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IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH – I, CHENNAI

IA/IBC/906/CHE/2023 IN IBA/454/2020

*(Filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read with
Rule 11 of NCLT Rules, 2016)*

In the matter of **POWER CAR INDIA PRIVATE LIMITED**

S. Kannan,
Resolution Professional of
Power Car India Private Limited
No.2/398, Mount Poonamalle Road,
Iyyappanthangal,
Chennai – 600 056

... Applicant

Along with

IA/293(CHE)/2023 IN IBA/454/2020

(Filed under Section 19(2) & (3) of the IBC, 2016)

S. Kannan,
Resolution Professional of
Power Car India Private Limited
No.2/398, Mount Poonamalle Road,
Iyyappanthangal,
Chennai – 600 056

... Applicant

-Vs-

Sachin Selvakumar
Suspended Director
No.97, Guru Kripa, Defence Colony,
Ekkaduthagal, Guindy Industrial Estate,
Chennai – 600 032

Nikitha Selvakumar,
Suspended Director,
No.30/97, Defence Officers Colony
Ekkaduthagal, Chennai – 600 032

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... Respondents

✓

Along with

IA/1398(CHE)/2022 IN IBA/454/2020

*(Filed under Section 60(5) of the IBC, 2016 read with Rule 11 of the NCLT Rules,
2016)*

S. Kannan,
Resolution Professional of
Power Car India Private Limited
No.2/398, Mount Poonamalle Road,
Iyyappanthangal,
Chennai – 600 056

... Applicant

Order Pronounced on 27th July 2023

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : V. Manivannan, Advocate in
IA/IBC/906/CHE/2023, IA/293/CHE/2023 &
IA/1398/CHE/2022

For Respondents : None Appeared in IA/293/CHE/2023

COMMON ORDER

(Hearing Conducted through VC)

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

IA(IBC)/906/CHE/2023 has been filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking reliefs as follows:

- (a) to pass an order for the liquidation of the Corporate Debtor;*
- (b) To pass such other orders as it deems fit in the above circumstances of the case and thus render justice.*





2. **IA/293/CHE/2023** has been filed under Section 19(1)(2) of the Insolvency & Bankruptcy Code, 2016 seeking the following reliefs:

- a) *To direct the Respondents to submit the audited financial statement of the Corporate Debtor for the period 01.04.2018 till 01.09.2021 to the Applicant*
- b) *To direct the Respondent to submit the books of accounts of the Corporate Debtor for the period 01.04.2018 till 01.09.2021 to the Applicant*
- c) *To direct the Respondents to submit the Fixed Asset Register of the Corporate Debtor for the period 01.04.2018 till 01.09.2021 and to identify the Assets to the Applicant.*
- d) *To direct the Respondents to submit the vouchers and bank statements of the Corporate Debtor for the period 01.04.2018 till 01.09.2021 to the Applicant.*
- e) *To direct the Respondents to submit all the statutory returns filed with various departments with the user id and password of the same.*
- f) *To pass such other orders as it deems fit in the above circumstances of the case and thus render justice.*

3. **IA/1398/CHE/2022** has been filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking the following reliefs:

- a) *Condone the delay of 20 days (from 21.09.2022 till 10.10.2022) in filing the present application*
- b) *Grant extension of the CIRP period for a period of 90 days from 27.08.2022 till 25.11.2022,*
- c) *To pass such other orders as it deems fit in the above circumstances of the case and thus render justice*

IA(IBC)/906/CHE/2023

4. As per the averments made in the application, the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was





initiated on 02.09.2021 and one Mr. Venkata Sivakumar was appointed as the Interim Resolution Professional (IRP).

5. Pursuant to the order of CIRP, the IRP effected Public Announcement on 05.09.2021 and fixed the last date for submission of claims on 18.09.2021. The IRP received claim forms from various creditors and based on the claim forms received, the IRP constituted the Committee of Creditors (CoC).

6. It is stated that the IRP had conducted the 1st Committee of Creditors meeting on 25.09.2021. The COC with 100% voting approved the remuneration of the IRP and reimbursement of the CIRP costs incurred by him so far and also resolved to appoint Mr. China Masthan Talakayala as the Resolution Professional of the Corporate Debtor.

7. It is stated that the IRP conducted the 2nd CoC meeting on 19.04.2022 and informed the COC that the RP proposed to be appointed in the application for change of RP vide IA/1136/2021, as resolved requires to be substituted with another RP. The CoC with 100% voting approved to appoint the Applicant herein as the Resolution Professional (RP) for the Corporate Debtor.

8. It is stated that the IRP submitted a Memo for appointing the applicant herein, Mr. S. Kannan as RP. This Tribunal vide order dated 22.04.2022 dismissed IA/1136/2021 as infructuous and granted liberty to the CoC to file fresh application for change of RP.

9. It is stated that the IRP filed an application bearing IA/519/CHE/2022 under Section 22(3) of the IBC, 2016 seeking appointment of Applicant herein namely Mr.S.Kannan as RP and the same was allowed by this Tribunal vide order dated 23.06.2022.

10. It is stated that the 180th day of the CIRP period expired on 01.03.2022. The IRP filed an application on 02.05.2022 before this Tribunal for extension of the CIRP period (during which more than 236 days had expired at the time of filing the application) for a maximum period of 330 days vide IA/518/2022.

11. In terms of the Resolution passed by the CoC in 3rd CoC meeting the applicant filed an application vide IA/813/2022 seeking exclusion of the period of 180 days. This Tribunal vide order dated 30.08.2022 allowed the exclusion of CIRP period of 180 days from 03.09.2021 till 28.02.2022.

12. On 20.09.2022, IA/518/2022 was taken up for hearing along with IA/520/2022. This Tribunal recorded that the resolution approved by the CoC for extension of CIRP was not attached by the erstwhile IRP in the IA/518/2022 and the prayer sought in IA/520/2022 was incorrect. Hence, the Tribunal vide common order dated 20.09.2022 dismissed both the applications and granted liberty to the Applicant/RP to file fresh application along with CoC minutes for seeking extension of time and seeking cooperation from the Suspended Directors of the Corporate Debtor and the members of the CoC with correct prayer.



13. In the 4th CoC meeting held on 26.09.2022, the applicant informed the CoC regarding the order of this Tribunal in IA/518/2022 and IA/520/2022. The CoC passed resolution for filing an application for extension of the CIRP period for another 90 days with 100% voting rights. The copy of the minutes of the 4th CoC meeting is enclosed as *Annexure 9* of the application typeset.

14. Pursuant to the resolution passed in 4th CoC meeting, the applicant filed an application bearing IA/1398/2022 seeking extension of CIRP period.

15. The Applicant conducted the 5th CoC meeting on 21.12.2022 in which 100% CoC members participated who after discussions and deliberations resolved to liquidate the Corporate Debtor. In the said 5th CoC meeting, the recommendations and determinations under Regulations 39B (1), (2), (3), 39C (1), (2) and 39D of the IBBI (Liquidation Process) Regulations, 2016 were made. The Applicant namely Mr. S.Kannan submitted Form AA and the CoC approved the resolution to appoint Mr. Mr. S.Kannan as Liquidator with 100% voting. A copy of the minutes of 5th meeting of CoC is enclosed as *Annexure-11* of the application typeset. Copy of Form AA along with authorization for assignment are enclosed at *Annexure-13&14* respectively of the application typeset.

16. The extract of Resolution is reproduced hereunder:

RESOLVED THAT the Committee of Creditors has unanimously decided to liquidate the Corporate Debtor. Further, it is resolved that the Resolution Professional Mr. S. Kannan (IP Registration No. -IBBI/IPA-00755) may be appointed to act as Liquidator of the corporate debtor and he is further

authorized for filing the petition U/S 33(2) of IBC with Hon'ble NCLT, Chennai Bench I to proceed for Liquidation of the Corporate Debtor. The Entire cost of liquidation Rs.1,50,000/- will be funded by the COC members (Stakeholders)"

17. The applicant annexed **Form-H** as *Annexure-15* of the Application typeset. It is seen from Form-H that no PUFEE applications are pending before this Tribunal.

18. Heard the submissions of the Applicant and perused the documents placed on record.

19. It is seen from the minutes of the 5th CoC meeting, that the CoC has;- a) Decided to liquidate the Corporate Debtor and b) Appoint M.S.Kannan as the Liquidator of the Corporate Debtor. Considering the circumstances, this Tribunal has no other option but to order for liquidation of this Corporate Debtor viz., Power Car India Private Limited under Section 33 (2) of IBC, 2016. We also find that the present matter satisfies the mandate under Section 33(2) of the IBC, 2016. The Section 33(2) of the IBC 2016 is extracted hereunder:

Section 33 (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 creditors 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-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)."

20. In view of the aforesaid, we order for liquidation of the Corporate Debtor viz., Power Car India Private Limited.

21. We hereby appoint **Mr.S.Kannan**, with *Reg. No. IBBI/IPA-001/IP-P00755/2017-2018/11287 (E-Mail Id: charitarthkannan@gmail.com)* (*AFA is valid up to 08.12.2023*) as the Liquidator of the Corporate Debtor, to carry out the liquidation process subject to the following terms of the directions.

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.
- d) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- e) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- f) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency

and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

22. The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;

23. The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

24. Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

25. With the above said directions, this **IA/906/CHE/2023** filed for Liquidation of the Corporate Debtor stands **allowed**.

26. In relation to **IA(IBC)/293/CHE/2023**, it is stated that the RP had requested for certain documents to be furnished by the Respondent / suspended Board of Directors as sought for in the prayer made in **IA(IBC)/293/CHE/2023**. The Applicant has filed Affidavit of service before this Tribunal on **11.05.2023** and a perusal of the same manifests the fact that the Application was served to both the Respondents, and

inspite of the same, there was no representation on behalf of the Respondents.

27. Since we are inclined to order for liquidation of the Corporate Debtor, the proposed liquidator appointed, if necessary can file an application seeking cooperation of the suspended Board of Directors in the liquidation process under Regulation 9 of the IBBI (Liquidation Process) Regulations, 2016. With the above said directions, **IA(IBC)/293/CHE/2023** stands **disposed of**.

28. In relation to **IA(IBC)/1398/CHE/2022**, since we have ordered for the liquidation of the Corporate Debtor, nothing survives in this extension application. Accordingly, **IA(IBC)/1398/CHE/2022** is **dismissed as infructuous**.

29. All the above IAs are accordingly **disposed off**.

Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd -

SANJIV JAIN
MEMBER (JUDICIAL)