due diligence report carried out by him with respect to each of the resolution plans 121 under consideration, and to state briefly as to why it does or does not conform to the law.

79. Take the next stage under Section 30. A Resolution Professional has presented a resolution plan to the Committee of Creditors for its approval, but the Committee of Creditors does not approve such plan after considering its feasibility and viability, as the requisite vote of not less than 66% of the voting share of the financial creditors is not obtained. As has been mentioned hereinabove, the first proviso to Section 30(4) furnishes the answer, which is that all that can happen at this stage is to require the Resolution Professional to invite a fresh resolution plan within the time limits specified where no other resolution plan is available with him. It is clear that at this stage again no application before the Adjudicating Authority could be entertained as there is no vested right or fundamental right in the resolution applicant to have its resolution plan approved, and as no adjudication has yet taken place.

80. It is the Committee of Creditors which will approve or disapprove a resolution plan, given the statutory parameters of Section 30. Under Regulation 39 of the CIRP Regulations, sub clause (3) thereof provides:- "(3) The committee shall evaluate the resolution plans received under sub-regulation (1) strictly as per the 122 evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit: Provided that the committee shall record the reasons for approving or rejecting a resolution plan."

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6. It is a settled law that a statute is designed to be workable, and the interpretation thereof should be designed to make it so workable. The direction sought in the present application placing its reliance upon the MSME Notification dated 01.06.2020 seems to be purposefully carried out by the Suspended Director with an intention to drag the time bound Process as conferred by the Code, which very well defeats the Object of the Act. In the present case we find that the Applicant has not shown to this Adjudicating Authority any bonafide reason so as to direct the Liquidator to apply for MSME. At this Juncture the application in ***IA(IBC)/64(Che)/2022*** stands ***Dismissed.***

7. Heard the submissions of all the parties and perused the documents placed on record meticulously including the written submissions filed. That being the case, this Adjudicating Authority deems fit to order ***M/s. Automotive Coaches and Components Ltd.*** for Liquidation as resolved by the Committee of Creditors. It is seen from the records that, in the 11th COC meeting held on

30.08.2021, the CoC had resolved to appoint one ***Mr. SUBRATA M MAITY*** with register number- ***IBBI/IPA-001/IP-P00884/2017-2018/11481*** as the Liquidator. Further it is also seen that, Mr. Subrata M Maity, has accorded his written consent in Form AA to act as the Liquidator of the Corporate Debtor. In the circumstances, ***Mr. SUBRATA M MAITY*** is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions.

a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.

b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

c) 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 suitable application before this Adjudicating Authority.

d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;

e) 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 which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.

h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.

i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

j) Copy of this order be sent to the Financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

8. The application in IA(IBC)/848(Che)/2021 in IBA/660/2019 stands **Allowed** with the aforesaid terms.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Mohana Priya