

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH, DELHI  
BENCH III**

IA-1896/2020

In

CP (IB) – 1329/ND/2019 filed under  
Section 33 of the Insolvency and  
Bankruptcy Code, 2016

**In the matter of Automobiles Sterling (India) Pvt. Ltd (CD).**

**Mr. Pankaj Kumar Singhal**, Resolution Professional

*... Applicant*

*Order delivered on 11<sup>th</sup> January, 2021*

**CORAM:**

**CH. MOHD SHARIEF TARIQ, HON'BLE MEMBER (JUDICIAL)**

**SHRI, NARENDER KUMAR BHOLA, HON'BLE MEMBER (TECHNICAL)**

**Parties / Counsels present**

For Resolution Professional : Pankaj Kumar Singhal Adv (RP)

**ORDER**

**Per: NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)**

1. This relates to IA- 1896/2020 filed in CP (IB) – 1329/ND/2019 by Mr. Pankaj Kumar Singhal (hereinafter referred to as 'Resolution Professional' or 'Applicant') under Section 33(2) and 34(1) of the Insolvency and Bankruptcy Code, 2016. The prayer made in the Application is to pass an order of liquidation pertaining to the Corporate Debtor (CD) viz., Automobiles Sterling (India) Private Ltd.

2. Originally CP (IB) – 1329/ND/2019 was admitted by this Authority vide Order dated 07.08.2019, the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor and the Applicant was appointed as Interim Resolution Professional vide the same order.
3. It is averred that pursuant to the Order of this Authority, the applicant made a public announcement on 20.09.2019 in accordance with section 15 of the Code read with Regulation of CIRP Regulations in the newspaper namely, Financial Express (English edition) and Jansatta (Hindi edition) and same information was intimated to concerned authority.
4. It is submitted that the claims from Kotak Mahindra Prime Limited (secured creditor/financial creditor) and M/s Adbridge Communication India Private Limited (Operational Creditor) were received till last date i.e., 04.10.2019 and no claims have been received from any other operational creditor including workmen and employee.
5. It is further submitted that the CoC was constituted on 14.10.2019 comprising of sole financial creditor i.e., M/s Kotak Mahindra Prime Limited. The First CoC meeting took place on 19.10.2019 wherein the IRP informed that only duly authorized

officer can attend and vote on behalf of the member in the CoC.

The meeting was adjourned to 21.10.2019. In the adjourned meeting following discussion took place:

- CoC through Mr. Arjit Punia only member of CoC consented for shorter notice for meeting of CoC and also agreed not to hold CoC meeting through video conferencing.
- IRP informed that only one claim has been received so far as financial creditor and one claim has been received as operational creditor. It was informed that the claims received have been collated. IRP presented the report of constitution of CoC formed and submitted by him to the adjudicating authority i.e., Kotak Mahindra Prime Limited with 100% voting right. The CoC was also informed that the amount claimed by the Kotak Mahindra Prime Limited is Rs. 6,18,19,879/- and the amount admitted as per audited balance sheet for the financial year ending 31.03.2019 subject to rectification/revision is Rs.3,59,13,086/-. CoC took note of the same.
- IRP also informed the CoC about the actions taken by him since his appointment.

- IRP presented the cost incurred by him till the date of meeting of CoC for rectification of the same. After detail discussion it was resolved/ approved that cost of Rs. 1,28,364/- shall be considered as CIRP cost and IRP was authorized to make the payment towards CIRP cost, if not paid earlier.
- The IRP also informed the CoC about his visit to the showroom as well as workshop of the corporate debtor, furthermore IRP also informed the CoC that Mr. Tarun Kapoor is not disclosing the details of all the related parties under Companies Act 2013.
- The IRP also discussed the possibilities of continuous inspection of assets lying at the showroom and workshop. Members of CoC asked for some time to discuss the issue of fixed assets after discussion with expert.
- The IRP was appointed as Resolution Professional in the matter of CIRP of Automobile Sterling (India) Private Limited in accordance with provisions of section 22(3)(a) of IBC 2016.
- The IRP proposed professional fee of Rs. 2,00,000/- per month. On being put to vote the said professional fee of

Rs. 1,25,000/- was approved by the CoC and the following resolution was passed, "RESOLVED THAT remuneration of Rs. 1,25,000/- per month plus applicable taxes be and is hereby approved for payment to the IRP in CIRP of Automobile Sterling (India) Private Limited. In addition to the professional fee and applicable taxes, the Insolvency professional would be entitled for reimbursement of expenses like Insolvency professional insurance expense, fee payable to professionals engaged by IRP/RP, publication of public announcement, expenses for conducting the CoC meeting. Travel expenses and other incidentals charges incurred during the CIRP. It was further resolved that the professional fee of the IRP shall form part of the CIRP cost.

- The IRP also informed the members of the CoC about some more actions which are required to be taken and the same was discussed. It was discussed that the book of accounts has been kept in the office of the statutory auditor and the same are required for evaluation of preferential transaction, undervalued transaction, fraudulent transaction, forensic audit, etc. Mr. Tarun

Kapoor, the suspended Director assured to discuss with the statutory auditor and was directed to make sure of availability of books of account all times as per the requirement of CIRP. On being asked to intimate Ministry of Corporate Affairs regarding change in place of shifting of book of account, Mr. Tarun Kapoor assured to submit the same.

- The IRP also informed the CoC about the cancellation of GST numbers of Corporate Debtor and the outstanding shown in the balance sheet for the financial year 2018-2019 is Rs. 1,99,64,482/-. The CoC was informed that the said GST number would also be required to be reactivated in terms of implementation of resolution plan in future and effective steps are required in this regard.
- The IRP also informed the CoC that the audit for the period from 01.04.2019 till 07.08.2019 is required to be done and for the same statutory auditor has raised concern over professional fee in this regard. The IRP has agreed to pay fee proportionate to the period of audit as compared to the previous financial year 2018-2019.
- The IRP also informed the member of the CoC that

statutory register submitted by Mr. Tarun Kapoor is not reliable in terms of some observation sheet presented and initialled by the IRP for the purpose of identification, on which Mr. Tarun Kapoor replied that the same needs to be revised as the same has been prepared by the auditor and some resolutions could not be sent on time due to urgency. The IRP informed the member that work books of account were made available, the same will be prepared again. The IRP also informed the members of CoC that Mr. Tarun Kapoor has been asked to submit the requisite form in relation to annual filing with Ministry of Corporate Affairs and Mr. Tarun Kapoor assured to submit the same.

- Mr. Tarun Kapoor also disclosed that the dealership of the Corporate Debtor has been cancelled and therefore CoC was also of the view that the Corporate Debtor should be liquidated. Some more discussion about the value of the building took place and the only member of CoC asked some time to confirm from their team. It was also discussed to keep the cost of CIRP under control.

6. It is submitted that the 2<sup>nd</sup> meeting of CoC was called by the

applicant on 30.12.2019. In the aforesaid meeting following resolutions were passed by the CoC :-

- Resolved that since the business of the corporate debtor is shut down due to the suspension/cancelation of dealership and there is no viability in continuation of the business of corporate debtor in the present scenario, the CoC decided to recommend the liquidation of the corporate debtor.
- Resolved that RP Mr. Pankaj Kumar Singhal be and is hereby recommended as liquidator subject to the approval of the adjudicating authority and his willingness to act as liquidator.
- Resolved that as per chapter III of part of part II of the IBC 2016, the business of the corporate debtor is hereby approved to be liquidated and authorize RP to file the application for seeking order of liquidation with the Adjudicating Authority.
- Resolved that the Adjudicating Authority may be requested to appoint already appointed RP as liquidator of the Corporate Debtor, on such terms and conditions as it may deem fit pursuant to the relevant provisions of IBC



2016.

- Resolved that Legal cost relating to the application to be made for liquidation be and is hereby approved and to be paid as professional fee plus out of pocket expenses on actual basis payable to professional engaged/to be engaged by the RP and the same may be treated as CIRP cost.

7. Following reasons are there behind the liquidation of corporate debtor: -

- The CoC is of the view that the business of the Corporate Debtor is shut due to the suspension/ cancelation of the dealership and there is no viability in continuation of the business of the corporate debtor in present scenario and has approved for liquidation of the corporate debtor vide resolution dated 09.01.2020.
- Since the work of the corporate debtor was to run and operate a car dealership. After appointment of the IRP, the IRP sent various mails and also held meeting with Mr. Tarun Kapoor the suspended Director of the corporate debtor to get information-about the details of the assets of the corporate debtor. After persistent effort, the IRP could

only find one showroom and workshop of the corporate debtor and personally visited at Zb-45-46/487, GT Road, Dilshad Garden, Shahadra Delhi on 07.10.2019. No operation was found to be carried at the said premises and on the instruction of Mr. Tarun Kapoor, floors of the premises were unlocked. Basement of the said building was informed to be in possession of third party. Caution notice was affixed at the main entry of the ground floor of the said building. Videography of said visit was also done. After that Mr. Tarun Kapoor took IRP to the nearby workshop and certain machinery as well as movable stock like computer with its accessories were found in the said workshop. It was also informed by Mr. Tarun Kapoor that the dealership of Corporate Debtor stood cancelled and the subject premises was on lease hold basis and the possession of the same has already been handed over to its owner and when the IRP took over the matter, the business of the corporate debtor was already closed, there was no employee of the company and the license of the dealership was already cancelled. As the corporate debtor was not going concern and because of termination

of the dealership license, there was no possibility of revival of the CD.

8. Since no Resolution Plan is received by this Authority under Sub-section (6) of Section 30 of the Insolvency & Bankruptcy Code, 2016 and keeping in view the fact and circumstances abovementioned, the Corporate Debtor has to be ordered for liquidation.

**ORDER**

9. In view of the facts and circumstances recorded by Resolution Professional in IA- 1896/2020 filed in CP (IB) – 1329/ND/2019 and in exercise of powers conferred under Sub-Clauses (i) (ii) and (iii) of Clause (a) of Sub-Section (1) of Section 33 of the I&B Code, 2016, this Authority proceeds to pass Liquidation Order as follows: -

I. This Authority hereby orders for liquidation of the Corporate Debtor (CD) viz., M/s. Automobiles Sterling (India) Pvt. Ltd. which shall be conducted in the manner as laid down in Chapter III of Part II of the Insolvency & Bankruptcy Code, 2016;

- II. This Authority hereby appoints Mr. Pankaj Kumar Singhal as Liquidator who shall issue a public announcement stating therein that the Corporate Debtor is in liquidation;
- III. The moratorium declared under Section 14 of the Insolvency & Bankruptcy Code, 2016, shall cease to have effect from the date of the order of liquidation;
- IV. Subject to Section 52 of the Insolvency & Bankruptcy Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
- V. This Authority makes it clear that Para (IV) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
- VI. This Order 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.

VII. 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 with the Company Liquidator viz., Mr. Pankaj Kumar Singhal, in addition to it, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the Insolvency & Bankruptcy Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

VIII. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

IX. The Company Liquidator shall be entitled to charge such fees as resolved by the CoC i.e., Rs.1,00,000/- plus applicable taxes per month.

X. The Liquidator is directed to communicate this order with immediate effect to the concerned Registrar of Companies, OL, Registered Office of the Corporate Debtor and for information and compliance.

10. In terms of the above, CA-1896/2020 filed in CP (IB) – 1329/ND/2019 by the Resolution Professional under Section 33(2) of the Insolvency & Bankruptcy Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor viz., M/s Automobiles Sterling (India) Pvt. Ltd., is **allowed**.

(NARENDER KUMAR BHOLA) (CH. MOHD SHARIF)  
— *sd-* — *sd-*  
MEMBER (TECHNICAL) MEMBER (JUDICIAL)