

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

Coram: MR. AJAY KUMAR VATSAVAYI,
HON'BLE JUDICIAL MEMBER
MR. RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

IA No. 51/JPR/2021
In
CP No. 177/9/JPR/2019

**UNDER SECTION 33 and 34 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016**

IN THE MATTER OF

Yash Productions

...Operational Creditor

VERSUS

Saga Automotive India Pvt. Ltd.

...Corporate Debtor

AND IN THE MATTER OF

IA No. 51/JPR/2021

Prashant Agrawal

Resolution Professional of Saga Automotive (India) Private Limited

Office at: F-106, 1st Floor, Sumer Complex,

Gautam Marg, Behind Bagadia Bhawan,

C-Scheme, Jaipur-302001, Rajasthan

...Applicant

For the Applicant: Mr. Prashant Agrawal, Adv.

Order Pronounced On: 16.03.2021

ORDER

Per: Shri Raghu Nayyar, Technical Member

1. This Application bearing IA No. 51/JPR/2021 is filed by the Resolution Professional ('Applicant' / 'RP') for Saga Automotive India Pvt. Ltd. under Section 33 and 34 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 for initiation of liquidation proceedings against Saga Automotive India Pvt. Ltd. ('Corporate Debtor').
2. The Adjudicating Authority vide order dated 04.03.2020 had admitted the application filed by Mr. Yash Bhardwaj, proprietor of Yash Productions under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and as a consequence thereof appointed Mr. Prashant Agrawal as Interim Resolution Professional ('IRP').
3. In compliance with provisions of the Code, the IRP constituted the CoC. The 1st meeting of the CoC was held on 03.06.2020, wherein the CoC unanimously resolved to appoint the IRP, i.e. Mr. Prashant Agrawal, as the Resolution Professional ('RP') of the Corporate Debtor. Copy of Minutes of 1st CoC meeting is enclosed as Annexure-2 of the Application. In the minutes of 2nd CoC meeting held on 18.07.2020, it is seen that the RP had appointed registered valuers to determine fair and liquidation values in accordance with Regulation 35 of the CIRP Regulations, 2016.

4. It is submitted that the RP had effected publication of Form G on 15.07.2020 and invited Expression of Interest ('EOI') for submission of resolution plan for the Corporate Debtor and thereafter, 8 EOIs were received out of which only 3 resolution applicants were successfully qualified under the eligibility criteria and were included in the final list of prospective resolution applicants. In the 3rd CoC meeting, held on 25.09.2020 it was resolved to seek extension of CIRP period of the Corporate Debtor by 90 days. Subsequently, this Adjudicating Authority vide order dated 10.12.2020 allowed IA 371/JPR/2020 seeking extension of CIRP period by 90 days, excluding lockdown period from 25.03.2020 to 24.05.2020. The extended period of CIRP was to expire on 29.01.2021.
5. Thereafter, the RP received a resolution plan from one Mr. Sanjay Dhagga on 02.01.2021. In the 6th CoC meeting held on 12.01.2021, the CoC asked the Resolution Applicant to consider increasing the amount of resolution plan; however, the Resolution Applicant did not agree. In view of this, the CoC decided to open voting period for approval of resolution plan but this did not lead to approval of the Resolution Plan. In the 7th CoC meeting held on 28.01.2021, the CoC with 98.91% voting rights resolved to liquidate the Corporate Debtor. Copy of the minutes of 7th meeting of CoC is annexed as Annexure 10 of the Application.

6. We have carefully heard and considered the arguments of the learned counsel for the RP; and have also perused the records and taken into consideration the above facts in relation to the affairs of the Corporate Debtor. The provisions of Section 33 of IBC, 2016 are as follows: -

“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.

(2) where the resolution professional at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the adjudicating authority of the decision of the committee of creditor approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clause (i), (ii) and (iii) of clause (b) of Sub-Section (1)”

7. The Hon'ble National Company Law Appellate Tribunal ('NCLAT'), in

Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd. in CA No. 1/2020 in CA No. 308/2000, dated 09.06.2020, observed as under: -

“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review.”

However, it is to be seen whether the relevant application is filed within stipulated time lines and as per applicable procedure.

8. **Prescribed period for filing application** - In the present case, the Application under Section 9 of the Code was admitted on 04.03.2020 and the period of 180 days was ending on 31.08.2020. Thereafter, vide order dated 10.12.2020, CIRP period was extended by 90 days beyond 180 days after excluding the period of lockdown from 25.03.2020 to 24.05.2020. Accordingly, the CIRP period was to expire on 29.01.2021. It is noted that the CoC resolved to liquidate the Corporate Debtor on 28.01.2021 and, as a consequence thereof, the instant application is filed by the RP on 08.02.2021. It is seen that there is no prayer for further extension or exclusion in the instant or any other application(s). In view thereof the Application under consideration is taken up under Section 33(1). Irrespective of the applicable sub-section under Section 33, this leads to liquidation of the Corporate Debtor.

9. **Appointment of Liquidator and fee to be paid**– Section 34(1) of the Code provides that 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 shall, subject to submission of written consent act as the Liquidator for the purpose of liquidation. The relevant provisions of Sections 34(1) of the Code are as follows: -

“(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 written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4).”

10. The present RP Mr. Prashant Agrawal is eligible to be appointed as Liquidator. The CoC had resolved to appoint the RP as the Liquidator. We do not find any reason to replace the existing RP. Mr. Prashant Agrawal, Resolution Professional with IBBI Registration No. IBBI/IPA-001/IP-P00053/2017-18/10127 has filed his consent in format / Form - AA dated 06.02.2021 as Annexure 11. The credentials of the proposed Liquidator have been checked from IBBI website (www.ibbi.gov.in) and nothing adverse is found on record. Therefore, Mr. Prashant Agrawal is appointed as the Liquidator.

11. It is seen that Regulation 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder.
12. **Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)** - The RP apprised the CoC in the 7th meeting about Regulation 39B of CIRP Regulation, 2016 and estimated the liquidation cost to be at Rs. 8,20,000/- plus GST, if any. The CoC with 98.91% voting rights approved the estimated liquidation cost along with applicable GST, except for the fees for registered valuer. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.
13. **Assessment of Sale as a going concern (Regulation 39C of CIRP Regulations, 2016)** - The RP apprised the CoC in its 7th meeting about Regulation 39C of CIRP Regulation, 2016. The members of CoC discussed and resolved to sell the Corporate Debtor as a going concern, as first option, or sell the business(s) of the Corporate Debtor as a going concern, as second option, before exploring other options as per Regulation 32 & 32A of IBBI (Liquidation Process) Regulations, 2016 and Regulation 39C of CIRP Regulations, if an order of liquidation is passed by the Adjudicating Authority.

14. **Fees of the Liquidator (Regulation 39D of CIRP Regulations, 2016) –**

In the 7th meeting of the CoC, the members with 98.91% voting rights resolved that the fees of the Liquidator will be fixed at Rs. 50,000/- plus GST per month during the entire process of liquidation.

15. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor, Saga Automotive India Pvt. Ltd. is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include: -

(i) As per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor,

Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority; and

(ii) The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and

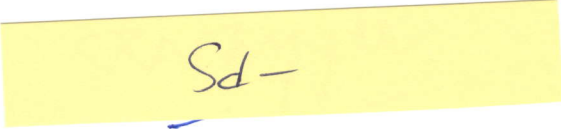
(iii) This order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business

of the Corporate Debtor is continued during the liquidation process by the Liquidator; and

- (iv) All the 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; and
- (v) 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 of the Code shall apply in relation to liquidation process as they apply in relation to CIR process with the substitution of references to the Liquidator for references to the Interim Resolution Professional; and
- (vi) The Liquidator shall publish public announcement in accordance with Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stakeholders to submit their claims as on the liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date; and

(vii) In accordance with Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and shall file regular progress reports as per Regulation 15.

16. **Pending Applications, if any, and its / their effect-** It is seen that the RP had filed IA No. 58/JPR/2021 to report the minutes of 4th CoC meeting. Relevant items of the said report and aspects related thereto have been considered in these proceedings. The same are not required for any further reference. Thus, IA No. 58/JPR/2021 is also disposed of along with this order in IA No. 51/JPR/2021.
17. In view of the foregoing, IA No. 51/JPR/2021 is disposed of. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.



Sd-

**Mr. RAGHU NAYYAR,
TECHNICAL MEMBER**



Sd-

**Mr. AJAY KUMAR VATSAVAYI,
JUDICIAL MEMBER**