

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA-2222/ND/2020

IN

Company Petition No. (IB)-671(ND)2019

IN THE MATTER OF :

M/s. Volkswagen Finance Private Limited

....Financial Creditor

Versus

M/s Kelvin Recruiters Private Limited

....Corporate Debtor

AND IN THE MATTER OF :

Kamal Agarwal

Resolution Professional of the Corporate Debtor

M/s Kelvin Recruiters Private Limited

487/27 School Road Peeragarhi

New Delhi-110087

...Resolution Professional/Applicant

Versus

1. M/s Volkswagen Finance Private Limited
2nd Floor Enkay Tower Udyog Vihar
Phase V, Gurgaon Haryana

...Respondent No.1

2. Mr. Vishesh Goyal
Suspended Director
House no 377, Old Jhajjar Road
Near Market Committee (Seni Pura)
Ward no 10, Charkhi Dadri,
Haryana-127306

...Respondent No.2



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3. Mr. Vishwajeet Rana
Suspended Director,
House no 10, Near Chaupal
Mungesh Pur,
Noorth West Delhi-110039

...Respondent No.3

4. Naveen Kumar & Sons (HUF)
(Operational Creditor)
Flat no. 78 Swastik Kunj
Sector-13, Rohini Delhi-110085

...Respondent No.4

Order Delivered on : 02.11.2020

Under Section: 33(2) of the IBC, 2016.

CORAM:

SHRI. ABNI RANJAN KUMAR SINHA, MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Kamal Agarwal, RP

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

This is an Application, filed by Mr. Kamal Agarwal, the Resolution Professional of M/s Kelvin Recruiters Private Limited (hereinafter referred as 'Applicant') under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, seeking the following main reliefs :

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- "a) Pass an order requiring the corporate debtor to be Liquidated under Section 33(2) in the manner as laid down under Chapter III of the IBC 2016.
- b) Pass an order under Section 34(1) of the code for appointment of the RP as the Liquidator of the corporate debtor."

2. Facts of the case in brief are that the Financial Creditor, M/s Volkswagen Finance Private Limited had filed an Application bearing No. (IB)-671(ND)/2019 under Section 7 of the IBC, 2016 for initiating the Corporate Insolvency Resolution Process (CIRP) against M/s Kelvin Recruiters Private Limited. The said Application was admitted by this Tribunal vide its Order dated 17.09.2019 and Mr. Kamal Agarwal was appointed as the Interim Resolution Professional (IRP).

3. In terms of the Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a public announcement in the Form-A, which was published in the newspapers namely, the Financial Express (English) and Jansatta (Hindi) on 25.09.2019. The said public announcement was uploaded on the website of the Insolvency and Bankruptcy Board of India (IBBI).

4. The Interim Resolution Professional constituted the Committee of Creditors (CoC), comprising of a sole Financial Creditor namely, Volkswagen Finance Private Limited.



5. That the IRP Mr. Kamal Agarwal was confirmed as Resolution Professional (RP) of the Corporate Debtor vide Order dated 01.11.2019 passed by this Tribunal.

6. It is averred by the Applicant that the Corporate Debtor *"is not a going concern and is having no registered office with absconding Suspended Directors and no employees"*.

7. It is stated by the Applicant that in the 2nd Meeting of CoC held on 14.03.2020, vide agenda item 5, discussed upon the future course of action and *"...took the decision of not to make any application under section 12(2) of IBC,2016 as it would be a waste of time and resource in view of the fact that the corporate debtor is not a going concern, and does not have any registered office and no employees are functioning and even the suspended directors are not coming forward and not co-operating in the CIRP of the corporate debtor.....The CoC instead deemed it fit and proper to liquidate the corporate debtor and hence, decided to liquidate the corporate debtor and requested the RP to continue as the Liquidator and expedite the process of taking custody of the assets in possession of the suspended directors."*

8. It is informed by the Applicant that thereafter, the CoC resolved to liquidate the corporate debtor vide agenda item no. 7 of the same meeting. The agenda item no. 7 and the Resolution passed are reproduced overleaf :



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Item no 7:-

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To decide and vote upon the resolution to liquidate the corporate debtor in view of the fact that the corporate debtor is not a going concern since 01.04.2015 onwards and having no registered office.

The chairman shall propose and put to vote upon the resolution to liquidate the corporate debtor in view of the fact that the corporate debtor is not a going concern since 01.04.2015 onwards and having no registered office.

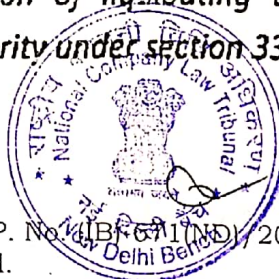
Outcome:-

In continuation to discussion in agenda item no 5 above and pursuant to the resolution passed in item no 6 above of not making any application before the Adjudicating Authority for extending the period of CIRP beyond 180 days, the CoC with 100% voting rights took the decision to liquidate the corporate debtor in view of the fact that the corporate debtor is not a going concern, and does not have any registered office, with no employees and total wilful non co-operation from the suspended directors of corporate debtor in the CIRP of the corporate debtor.

Hence the following resolution was passed:-

"Resolved that the Committee of Creditors with 100% Voting Share has assented to/ voted for/consented to the decision 'to Liquidate the Corporate Debtor' and directed the Resolution Professional to intimate its decision of liquidating the Corporate Debtor to the Adjudicating Authority under section 33(2) of the IBC, 2016".

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9. It is further submitted by the Applicant that the aforesaid Resolution was passed by 100% voting share. The voting sheet as annexed by the Applicant is reproduced below :

Resolution & item No.	I/We assent to the Resolution	I/We Dissent to the Resolution	I/We Abstain to the Resolution
<p><u>Item No 6</u></p> <p>Resolution to approve and further instruct the RP for filing of an application before the Adjudicating Authority for the extension of the Corporate Insolvency Resolution Process period of 180 days by another 90 days for as the subject matter of the case is such that the CIRP of the corporate Debtor cannot be completed within One Hundred & Eighty Days.</p>		<p><i>Jaha</i></p> <p><i>12/02</i></p>	
<p><u>Item No. 7</u></p> <p>Resolution on Decision to Liquidate the Corporate Debtor under section 33(2) of IBC,2016 to meet the objective of Maximization of value of assets of the corporate debtor in view of the fact that the corporate debtor is not a going concern since 01.04.2015 onwards and is not operational, having no registered office, no employees and further total non co-operation from the suspended directors.</p>	<p><i>For</i></p> <p><i>Jaha</i></p>		

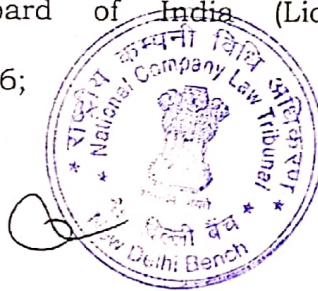


10. That the RP has also filed his written communication dated 18.03.2020 to act as Liquidator of the corporate debtor as required under Section 34(1) of the IBC, 2016.

11. In the circumstances and there being no other alternative, this Bench is inclined to accept the Resolution of the COC and order Liquidation of the Corporate Debtor.

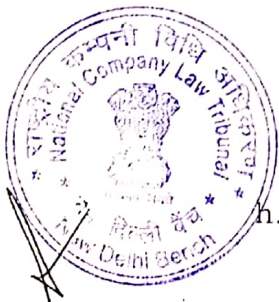
12. In sequel to the above, the Application is allowed, ordering Liquidation of the Corporate Debtor, M/s. Kelvin Recruiters Private Limited in the manner as laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant Rules and Regulations along with the following directions :

- a. Mr. Kamal Agarwal, having IBBI Registration No. IBBI/IPA-001/IP-PO0868/2017-18/11466, is appointed as Liquidator, who has given his written consent to act as Liquidator in terms of Section 34 (1) of IBC 2016;
- b. The Liquidator, is directed to issue 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;



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- c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- d. This Order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- e. Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued and preferential transactions etc., if any.
- f. 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.
- g. The Registry is directed to communicate a copy of the Order to the Financial Creditor, the Corporate Debtor and Liquidator Mr. Kamal Agarwal at the earliest but not later than seven days from today.
- h. A copy of this Order be sent by the Registry and Liquidator to the Registrar of Companies (RoC), NCT of Delhi &



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Haryana for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT within a period of 30 days;

- i. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

13. IA-2222/ND/2020 filed in IB-671(ND)/2019 is **allowed** in the aforesaid terms.

— S. d —

(L. N. Gupta)
Member (T)



— S. J —

(Abni Ranjan Kumar Sinha)
Member (J)

10.11.2020
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110002