

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH, KERALA**

**IA/IBC/25/KOB/2021**

**in**

**CP/IB/54/KOB/2019**

*(Under Section 33(2) of Insolvency and Bankruptcy Code, 2016)*

**Order delivered on: 05.02.2021**

Coram:

**Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)**

**Applicant/Resolution Professional**

Raju Palanikunnathil Kesavan, Resolution Professional  
Auto Friction Components India Pvt. Ltd  
CGNRA-9(33/1183A)  
Kodamassery Lane, Chalikkavattom, Vennala PO  
Kochi, Ernakulam, Kerala-682018.

In the matter of

The Kerala State Industrial Development Corporation Limited...Financial Creditor

**Versus**

Auto Friction Components India Private Limited ... Corporate Debtor

**Appearance (through Video Conferencing):**

For applicant/RP ... Shri Vinod P.V

**ORDER**

This Interlocutory Application has been filed under Section 33(2) of IBC, 2016 by Mr.Raju Palanilkunnathil Kesavan, Resolution Professional in



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M/s. Auto Friction Components India Private Limited seeking the following reliefs: -

- (a) To pass an order under Section 33(2) of the Code for Liquidation of the Company: and
- (b) Appoint the Resolution Professional, Mr. Raju Palanilkunnathil Kesavan as Liquidator of the Corporate Debtor.

2. The facts in brief are as under: -

The Applicant/Resolution Professional stated that this Tribunal vide order dated 18.03.2020 in CP/IB/54/KOB/2019 admitted the application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by the Kerala State Industrial Development Corporation Limited against the Corporate Debtor, M/s Auto Friction Components India Private Limited and appointed the Applicant herein as the Interim Resolution Professional.

3. It is further stated that as per Section 13 and 15 read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Applicant has made Public Announcement on 21.03.2020 through newspapers namely Business Line all Kerala Edition (in English) and Deshabhimani Trivandrum Edition (in Malayalam) and also on the website of the IBBI intimating the commencement of CIRP inviting creditors to submit their claim. It is stated that because of the lock down imposed by the State and Central Governments the Applicant has admitted the claim up to 20.09.2020. It is also stated that no claims have been received from workmen/employees/authorized representative of workmen and employees till 20.09.2020.

4. The Applicant further stated that the first meeting of Committee of Creditors of the Corporate Debtor was held on 30.10.2020, and resolved to



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appoint the Applicant as the Resolution Professional with 100% voting. In the first meeting of Committee of Creditors, the Applicant reported to the Committee of Creditors that it may not be possible to revive the Corporate Debtor as a going concern for the following reasons:

- (A) As per the data available from the website of Ministry of Corporate Affairs, the status of the Company for e-filing is marked as "strike off".
- (B) There are no signatories existing for the Company and details of existing Directors, if any, are not available.
- (c) It is observed from the ROC website that the Company has not filed any statutory returns after 2006 including its Annual Return and Audited Financial Statements.
- (D) The factory of the Corporate Debtor is unoccupied for more than 15 years and is in dilapidated condition and boundaries are not ascertainable due to thick vegetation.

5. It is stated that the Committee taken into account of the above factors and instructed Resolution Professional to explore the possibilities of Liquidation of the Corporate Debtor without going into CIRP process.

6. The Applicant also stated that the Second meeting of Committee of Creditors was held on 07.12.2020 resolved to liquidate the Corporate Debtor under Section 33(2) of IBC before inviting expression of interest and also before preparing the information memorandum with 100% voting right for the following reasons:

- (a) Company is not functional for the last 15 years and is not a going concern and also formed an opinion that it may not be possible to revive the Company as a "going concern" through a Resolution Process by inviting an Express of Interest.



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(b) The status of the Company for e-filing is "strike-off" as per the ROC records.

(c) Application under Section 7 of the Insolvency & Bankruptcy Code, 2016 was filed by M/s KSIDC after withdrawing the original Company Petition No. 12/2016 filed before the Hon'ble High Court of Kerala for winding up of the Company on the ground of "inability to pay its debts" and the same was transferred to Hon'ble NCLT, Chennai as an application under Section 7 of IBC and the same was subsequently transferred to Hon'ble NCLT, Kochi Bench.

(d) There are no existing Directors/Signatories available for the Company as per ROC website and existence or details of the Directors if any are not traceable.

(e) Company has not filed any statutory returns/audited financial statements after the year 2006. The registered office of the Company is also not functional.

(f) The Company has no existing employees.

(g) The essential information required for the preparation of Information Memorandum are not available.

(h) There is no significant asset value for the Company other than the land admeasuring approximately one acre in Industrial Estate, Pappanamcode, Trivandrum District with Survey No. 76/2, 77/1, 77/2 of Nemam village as per Patta No. 19710 dated 03.04.1985, 16.08.1995, 08.01.1998 and 03.03.1999. This land was mortgaged by the Corporate Debtor with the Financial Debtor, KSIDC by deposit of the title deeds and by creating charge with ROC. Other assets are old and damaged building and scrap items of some old machineries. Hence even if going through the process of resolution, there is remote possibility of getting a Resolution Plan for the Company, which will also involve additional cost and time. The only possibility is to dispose such items in an "as is where is condition".

(i) There are no liquid assets available for the Company to meet the estimated Liquidation cost.



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7. In order to state that the Adjudicating Authority can approve the Liquidation of Corporate Debtor Company without taking any steps for resolution of the Corporate Debtor, the Applicant has referred to a decision of the Hon'ble NCLAT in the matter of ***Sunil S. Kakkad Vs. Altrium Infocom Private Limited (Company Appeal (AT) (Insolvency) No. 194 of 2020)***.

8. The Applicant further stated the Committee of Creditors with 100% voting right resolved to appoint the Applicant/ Resolution Professional as the Liquidator for conducting the Liquidation process of the Corporate Debtor. The Committee also considered the provisions of Regulation 39(B), 39(C) and 39(D) of the Regulation and noted that:

- a. The estimated Liquidation cost excluding the fee payable to the Liquidator is Rs. 1,60,000/- and Financial Creditor agreed to meet such expenses which shall be subject to the recovery from the liquidation assets.
- b. The Committee formed an opinion that in view of defunct status of the Company, it may not be possible to explore the option of sale of the Corporate Debtor as a going concern under Regulation 39(C).
- c. Committee also fixed the fee of the Liquidator as 2.98% of the proceeds distributed to the creditors.

9. Hence, the Applicant has filed this IA with prayer to order Liquidation of the Corporate Debtor and appoint the Resolution Professional as the Liquidator of the Corporate Debtor.

10. The consent of the Resolution Professional in Form 2 accepting appointment as the Liquidator of the Corporate Debtor has been produced.



11. This Tribunal heard the learned counsel appearing for the Resolution Professional and had gone through all the case records including the Resolution passed by the Committee of Creditors in the 2<sup>nd</sup> meeting held on 07.12.2020, and being satisfied with the conditions enshrined in the CIRP Regulations, pass the following order:

- a) The Corporate Debtor M/s. Auto Friction Components India Private Limited is hereby put under liquidation with immediate effect under Section 33(1) of IBC, 2016.
- b) The Resolution Professional **Shri. Raju Palanilkunnathil Kesavan** [rajupkin@gmail.com](mailto:rajupkin@gmail.com) Reg.No.IBBI/IPA-001/IP-P00801/2017-18/11356, CGNRA-9(33/1183A), Kodamaserry Lane, Chalikkavattom, Vennala P.O., Kochi, Ernakulam, Kerala- 682 028. is hereby appointed as Liquidator of the Corporate Debtor under Section 34 of IBC, 2016.
- c) That the Corporate Debtor be liquidated in the manner as laid down in Chapter III of by issuing a Public Notice stating that the Corporate Debtor is in liquidation. It is also directed the Applicant to send this order to ROC under which this Company has been registered.
- d) The applicant herein is hereby directed to act as a Liquidator for the purpose of liquidation of Corporate Debtor company with all powers of the Board of Directors, key managerial persons, and the partners of the Corporate Debtor shall cease to have effect and hereby vested in the Liquidator. The personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate

Debtor.



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- e) Since this liquidation order has been passed, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor without prior approval of this Adjudicating Authority, save and except as mentioned in Sub-Section 6 of Section 33 of the Code.
- f) The Liquidator shall co-ordinate with all the authorities, and the respected Govt. authorities shall provide complete information required by the Liquidator to facilitate the process of Liquidation.
- g) The Liquidator is at liberty to seek any directions, if need be, from this Bench during the Liquidation Process.
- h) The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.
- i) Moratorium declared vide Order dated 18.03.2020 on CP(IB)- 54/KOB/2019, henceforth ceased to exist
12. With the above orders, IA (IBC)/25/KOB/2021 is disposed.

Dated the 5<sup>th</sup> day of February, 2021

Sd/-  
Ashok Kumar Borah  
Member (Judicial)

Certified to be True Copy  
*[Signature]*  
Deputy Registrar  
National Company Law Tribunal  
Kochi Bench  
8/2/2021

NO. NCLT/CP/IB/54/KOB/2019/

dt. 9/2/2021

Copy to: Shri Rajin Palanikunnathil Kesavan,  
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