

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH-II**

**(IB)-1647(ND)2019**

**IA-2716/2021**

**IN THE MATTER OF:**

**Mr. Kumud Mishra**

**Operational Creditor**

**Versus**

**M/s. Reverse Logistics Company Pvt. Ltd.**

**Corporate Debtor**

**AND IN THE MATTER OF:**

**Mr. Pawan Kumar Agrawal, Resolution Professional,  
(M/s. Reverse Logistics Company Pvt. Ltd.)**

**Office at:**

**40/55 First Floor, Chittaranjan Park,  
New Delhi-110019**

**Applicant**

**Versus**

**Mr. Kumud Mishra  
House No. 310, Old Seemapuri,  
Delhi-110095**

**Respondent**

**Section : 33 of IBC, 2016**

**Order delivered on: 2/11/2021**

**CORAM:**

**MR. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)**

**MR. L.N. GUPTA, HON'BLE MEMBER (TECHNICAL)**

**PRESENT: -**

**Mr. Pawan Sharma Adv. and Adv. Prashant Kashyap for Applicant**



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**ORDER**

**AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

By filing this IA, the Applicant/RP has prayed for the following reliefs:

- (a) Pass an order requiring the Corporate Debtor i.e. M/s Reverse Logistics Company Private Limited to be liquidated in a manner as laid down in the Insolvency and Bankruptcy Code, 2016, and appoint Mr. Pawan Kumar Agrawal as the Liquidator.
- (b) Issue public announcement stating the corporate debtor is in liquidation.

2. Heard the Learned Counsel appearing for the Applicant and perused the averments made in the application. The Learned Counsel for the RP submitted that vide order dated 16.09.2019, the CIRP was initiated against the Corporate Debtor and the IRP was appointed. He further submitted that after assuming the office, the IRP made public announcement on 29<sup>th</sup> September, 2019, in accordance with, Section 15 of the IBC, 2016, read with Regulation 6 of Chapter III of the IBC, 2016. He further submitted that IRP has received claim from one Financial Creditor (innoven Capital India Pvt. Ltd On 5<sup>th</sup> Novmeber 2019 and constituted Committee of Creditor on 7<sup>th</sup> Novmber 2o019. In the first meeting of CoC held on 8<sup>th</sup> November, 2019 the IRP was confirmed as Resolution Professional and same was approved by the Adjudicating Authority vide its order dated 17<sup>th</sup> January, 2020.

3. He further submitted thereafter the Resolution Professional had received claim of one Operational Creditor and one ex-employee of the Corporate Debtor and prepared Information Memorandum, appointed Valuers, TRA Auditors and other professionals, prepared invitation for expression of interest and performed other activities. He further submitted that in the 2<sup>nd</sup> CoC Meeting dated 19<sup>th</sup> March, 2020, CoC has resolved to publish "Form-G" i.e. Invitation for Expression of Interest under Regulation 36A (1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 and also to seek extension of CIRP period beyond 180 days.

5. He further submitted that the Form-G i.e. Invitation for expression of Interest dated 20<sup>th</sup> March, 2020 was published on 21<sup>st</sup> March 2020.

6. He further submitted that the extension of 90 days of CIRP was granted vide order dated 21<sup>st</sup> August, 2020.



7. He further submitted that the Resolution Professional has submitted the updated claim, insolvency resolution proceeding cost, liquidation value, TRA submissions, appointment of statutory auditors and other updated to the CoC. In absence of any resolution plan from previous expression of interest, CoC resolved for further expression of interest under regulation 36 A (1) of Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 by way of publication of "Form-G". The copy of the minutes of Third CoC meeting dated 21<sup>st</sup> September, 2020 and copy of expression of interest in "Form-G" dated 28<sup>th</sup> September, 2020 are annexed at Page 5/6 of the application.

8. That the Applicant / RP conducted the 4<sup>th</sup> meeting of CoC on 19.11.2020 as per ANNEXURE A-11, where CoC decided as under: -

- I. That despite availing extension of 90 days of CIRP and the EOIs were invited, no resolution plan has been received. Therefore, the CD may be liquidated under Section 33 of the Code.
- II. That CoC decided to propose the name of Mr. Pawan Kumar Agrawal, Insolvency Professional (IBBI Registration No. IBBI/IPA-001/IP-P00852/2017-18/11435) as Liquidator, who has given his written consent to act as liquidator. A copy of the written consent is annexed as ANNEXURE A-12.
- III. That the CoC approved the estimated Liquidation Cost as per provision of Regulation 39B of IBBI (CIRP Regulation), 2016.
- IV. That the CoC approved the liquidator's fee in terms of provisions of Regulation 39D of IBBI (CIRP) Regulations.

RP has submitted that in view of the resolution passed in the meeting of committee of creditors, order of liquidation is required to be passed against the corporate debtor in the manner as prescribed under Section 33 of the Insolvency and Bankruptcy Code, 2016. (PARA 13 PAGE 6/7)

9. He further submitted that since there was no Resolution Plan received, therefore, the CoC in its 4<sup>th</sup> meeting held on 19<sup>th</sup> November, 2020 resolved to liquidate the Corporate debtor.

10. In the light of the submissions, we consider the prayer of the applicant.

11. Before considering the prayer, we would like to refer to the Resolution of the 4<sup>th</sup> meeting of the CoC held on 19<sup>th</sup> November, 2020, (at page 56 of Application). The scanned copy of the relevant resolution is reproduced below: -

Annexure A-11

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**MINUTES OF THE FORTH MEETING OF COMMITTEE OF CREDITORS OF REVERSE LOGISTICS COMPANY PRIVATE LIMITED HELD ON 19TH NOVEMBER 2020 AT 40/55, FIRST FLOOR, ABOVE ORIENTAL BANK OF COMMERCE, KALKAJI, NEW DELHI-110019 AT 12:30 P.M.**

**PRESENTS**

Name	Designation
IP Pawan Kumar Agrawal	Chairperson/Insolvency Resolution Professional
Ms. Nisha Garodia	Authorised Representative of Innoven Capital India Private Limited, Financial Creditor
Mr. Kumud Mishra	Operational Creditor as an observer

The Resolution Professional welcomed all the members present at the meeting and informed the members that this is the Second meeting of the Committee of Creditors of M/s Reverse Logistics Company Private Limited, (the "Company" / the "Corporate Debtor")

The Resolution Professional invited the member to introduce themselves to confirm that nobody except the members is available in the meeting room.

Resolution Professional enquired as to who is the authorized member from respective members of the Committee of Creditors (CoC). It was clarified that only duly authorized officers can attend and vote at the meeting of Committee of Creditors, on behalf of the member of Committee of Creditors.

The member of CoC introduced themselves.

Resolution Professional then declared that all the members of CoC are present at the meeting and there will not be any requirement of E-voting in this meeting.

**Important Dates of CIRP**

RP appraised CoC about the important dates mentioned below:-

Particulars	Timeline as per IBC 2016
CIRP Commencement Date (Issue of CIRP order)	27.09.2019
Public Announcement	29.09.2019
Last Date of submission of claim	12.10.2019
Constitution of Committee of Creditors	07.11.2019
First CoC Meeting	08.11.2019
NCLT order for appointment of existing IRP as RP	17.01.2020
Second CoC Meeting	19.03.2020
Invitation for Expression of Interest	20.03.2020
NCLT order for extension of CIRP period for 90 days from the date of order	21.08.2020
Third CoC Meeting	21.09.2020
Forth CoC Meeting	19.11.2020
Date of completion of CIRP Period (90 days from extension order)	19.11.2020

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ITEM NO. 1CHAIRMAN OF THE MEETING

"Resolved that Mr Pawan Kumar Agrawal, Interim Resolution Professional duly appointed by Hon'ble Adjudicating Authority (National Company Law Tribunal, New Delhi), be and is hereby appointed as Chairman of the meeting of Committee of Creditors of Reverse Logistics Company Private Limited."

ITEM NO. 2QUORUM OF THE MEETING

"Resolved that the Quorum is present (members with 100% voting right) at the meeting of the Committee of Creditors of Reverse Logistics Company Private Limited in its meeting held on 19th November 2020, based of the members present."

ITEM NO. 3LEAVE OF ABSENCE

Since the member of CoC was present in the meeting, no leave of absence was required by any member.

ITEM NO. 4HOLDING COC MEETING WITH SHORTER NOTICE

RP invited attention of CoC to Regulation 19 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which reads as under:

"1. Subject to this Regulation, a meeting of the committee shall be called by giving not less than five days' notice in writing to every participant, at the address it has provided to the resolution professional and such notice may be sent by hand delivery, or by post but in any event, be served on every participant by electronic means in accordance with Regulation 20.

(2) the committee may reduce the notice period from five days to such other period of not less than twenty-four hours, as it deems fit"

CIRP is at vital stage and as quick decisions from CoC are required to take it to logical end.

RP apprised that CoC has been empowered in this respect under regulation 19(2) of CIRP and approved the same in 4th COC meeting for holding meeting at a shorter notice of 2 days. Therefore, COC was hereby informed that the proposed 4th meeting of COC was being held at a shorter notice i.e 17th November, 2020.

ITEM NO. 5ACTIONS TAKEN BY RP TEAM

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Chairman informed the Committee of Creditors about the actions taken by him since 3<sup>rd</sup> CoC held on 21<sup>st</sup> September 2020.

**i. Receipt of Claim**

RP informed the CoC about the status of claims received and verified till 3<sup>rd</sup> CoC. After 3<sup>rd</sup> CoC, no claim received. The status of the claim are as follows:-

Sl No.	Name & the Creditor	Nature of Credit	Date of Claim	Amount of Claim (in Rs.)	Voting Interest (in %)
1	Kumud Mishra	Operational Debt	21/10/2019	377,808	NA
2	The Commissioner of Commercial Taxes, Government of West Bengal	Operational Debt	25/10/2019	25,647,234	NA
3	Deputy Excise and Commissioner(ST), Gurugram (South), Excise and Taxation Deptt., Govt of Haryana	Operational Debt	29/01/2020	15,976,958	NA
4	Deputy Commissioner of Comm. Taxes (Audit) - 6.7. Divisional Goods and Service Taxes Office - 6, Bangalore	Operational Debt	10/03/2020	6,500,092	NA
5	S S Kothari Mehta & Co., Plot No.-68, Phase - 3, Okhla Industrial Area, New Delhi - 110020	Operational Debt	06/08/2020	1,351,100	NA
6	Innoven Capital India Private Limited	Financial Debt	05/11/2019	126,973,526	100%

**ii. Going Concern of Corporate Debtor**

As per inspection by RP team there is no office of the Corporate Debtor except one warehouse where all previous books of the corporate debtor has been kept. Resolution Professional has paid the rent of said premises till 31<sup>st</sup> October 2020 @ Rs 7,000/- p.m.

The Promoters has already left the registered premises. There is no operation of the Corporate Debtor and there seems to be a threat on Going Concern.

**iii. Refund from Anti-Evasion – AC/CTO, Jaipur Sectt**

Resolution Professional has filed an application with the Commissioner, Commercial Tax Department, Jaipur – III, Anti-Evasion – AC/CTO, Jaipur Sectt for recovery of Rs. 32,74,239/- against order of Appellate Authority. The appellate authority has accepted the appeal and set aside additional penalty raised by the Commercial Tax Department, Jaipur – III, Anti-Evasion – AC/CTO.

An amount of Rs. 39,71,259/- was paid/deducted under protest while the actual amount as per <sup>pr</sup> <sub>(pr)</sub>

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Demand was Rs 6,97,020. Thereafter, the Corporate Debtor had approached to the office of Appellate Authority – I, Commercial Tax Department, Jaipur to appeal the order.

The resolution Professional has visited to Commercial Tax Department, Jaipur – III, Anti-Evasion – AC/CTO with application for refund.

After several follow-ups and our visit with legal counsel PPG Leagl, refund application has been processed by AC for Rs 29,88,457/- on 20<sup>th</sup> August 2020 after deduction of interest amount that was not mentioned by the appellate authority. The refund was forwarded to CRO. On 15<sup>th</sup> September 2020, CRO has also approved the refund.

The RP visited the department at Jaipur on 4<sup>th</sup> November 2020 as no refund was received even after approval from CRO. VAT Department suggested to visit IT office at Kar Bhawan, Commercial Tax Department, Rajasthan where it was informed that the refund was objected due to clerical issue from department. The department assured that refund will be paid soon. Till 18<sup>th</sup> November 2020 no refund amount is reflecting in account.

**Committee of Creditors took notice of the same.**

**iv. Statutory audit**

Statutory audit for FY 2018-19 & FY 2019-20 was conducted by M/s PAMS & Associates as appointed in 3<sup>rd</sup> COC Meeting. The auditor has shared the draft report with the RP and raised certain clarifications that needs to be resolved by the Corporate Debtor. Overall a qualified report has been issued by the auditor considering negative Net Worth, Demands from statutory bodies, Non-compliance of statutory provisions, default in financial payments, etc.

**Committee of Creditors took notice of the same and instructed to complete the audit queries at earliest and circulate the signed financials.**

**v. Invitation for Expression of Interest**

The Resolution Professional published "Form G" i.e. Invitation for Expression of Interest under Regulation 36A (1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 28<sup>th</sup> September 2020. The eligibility for resolution applicants under section 25(2)(h) of the Code Net Worth of INR 2.00 Crore (Rupees Two Crore Only) as on 31<sup>st</sup> March 2020 based on Audited Financials of Entity and certified by a Chartered Accountant.

After publication the RP has also intimated to IBBI and his RP Agency i.e. IIPICAI.

The RP didn't receive any FOI or Resolution Plan or any query with respect to the said invitation. As the Corporate Insolvency Resolution Period expiring on 19<sup>th</sup> November 2020, the Corporate Debtor will sue-moto go into liquidation.

**After a detailed deliberation, the CoC agrees for Liquidation Proceedings and no proposal received for extension of Resolution Period.**

**vi. TRA Report and its Reply**

The TRA Auditor M/s Kumar Pramod and Associates, has submitted their report dated 5<sup>th</sup> August 2020 and raised certain issues with respect to Financial Transactions. Subsequently Corporate Debtor has responded on those queries to the TRA Auditor. The brief observations

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and their responses are as follows:

Sl No.	Observation	Response from Corporate Debtor
1	Charge created by the Financial Institutions (Kotak Mahindra Bank Rs 5.00 Cr. and Rs 12.00 Cr. from SVB India Finance Private Limited) on company's assets. But no Loan from Kotak Mahindra Bank is showing in books.	<p>The company has already paid to Kotak Mahindra Bank and there is no outstanding amount showing in the books of Corporate Debtor. Corporate Debtor has not satisfied the charge.</p> <p>Charge by financial creditor i.e. Innovent Capital India Private Limited (formerly known as SVB India Finance Private Limited) is correctly mentioned within the report on Uncalled Share Capital; Goodwill; Book debts; Book debts; Movable property (not being pledge); Copyright.</p>
2	During the verification of transaction in the account of corporate debtor, it was found that company paid remuneration to directors in F.Y.2017-18 amounting to Rs. 11,48,550/- and in F.Y. 2018-19 it rises to Rs. 95,39,746/-.	<p>The actual Gross remuneration of Mr. Hitendra Chaturvedi was Rs. 11,88,580/- till August 2015. The Corporate Debtor had holded remuneration of Rs. 1,73,39,148/- of Mr. Hitendra Chaturvedi (Director) i.e. Rs 53,29,368/- during FY 2015-16 and Rs 1,20,09,780/- during FY 2016-17.</p> <p>Out of above Rs. 1,73,39,148/- the company had paid Rs. 95,39,746/- including current remuneration. Even the actual Gross remuneration of Mr. Hitendra Chaturvedi during FY 2018-19 is Rs. 142,62,960/- (less statutory deductions)</p> <p>To be precise, the gross salary of Mr Hitendra Chaturvedi was Rs. 11,88,580 till August 2015 and the same was on hold to a certain extent due to shortage in cash flow Hence this is not a preferential transaction.</p>
3	Incentive amounting to Rs. 22.00 Lakhs has been paid to Mrs. Surinderjit Singh a.k.a Mrs. Sonali Singh (Spouse of Director) in F.Y. 2018-19.	<p>As the corporate debtor was facing shortage of fund, after May 2017, the corporate debtor had proposed the employee Mrs Sonali Singh to hold the entire remuneration till one year with a revised remuneration of Rs 1.50,000 per month inclusive of all perquisites, allowances and retirement benefits viz Gratuity, Leave Encashment, Provident Fund, etc</p> <p>The proposal was accepted by Mrs Sonali Singh and hence she was paid Rs. 22.00 Lakh in settlement of Rs. 22.50 Lakh i.e. 1.50 Lakh for 15 months.</p> <p>After deduction of Rs. 6.60 Lakh as TDS, the Corporate Debtor has paid Rs. 15.39 to Mrs Sonali Singh on 11<sup>th</sup> March 2019 for</p>

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		Rs 12.39 Lakh & on 7 <sup>th</sup> February 2019 for Rs. 3.00 Lakh.
4	<p>On the verification of sales made from the account of corporate debtor we found that ONKAR Enterprises which is related party to corporate debtor as one of the directors is proprietor of ONKAR Enterprises.</p> <p>The corporate debtor has made sales amounting to Rs. 50,107,914/- in F.Y. 2016-17 out of which only Rs. 43,800,000/- received on account of sales and balance amount of Rs. 6,307,914/- is adjusted against Credit Balance of Onkar Enterprises.</p> <p>Further, it has been observed that Set-off entries has been passed to adjust the Debit as well as Credit balances of various units of Onkar Enterprises among each other.</p>	<p>ONKAR Enterprises was the proprietorship of Savita Chaturvedi (one of the director of the Corporate Debtor). All the transaction of Corporate Debtor with ONKAR Enterprises has been disclosed within Related Party Transaction as per applicable GAAP. There were different units of Onkar Enterprises in different location. The debit/credit balance of all the locations as on 31<sup>st</sup> March 2017 is Zero and final reconciliation was done. This has been verified to TRA Auditor. There is no transaction thereafter.</p>
5.	<p>There is an outstanding Balance with GREENDUST INC. (Subsidiary of Corporate Debtor) amounting to Rs. 1.66 Crore due from F.Y. 2016-17 and finally treated as Bad Debts in F.Y. 2017-18. So, we are in opinion that this trade Receivable amount is not recoverable as corporate debtor has not taken any action against Greendust Inc. and amount is not recoverable.</p>	<p>Greendust Inc. was incorporated as a subsidiary of the corporate debtor and amount was invested for setting up overseas business of the corporate debtor. But later on the project didn't respond well and ultimately the Corporate Debtor decided to shut its subsidiary. The amount was considered as Bad Debt with approval of its auditors.</p>
6.	<p>On verification of Sundry debtors from the accounts of corporate debtor, we found that debtors amounting to Rs.4.33 crore are outstanding since April 2017 and neither any initiative/follow up nor any legal action had been taken against them for realizing such amount by corporate debtor.</p>	<p>The Corporate Debtor had stringent policy for follow up and recovery of its debtors. Out of 4.33 Crores of long outstanding amount 2.84 pertains to International Coil Limited which is already facing Insolvency Proceedings and Rs 1.15 Crore pertains to Blooming Diagnostic &amp; Impex Private Limited on which Legal suit has been filed and decree is in the favor of Corporate Debtor. On other 0.33 Crore rigorous follow up was taken place.</p>
7.	<p>On verification of Sundry creditors from the accounts of corporate debtor, we found that creditors having Dr. balances amounting to Rs.48.63 lakhs are outstanding since April 2017 and</p>	<p>Most of the expenses as per the outstanding Debit balance of Sundry Creditors were incurred at the time of payment viz payment to Cloutail is for providing cloud space, payment to</p>

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	<i>neither any initiative/follow up nor any legal action had been taken against them for realizing such amount by corporate debtor.</i>	<i>Consulting Rooms are for space/rental services, Reliance Retail is for sundry purchases, etc. These expenditures were actually incurred but can't be booked due to unavailability of proper documents and thus showing as Debit balance and as per Creditors there is no outstanding amount.</i>
8.	<i>On the verification of Fixed Assets, it is being observed that WDV as on 01/04/2016 amounting to Rs.13.32 Crores out of which assets having WDV of Rs. 5.63 Crores have been sold and assets having WDV of Rs. 1.10 Crores have been written off during the year 2016-17 incurring a total loss of Rs.6.56 Crore. Further, it has been observed that corporate debtor sold assets at value less than their market value moreover, standard procedures like obtaining quotation, selecting best quote as compared to market value of such assets have been omitted.</i>	<i>As the Corporate Debtor was facing financial losses and shortage of working capital and no further investment was received from the investors after several follow ups, the corporate debtor has no choice other than reducing the scale and shutting down its branched. The corporate debtors has faced huge losses on Machinery, furniture, etc and written off its fixtures. Due to minimal realizable value, the company had suffered a huge amount on Fixed Assets.</i>

After a detailed deliberation, Committee of Creditors took notice of the same and instructed to go with response of TRA Auditor.

#### ITEM NO. 6

#### TO CONSIDER AND TAKE NOTICE ON CLAIMS RECEIVED AND ADMITTED

Chairman informed that no further claim received after third CoC and the constitution of the committee is still the same.

Chairman informed the members that claims received have collated.

#### ITEM NO. 7

#### COMMITTEE OF CREDITORS CONSTITUTED BY THE IRP

The Chairman presented the report on constitution of Committee of Creditors formed and submitted by him with Hon'ble Adjudicating Authority, which is as under:-

Sl. No.	Name of the Creditors	Amount Claimed by the Creditors (Amount in Rs.)	Amount Admitted (Amount in Rs.)	% of Voting Right

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1	Innoven Capital India Private Limited	12,69,73,526	12,69,73,526	100%
	Total	12,69,73,526	12,69,73,526	100%

Committee of Creditors took notice of the same.

#### ITEM No. 8

#### RATIFICATION OF THE CIRP COST TILL LIQUIDATION ORDER

Chairman presented the cost incurred by him to Committee of Creditors members for ratification of the same. Chairman has deliberated the following expenditure for discussion after Third CoC Meeting.

S. No.	Particular	Amount (Rs.)	Incurred by/ Cheque No.
1	Publishing of Invitation for Expression of Interest	19,740/-	485332
2	Rent for Chattarpur, New Delhi @ Rs 7000 pm for September 2020 & October 2020	14,000/-	485330
3	TDS Paid	35,625/-	485331
	Total	169,365/-	

#### CIRP Cost Pending for payment

S. No.	Particular	Amount (Rs.)	Incurred by/ Cheque No.
1	PPG Legal (Advocates & Solicitors) April 2020 to 19 <sup>th</sup> November 2020	343,500/-	Pending
2	RP Fees (for 209 days till 19/11/2020)	10,25,000/-	Pending
3	Tour & Travel – (Jaipur Visit)	10,525/-	Pending
4	Accountants Salary – Since May 2020 till 19/11/2020	215,583/-	Pending
5	Statutory Audit Fees for 2 years	10,30,000/-	Pending
6	Rent for the month of November 2020	7,000/-	Pending

#### CIRP COST AFTER CIRP PERIOD TILL ORDER FOR LIQUIDATION

Chairman presented the cost to be incurred as Rental, remuneration to Deemed RP and Fees of PPG Legal (Advocates & Solicitors) after CIRP Period but before order of Liquidation. The chairman proposes to keep the same remunerations/fees/rental for them as approved for CIRP Period.

Chairman informed that no further expenses shall incur before order of Liquidation. Ms Nisha Garodia, Authorised Representative of Innoven Capital India Private Limited, Financial Creditor proposed that CoC shall not take any burden for CIRP Cost or any other cost till Liquidation.

After detailed discussion it was

*"RESOLVED THAT the expenses towards CIRP Cost be and is hereby ratified and approve the cost till order of Liquidation."*

*"RESOLVED FURTHER THAT Committee of Creditors shall not bear the cost of Corporate Insolvency Resolution Proceedings."*

*"RESOLVED FURTHER THAT Resolution Professional be and is hereby authorized to do all such acts, deeds and things as may be required necessary or incidental thereto."*

#### ITEM No. 9

#### LIQUIDATION OF CORPORATE DEBTOR

Chairman presented that Resolution plan which is required under Section 30(6) of Insolvency Code, 2016 has not been received before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 of Insolvency Code, 2016.

Further, as per Regulation 39(B)(4), as no EOI received and keeping in view the fact that the last date of completion of CIRP is 19th November, 2020 (after completing 180 days and further its extension) liquidation of the Corporate Debtor is the logical conclusion. Therefore, RP shall be filing application to Adjudicating Authority for initiation of liquidation of Corporate Debtor in pursuant to Section 33. After detailed discussion it was

*"RESOLVED THAT the application to be moved to Adjudication Authority to Liquidate the Corporate Debtor under Section 33(1) of the Code."*

#### ITEM No. 10

#### APPOINTMENT OF LIQUIDATOR

The appointment of Liquidator shall be in accordance to 34 of the Insolvency and Bankruptcy Code 2016. As per the Code:

*"36(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form act as the*

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liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).

36(2) On the appointment of a liquidator under this section, 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.

36(3) 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 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.

36(4) The Adjudicating Authority shall by order replace the resolution professional, if—  
 (a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or  
 (b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing; or  
 (c) the resolution professional fails to submit written consent under sub-section (1)”

The Chairman informed that the Resolution Professional has submitted the written consent to act as the Liquidator of the company. The resolution put up for Voting before the Committee of Creditors for approval is as under. Chairman proposed voting on the Agenda Item. The results of the voting are as under:-

Particulars	Assent	Dissent	Abstained
Appointment of existing Resolution professional as Liquidator of the Corporate Debtor as per Section 36 of the Code	100%	0%	0%

It was then decided that:-

“RESOLVED THAT pursuant to Section 36(1) of Insolvency and Bankruptcy Code, the appointment of existing Resolution Professional as Liquidator of the corporate debtor be and hereby approved.”

#### ITEM NO. 11

#### RELEVANT CIRP REGULATIONS TO BE DELIBERATED BY COC AT THE TIME OF LIQUIDATION OF CORPORATE DEBTOR

Attention of CoC was invited towards Regulation 39B, 39C, 39D for deliberations and decisions making-

#### *39B. Meeting Liquidation Cost.*

RP apprised CoC about the Regulation 39B of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which reads as under:

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(1) While approving a resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, the committee may make a best estimate of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.

(2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).

(3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.

(4) The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

Explanation :- For the purposes of this regulation, 'liquidation costs' shall have the same meaning as assigned to it in clause (ea) of sub-regulation (1) of regulation (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016."

The resolution put up for Voting before the Committee of Creditors for approval is as under. Chairman proposed voting on the Agenda Item. The results of the voting are as under:-

Particulars	Assent	Dissent	Abstained
Total anticipated liquidation cost is Rs. 25 Lakh for 6 months period	100%	0%	0%

It was then decided that:-

**"RESOLVED THAT** pursuant to regulation 39B(1) of CIRP Regulations and in consultation with the Resolution Professional, the total anticipated liquidation cost is Rs. 25 Laacs for 6 months period be and is hereby approved."

**"RESOLVED FURTHER THAT** Resolution Professional be and is hereby authorized to do all such acts, deeds and things as may be required necessary or incidental thereto."

39C. Assessment of sale as a going concern.

RP apprised CoC about the Regulation 39C of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which reads as under:

(1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.

(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and

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*Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*

*(3) The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.]*

Further, the Resolution Professional shall submit the recommendation of the committee under sub regulations (1) and (2) to the Adjudicating Authority while filing the approval of decision of the committee under section 33.

Resolution Professional apprised that in accordance to the performance of the corporate debtor and as mentioned within Information Memorandum, the corporate debtor is not running its business as a going concern. Further, in view of CoC, the Corporate Debtor has only three properties with it and those properties are shown as investments and not fetching any return.

*In view of this there was no recommendation from the Committee that the liquidator may first explore sale of the corporate debtor as a going concern.*

**39D. Fee of the liquidator.**

RP apprised CoC about the Regulation 39D of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which reads as under:

*While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional, fix the fee payable to the liquidator, if an order for liquidation is passed under section 33, for -*  
*(a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;*  
*(b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, and*  
*(c) the balance period of liquidation."*

Negotiations took place between CoC and RP over the fees payable to RP as a liquidator and CoC proposed a Liquidation fees as per Regulation 4(1) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 i.e. in accordance with the decision taken by the committee of creditors under regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

The chairman proposed to fix the remuneration to the Liquidator at par with the remuneration of Resolution Professional i.e. Rs. 1,50,000 p.m for the period mentioned under regulation 39D.

*The resolution put up for Voting before the Committee of Creditors for approval is as under*  
 Chairman proposed voting on the Agenda Item. The results of the voting are as under:-

Particulars	Assent	Dissent	Abstained
Fees payable to RP as a liquidator and CoC proposed a Liquidation fees as per Regulation 4(1) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 i.e. at par with the remuneration	100%	0%	0%

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[of Resolution Professional]

It was then decided that:-

*"RESOLVED THAT Liquidator's Fee for the period of liquidation in pursuant to Regulation 39D of CIRP Regulations be and is hereby approved by CoC, as per Regulation 4(1) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 at par with the remuneration od Resolution Professional"*

*"RESOLVED FURTHER THAT Resolution Professional be and is hereby authorized to do all such acts, deeds and things as may be required necessary or incidental thereto."*

**VOTE OF THANKS**

There being no other matter the Meeting ended with a vote of thanks to the Chairman.

**Pawan Kumar Agrawal**  
Chairperson of Committee of Creditors/RP  
**Reverse Logistics Company Private Limited**  
IP Registration Number: IBBI/IPA-001/IP-P00852/2017-18/11435  
Registered Address:-  
1, 2/37A, Ground Floor, DDA, Ekta Square  
Kalkaji, South Delhi - 110019  
Email: irp@ppglegal.com

Place: New Delhi  
Date: 19.11.2020

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Grantant

12. On perusal of the Resolution of the 4<sup>th</sup> meeting of the CoC, we notice that on page 59 (V) of the main petition, it is specifically mentioned that after publication of Form-G, the Resolution Professional did not receive any EOI or Resolution Plan and therefore, the Resolution Professional has placed the matter before the CoC as item number-5 and the CoC, after the detailed deliberation agreed for liquidation proceedings and not propose for further extension of resolution period. It was also informed by the Resolution Professional that after the constitution of the CoC in the 3<sup>rd</sup> meeting, no further claim was received, therefore, Innoven Capital India Pvt. Ltd., the sole Creditor having 100 percent voting share, participated in the said meeting of the CoC. The CoC at item number 9 resolved that the application to be moved to Adjudication Authority to liquidate the Corporate Debtor under Section 33 sub-Section (1) of the Code and vide item number 10, the CoC has approved the appointment of existing Resolution Professional as liquidator of the Corporate Debtor and the Resolution Professional has also given his consent to act as a liquidator. It is further seen that the matter regarding exploring the sale of the Corporate Debtor as a going concern was considered by the CoC and Resolution Professional placed the facts that the Corporate Debtor is not running its business as a going concern and in view of this, there was no recommendation from the Committee that the liquidator may first explore sale of the Corporate Debtor as a going concern.

13. At this juncture, we would like to refer to Section 33 (1) of the IBC, 2016, the relevant portion of the Section 33 (1) is reproduced below: -

**Section 33 Initiation of liquidation**

(1) Where the Adjudicating Authority, -

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

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

- (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
- (ii) issue a public announcement stating that the corporate debtor is in liquidation; and
- (iii) require such order to be sent to the authority with which the corporate debtor is registered.



14. A bare perusal of the provision shows that there are two circumstances under which order for liquidation will be passed under Section 33 sub-Section (1) clause (a):

- 1) Before the expiry of the Insolvency Resolution Process, or
- 2) When in the maximum period permitted for completion of the CIRP under Section 12, the Adjudicating Authority does not receive a resolution plan under section 30(6).

16. Here in the case in hand, after the completion of 180 days and even after the extension of 90 days, the Resolution Professional did not receive any resolution plan and hence, the matter was placed before the CoC, which by 100 percent voting share resolved to liquidate the Corporate Debtor. Under such circumstances, we have no option but to approve the Resolution of the CoC for Liquidation of the Corporate Debtor.

17. Accordingly, by exercising our power under Section 33 sub-Section (1)(a) pass the following order: -

- i. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016.
- ii. Since the COC at Item no.10 has approved the appointment of Resolution Professional, Mr Pawan Kumar Agarwal as liquidator, hence, we approve the appointment of Resolution Professional Mr Pawan Kumar Agarwal to act as a liquidator u/s 34 (1) IBC, 2016.
- iii. The liquidator is directed to take custody and control of the assets, property of the Corporate Debtor with immediate effect and made 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;
- iv. The Provision of Section 33 sub-Section 5,6 and 7 IBC, 2016 shall come into force with immediate effect. 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;
- v. Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued & preferential transactions and Fraudulent Trading or wrongful trading etc., if any."

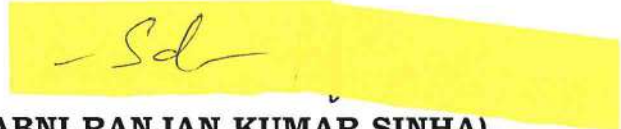


- vi. This Order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- vii. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- viii. The Registry is directed to communicate a copy of this Order to the Financial Creditor, the Corporate Debtor and Liquidator Mr. Pawan Kumar Agarwal IP immediately;
- ix. A copy of this Order be sent by the Registry and Liquidator to the Registrar of Companies (RoC), NCT of Delhi & 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;
- x. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.

**18. Accordingly, in terms of aforesaid order IA-2716/2021 in (IB)-1647 (ND) 2019 is hereby allowed.**



**(L.N. GUPTA)**  
**Member (T)**



**(ABNI RANJAN KUMAR SINHA)**  
**Member (J)**