

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/1396(KB)2019
IA(I.B.C)/191(KB)2022,
IA(I.B.C)/384(KB)2022

**CORAM: 1. HON'BLE MEMBER(J), SHRI ROHIT KAPOOR
2. HON'BLE MEMBER(T), SHRI HARISH CHANDER SURI**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 12TH MAY, 2022, 10:30 A.M

IN THE MATTER OF	VINOD DISTRIBUTORS PRIVATE LIMITED VS DULICHAND AUTO SALES PRIVATE LIMITED
UNDER SECTION	IBC UNDER SEC 7

Counsel / Authorised Representative appeared physically/through video conference:

For RP in IA/191/2022 & IA/384/2022 : Ms. Nancy Gupta Murarka, PCA
Mr. Jai Narayan Gupta, RP in person

For R-1 in IA/191/2022 : Ms. Mamta Binani, Adv.
Mr. Sidhartha Sharma, Adv.
Ms. Shalini Basu, Adv.

ORDER

1. Ld. Authorised Representative for the RP present. RP is present in person. Ld. Counsel for respondent no.1 in IA(IBC)/191(KB)2022 present.
2. IA(IBC)/191(KB)2022 – Ld. Counsel appearing for R-1, one of the suspended members of the Board of Directors of the Corporate Debtor, seeks permission to file reply affidavit. Let it be filed within two weeks with advance copy to the RP. List this matter on 21/06/2022.
3. IA(IBC)/384(KB)2022
 - (a) This is an application filed by the RP seeking liquidation of the Corporate Debtor, viz., **Dulichand Auto Sales Private Limited [CIN: U50200WB2013PTC193408]** on the ground that no Resolution Plan received by him and the CoC at its 7th meeting held on 16/04/2022 by 93% voting share approved liquidation of the Corporate Debtor.

(b) This Adjudicating Authority *vide* its order dated 18/11/2021¹ on a petition filed by Vinod Distributors Private Limited (*Financial Creditor*) u/s. 7 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) directed initiation of the Corporate Insolvency Resolution Process (*'CIRP'*) against the Corporate Debtor and appointed the applicant herein as the Interim Resolution Professional (*'IRP'*)

(c) The first CoC meeting was held on 15/12/2021², wherein IRP was confirmed as RP. 2nd CoC meeting was held on 27/12/2021³ and remuneration of RP was approved. No records were made available by the suspended members of the Board of Directors. Statutory Auditors was also not cooperating. 3rd CoC meeting was held on 19/01/2022⁴. RP formed opinion and determined the existence of the avoidable transactions u/s. 43, 45 and 66 of the Code. EoI was published on 21/01/2022, Information Memorandum was issued on 26/01/2022. 4th CoC meeting was held on 07//02/2022⁵. Only one EoI from prospective resolution applicant was received. 5th CoC meeting was held on 05/03/2022⁶. RFRP, IM and EM were provided to the prospective Resolution Applicant. Application u/s. 19(2) was filed on 04/02/2022 and the matter was heard on 04/04/2022. Forensic Auditor was appointed on 11/03/2022, who submitted their Report on 04/04/2022. Application u/s. 43, 45 and 66 was also filed on 09/04/2022.

(d) At the 7th CoC meeting held on 16/04/2022⁷, CoC has decided by 93% voting share for liquidation of the Corporate Debtor as the 180 days CIRP period will come to an end on 16/05/2022.

(e) The Resolution Professional has expressed his willingness⁸ to act as a Liquidator of the Corporate Debtor.

(f) We have considered the submissions made by the Ld. Authorised Representative for the Liquidator and the Liquidator and perused the records.

(g) This is a case where no Resolution Plan was received and the 180 days CIRP period will be expiring on 16/05/2022. Therefore, there is no alternative but to order liquidation of the Corporate Debtor.

(h) This Bench, therefore, hereby orders as follows: -

(i) IA(IBC)/384(KB)2022 filed by Mr. Jai Narayan Gupta, RP of **Dulichand Auto**

¹ Annexure 1 at pages A-1 to A-12 of the application

² Annexure 2 at pages A-13 to A-30 of the application

³ Annexure 3 at pages A-31 to A-41 of the application

⁴ Annexure 4 at pages A-42 to A-50 of the application

⁵ Annexure 5 at pages A-51 to A-59 of the application

⁶ Annexure 6 at pages A-60 to A-67 of the application

⁷ Annexure 8 at pages A-80 to A-92 of the application

⁸ Annexure 9 at pages A-93 to A-95 of the application

Sales Private Limited, the Corporate Debtor herein, 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;

(ii) Mr. **Jai Narayan Gupta** [Reg. No. **IBBI/IPA-001/IP-P00371/2017-2018/10628**], is hereby appointed as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation 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) Regulations, 2019.

(iii) 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.

(iv) Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, stating that the Corporate Debtor is in liquidation.

(v) All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.

(vi) 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.

(vii) 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.

(viii) 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 to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

(ix) In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.

- (i) The application bearing **IA(IBC)/384(KB)2022** shall stand disposed of in accordance with the above directions.
- (j) **CP(IB)/1396/KB/2019** to come up for filing of periodical report on **11/08/2022**.
- (k) A copy of this order shall also be sent to the IBBI for information.
- (l) 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.
- (m) Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

hb.