



**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**ITEM NO:-01
IA (IBC)/92/GB/2023
In CP (IB) No.31/10/GB/2022**

Coram:

Hon'ble Shri H.V Subba Rao, Member (J):

Hon'ble Shri Manoj Kumar Dubey, Member (T):

**Hearing through
Video Conference**

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 25.08.2023**

In the matter of: Sandeep Khaitan, RP
In
(P.L Vehicals Private Limited
Versus
State Bank Of India)

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

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MR. VIKRAM WADHERA	Advocate	Applicant	Present in Video Conference

**ORDER
Date of Order: 25.08.2023**

The matter is taken up for hearing through virtual mode. The order pronounced vide separate order. In the result the above I.A. is allowed of ordering liquidation of Corporate Debtor. Detailed order will follow.

Sd/-

Sd/-

**(Manoj Kumar Dubey)
Member (Technical)
& Adjudicating Authority**
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**(H.V Subba Rao)
Member (Judicial)
& Adjudicating Authority**



In terms of the said order, this Tribunal appointed Shri Purshottam Gaggar, Insolvency Professional as the Interim Resolution Professional.

- 2.2 The Committee of Creditors, following the decision at its first meeting, filed an interim application i.e. IA (IBC)/61/GB/2023 before this Tribunal seeking appointment of the applicant i.e. Mr. Sandeep Khaitan as the Resolution Professional. This Tribunal vide order dated 19th May, 2023, confirmed appointment of the Applicant as the Resolution Professional. The Applicant had duly submitted his consent to act as the Resolution Professional of the CD being eligible under Regulation 3 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.
- 2.3 In terms of the 2nd Meeting of the CoC held on 14th June, 2023, the members decided that invitation of Expression of Interest (EOI) is required to be published. The Applicant, upon having been appointed, in accordance with the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 published the Form G, as per Regulation 36A of the CIRP Regulations, on 19th June, 2023 through widely circulated newspapers i.e. Meghalaya Guardian (English) and Rupang (Khasi) for invitation of Expression of Interest.
- 2.4 The Applicant, in course of CIRP, had issued appointment letters on 15th June, 2023 for appointment letters on 15th June, 2023 for appointment of the Valuers for conduct of the valuation Process for Financial Assets of the Corporate Debtor. The valuers post issuance of the appointment letters had sent their preliminary list of requirements for the conduct of the valuation exercise and the Applicant had shared the documents/information available with him. Further, certain documents/information like tally data of the Corporate Debtor, Fixed Asset Register, Expense voucher/invoices were yet to be received by the Resolution Professional from the suspended board. The Applicant, had been vociferously pursuing the erstwhile management, and requesting for such data to be shared and/or information to be made available. However, in spite of elapse of a consideration period of time,



such data and/or information was not forthcoming from the suspended board of directors. The Applicant, accordingly, not having any other alternative, approached this Tribunal by filing an appropriate application under Section 19(2) of the Code. The said application stood numbered as I.A No. 89/19(2)/GB/2023 and is pending consideration with this Tribunal.

- 2.5 In terms of the 2nd Meeting of the Committee of Creditors held on 11th July, 2023, the Applicant informed the CoC members that after conducting market survey keeping in consideration the state of affairs of the Corporate Debtor and after the publication of Form G, though the Applicant had received preliminary queries from some parties but after sharing the relevant documents pertaining to the Corporate Debtor, none of the parties showed interest in the Corporate Debtor. No EOI had been received by the Applicant until the due date for submission. Hence the Applicant was of the view that the resolution of the Corporate Debtor may not seem plausible.
- 2.6 Pursuant to the 3rd Meeting of the CoC, the members with 100% voting share, recommended and approved liquidation of the Corporate Debtor, subject to approval of the Adjudicating Authority. It was resolved by the members of the Committee and Creditors that the Corporate Debtor will continue to function as a going concern during the Liquidation period and the liquidator may first explore sale of the Corporate Debtor as a going concern under Clause (e) and (f) of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- 2.7 In terms of Regulation 39C of the CIRP Regulations, while recommending liquidation of the Corporate Debtor under Section 33 of the Code, the Committee of Creditors may recommend that the liquidator should first explore sale of the Corporate Debtor as a going concern under Regulation 32 (e) of the CIRP Regulations or sale of the business of the CD as a going concern under clause (f) thereof. The Committee of Creditors have further identified the assets of the CD which mainly comprises of inventories and vehicles located in



Meghalaya and Assam, which according to commercial considerations of the Committee of Creditors, can be sold as a going concern under Regulation 32(e) and (f) of the CIRP Regulations.

- 2.8 As stipulated under Regulation 39D of the CIRP Regulations, while suggesting liquidation of the Corporate Debtor under Section 33 of the Code, the Committee of Creditors, in consultation with the Applicant have fixed the fee payable to the Liquidator.
- 2.9 The Applicant has duly performed his duties as specified under the Code read with the Regulations thereunder and has continued the business operations of the Corporate Debtor as a going concern. Further, the Resolution Professional has also complied with the timelines of the legal compliance as well.
- 2.10 In view of the commercial decision of the Committee of Creditors, adopted with 100% voting share, the present application is being moved praying for liquidation of the Corporate Debtor in accordance with Section 33 of the Insolvency and Bankruptcy Code, 2016.

ORDER

4. We heard the Learned RP and perused the materials available on record. It is found that no Resolution Plan has been received till date. **After perusing the minutes of the COC meeting held on 11.07.2023, it is also found that the CoC has voted for Liquidation of the CD with 100%. The CoC recommended that the liquidator may first explore sale of the Corporate Debtor as a going concern. Since a viable resolution plan was not received during the CIRP period, the prayer made in the IA for Liquidation needs to be accepted.**

5. Section 33(2) of the Code empowers the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the CIRP but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six % of the voting share, to liquidate the Corporate Debtor. In this case the Resolution for Liquidation of the CD has



been passed by the CoC **with 100% which is above the required % of voting for passing an order for Liquidation.**

6. The Insolvency and Bankruptcy Code, 2016, defines Resolution Plan as a plan for Insolvency Resolution of the Corporate Debtor as a going concern. The Resolution Plan must resolve insolvency (rescue a failing, but viable business); should maximize the value of assets of the 'Corporate Debtor', and should promote entrepreneurship availability of credit and balance the interests of all the stakeholders.

7. In the backdrop of the object of the IBC, it is amply clear that the **Resolution is Rule and the Liquidation is an Exception.** Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. **IBC therefore, does not allow liquidation of a corporate debtor directly.** It allows liquidation only on failure of corporate insolvency resolution process. It rather facilitates and encourages resolution in several ways.

8. Keeping in view such object behind the enactment of the Code, intention of the Legislature is that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of the Code and liquidation of a company can be only as a last resort, wherein, all efforts for bringing a Resolution Plan were failed or it cannot be found workable in the larger public interest. In this case during the hearing, the member of the CoC and the Applicant have submitted that they did not get any viable Resolution Plan at all. Hence, they have recommended for Liquidation.

9. **This Bench, therefore, hereby orders as follows:**

9.1 Prayers as sought for in IA (IBC) No. 92/GB/2023 filed by Mr. Sandeep Khaitan, the RP of the Corporate Debtor- P. L Vehicles Pvt. Ltd, is



- allowed and the **Corporate Debtor is ordered to be liquidated** in terms of section 33(2) of the Code read with sub-section (1) thereof.
- 9.2 Mr. Sandeep Khaitan [IBBI/IPA-001/IP-P00532/2017-2018/10957], having address 2nd Floor, Sanmati Plaza, G.S Road, ABC, Guwahati-781005, Assam, whose name has been proposed by CoC, **is hereby appointed as Liquidator** as provided under Section 34(1) of the Code subject to his possessing a valid Authorization for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of Regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulation, 2019.
- 9.3 The CoC under Regulation 39C has recommended **that the sale of CD should be a going concern. The liquidator is directed to adhere to it.**
- 9.4 The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- 9.5 Public Notice shall be issued in the same newspapers in which advertisements were issued earlier during the CIRP, stating that the Corporate Debtor is in liquidation.
- 9.6 The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- 9.7 On initiation of the liquidation process but subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.
- 9.8 In accordance with Section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of



the Corporate Debtor is continued during the liquidation process by the Liquidator.

9.9 In terms of Section 33(1) (b) (iii), the Liquidator shall file a copy of this order with the Registrar of Companies, Guwahati, Assam, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this order to the Registrar of Companies, Guwahati, Assam.

9.10 In terms of Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and regular progress reports according to Regulation 15.

10. **Thus, the present application i.e. IA (IBC) No. 92/GB/2023 filed under Section 33(2) of the IBC stands admitted and disposed of with the above observations and directions.**

11. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

12. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Sd/-

**(Manoj Kumar Dubey)
Member (Technical)
& Adjudicating Authority**

Sd/-

**(H.V Subba Rao)
Member (Judicial)
& Adjudicating Authority**