

THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI

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C.A. 1637 (PB) /2019

IN

Company Petition No. (IB) – 546 (PB) /2018

In the matter of:

Sunil Prakash Sharma

Applicant/ Resolution Professional

AND

In the matter of:

Sterling Vehicles & General Sales Private Limited

Corporate Debtor

*Under Section 33 of the Insolvency and Bankruptcy Code, 2016
for liquidation of the corporate debtor*

Judgment delivered on: 08.11.2019

Coram:

MR. CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For the IRP:

For the India Bulls Housing:

For the Respondent:

Mr. Neeraj Kumar Gupta, Advocate

Mr. Sumesh Dhawa, Ms. Vatsala Kak &

Ms. Geetika Sharma, Advocates

Ms. Ranjana Roy Gawai, Ms. Vasudha Sen

& Mr. Vineet Kumar, Advocates

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ORDER

S. K. Mohapatra, Member

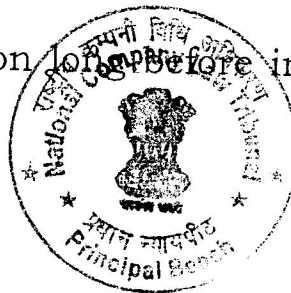
1. This is an application filed by the Resolution Professional under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the corporate debtor, M/s Sterling Vehicles & General Sales Private Limited.
2. The facts in brief are that one of the financial creditors, Volkswagen Finance Private Limited, had filed an application under Section 7 of the Code bearing number IB-546(PB)/2018 for initiation of Corporate Insolvency Resolution Process against the corporate debtor, M/s Sterling Vehicles & General Sales Private Limited. The said application was admitted by this Tribunal on 26.02.2019 initiating Corporate Insolvency Resolution Process against the corporate debtor M/s Sterling Vehicles & General Sales Private Limited and there in appointed Mr. Sunil Prakash Sharma, as the Interim Resolution Professional for the

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purpose of conducting the Corporate Insolvency Process of the Corporate Debtor.

3. It has been submitted in the application that in terms of Section 15 of the Code, Form-A was published in English Daily "Financial Express" Delhi-NCR edition and Hindi Daily "Jansatta" Delhi-NCR edition on 10.03.2019 and FORM-A was also sent via email on 11.03.2019 to the designated email id of IBBI for uploading on the website of IBBI and during the CIRP period. Consequently, Interim Resolution Professional received Claims from six Financial Creditors and three Operational Creditors.
4. It is interesting to note here that in the present application the applicant resolution professional has designated himself as the interim resolution professional of the corporate debtor. That apart on one hand he has alleged that the suspended directors are not co-operating and on the other hand at his instance C.A. no. 895/PB/2019 filed by him under Section 19(2) of the Code pertaining to non-cooperation was disposed of on 09.08.2019. moreover, notwithstanding the fact that admission order was passed on 10.08.2019 in February,



2019 neither valuation of the assets of the corporate debtor has been done nor forensic auditor has been appointed to look into the financial affairs of the corporate debtor.

5. Be that as it may, it is seen that the members of the Committee of Creditors in their 3rd Meeting held on 21.08.2019, with majority voting share of 75.47% have decided not to seek for extension of Corporate Insolvency Resolution Process period and have resolved for liquidation of the corporate debtor. It has also been decided to appoint the Resolution Professional as the liquidator who has given consent in the requisite Form.

6. The members of the suspended Board of Directors have opposed the present application mainly on the ground that the liquidation should be the last resort. Once they have not co-operated in furnishing the detailed information and documents pertaining to the corporate debtor lying in their possession in time, it does not lie in their mouth to allege that Corporate Insolvency Resolution Process has been delayed. Even the order dated 31.07.2019 read with order dated 27.09.2019 has not been complied with by the suspended directors in its letter and



7. It is submitted in the present application that the last date for conclusion of the CIRP period was 26.08.2019. Admittedly, there has been no application filed for extension of CIRP period as Committee of Creditors took a decision not to extend the CIR Process and resolved to liquidate the corporate debtor by majority votes.
8. Commercial decision of Committee of Creditors normally is not open to judicial review. The Resolution Professional has filed the present application with the requisite mandate of Committee of Creditors for liquidation of the Corporate Debtor as the initial statutory period of corporate insolvency process period has lapsed and as further extension of CIRP period was not approved by the Committee of Creditors.
9. However, it is clarified that in liquidation the liquidator can ensure that the corporate debtor remains a going concern and even can sell the business of the corporate debtor as a going concern in accordance with law.
10. It is also pertinent to refer to the statutory provisions provided in Section 33 (2) of the Code which envisages that:



“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 liquidated 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).”

11. Therefore, as per the mandate of the Code liquidation has to follow as recommended by the Committee of Creditors. Adherence to statutory requirement has to be in toto. When the language of the Code is clear and explicit the Adjudicating Authority must give effect to it whatever may be the consequences.

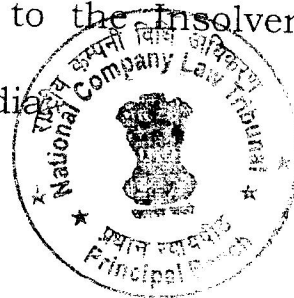
12. In the factual background and in the absence of any possible resolution plan and for want of time beyond statutory CIRP period; there is no other alternative left but to order in conformity with the majority decision of the Committee of Creditors with 75.47% voting share, for



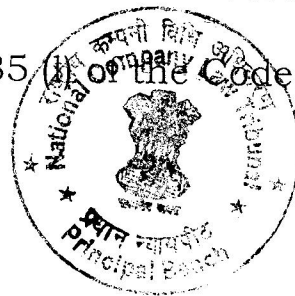
liquidation of the corporate debtor under Section 33 of the Code.

13. In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s Sterling Vehicles & General Sales Private Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

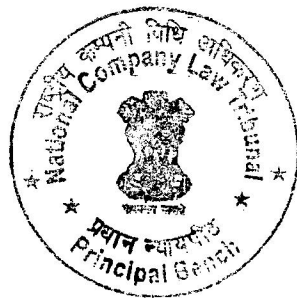
- a.** Mr. Sunil Prakash Sharma with Registration No. IBBI/ IPA-002 / IP-N00551 / 2017-18 / 11726, is appointed as Liquidator in terms of Section 34(1) of the Code.
- b.** Mr. Sunil Prakash Sharma, is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c.** The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India



- d. 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;
- e. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.
- f. Liquidator is directed to act in terms of the decision of Hon'ble Appellate Tribunal passed in *Company Appeal (AT) (Ins.) No. 224 of 2018 in the matter of Y. Shivram Prasad v. S. Dhanapal* decided on 27.02.2019 *inter alia* to ensure that the corporate debtor remains a going concern.
- g. The liquidator shall *inter-alia* appoint valuer and forensic auditor and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 of the Code.



- h. The liquidator shall also follow up any pending application for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- i. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- j. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.
- k. C.A. 1637 (PB) /2019 filed in IB 546 (PB)/2018 is disposed of in the aforesaid terms.



Sd-
(M.M. KUMAR)
PRESIDENT

Sd-
(S. K. MOHAPATRA)
MEMBER (T)

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Sd-
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27.11.19
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003