

(2022) 09 NCLT CK 0074

In the National Company Law Tribunal

Case No : IA(IBC)/176/KOB/2022 In IBA/25/KOB/2020

Federal Bank Ltd;

APPELLANT

Vs

Platino Classic Motors (India) Pvt. Ltd

RESPONDENT

Date of Decision : 30-09-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7, 14, 19(2), 33(2), 33(5), 34(1)
Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 —
Regulation 4(2)(6), 12, 13

Citation : (2022) 09 NCLT CK 0074

Hon'ble Judges : P. Mohan Raj, (J); Satya Ranjan Prasad, Member (T)

Bench : Division Bench

Advocate : Arjun Sheth

Final Decision : Disposed Of

Judgement

1. The present application is filed by the Applicant being the Resolution Professional (hereinafter referred to as "RP") under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") for passing an order of liquidation of the Corporate Debtor, M/s. Platino Classic Motors (India) Pvt. Ltd. and appointment of the present Resolution Professional as Liquidator of the Corporate Debtor.

2. The facts as narrated in the application and explained by the RP are summarized hereunder:

i. The Financial Creditor, the Federal Bank Ltd. had filed an application under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as the 'CIRP'), against the Corporate Debtor M/s. Platino Classic Motors (India) Pvt. Ltd., which was admitted vide order dated 08.03.2021 and Mr. Sathiq Buhari was appointed as the Interim Resolution Professional (hereinafter referred to as "IRP"). Thereafter due to the inconvenience expressed by the Interim Resolution Professional Mr. Sathiq Buhari, this Adjudicating Authority appointed the Applicant as Interim Resolution Professional of the

Corporate Debtor vide order dated 18.11.2021 in IA(IBC)/109/KOB/2021 and subsequently he was appointed as RP on 22.12.2021, which has been intimated to this Adjudicating Authority.

ii. It is submitted that as full information about the assets of the Corporate Debtor was unavailable RP filed an IA(IBC)/15/KOB/2022 under Section 19(2) of IBC, 2016 till the disposal of the application on 30.03.2022 the invitation for Expression of Interest in Form G ('EOI') as required to be published under Rule 36A of the CIRP Regulations could be published only on March 24, 2022. As the CIRP period was coming to an end on March 25, 2022, the Applicant approached this adjudicating authority for extension of 90 days under Section 12(2) of the IBC. Consequently, this Adjudicating Authority granted the prayer vide its order dated 04.04.2022 in IA(IBC)/ 68/ KOB/2022. As a result of this order, the CIRP completion date was extended to June 23, 2022.

iii. As no interested persons could be identified, the CoC at its 7th meeting held on April 28, 2022, resolved with 98.23% voting share to issue a second invitation for Expression of Interest. It is submitted that while there were several inquiries, only one application was received in response to the 2nd Expression of Interest. The Expression of Interest was received from a consortium consisting of the suspended managing director of the Corporate Debtor and his son.

iv. As the prospective resolution applicant was found to be eligible, the CoC at its 8th meeting held on May 27, 2022 resolved to issue the Information Memorandum, Request for Resolution Plan and Evaluation Matrix to the Prospective Resolution Applicant. The resolution applicant submitted its Resolution Plan on June 15, 2022. The CoC at its 9th meeting held on June 20, 2022 had resolved with 97.70% voting share to request the resolution applicant to submit a revised resolution plan with better terms and clarity as to the sources and applications of funds required for the implementation of the Resolution Plan. The Resolution Applicant indicated its willingness to improve its offer and to provide additional documents and supporting evidence to prove its capability to execute the Resolution Plan. Therefore, the CoC did not reject the Resolution Plan submitted but requested the Resolution Applicant to revise the resolution plan with better terms. The Resolution Applicant submitted its revised Resolution Plan on July 4, 2022. However, the revised Resolution Plan did not increase the amounts offered to the creditors and did not provide information on the source of funds required for implementing the Resolution Plan.

v. At the 10th meeting of the CoC held on July 8, 2022, the CoC deliberated on the Revised Resolution Plan in the presence of the Resolution Applicant. After applying their commercial wisdom, CoC resolved with 97.70% voting share to reject the Revised Resolution Plan submitted by the Resolution Applicant. The CoC observed the following reasons for rejection of the Revised Resolution Plan: -

a) The overall amount offered to the creditors was unsatisfactory;

b) The requirement to waive all other claims by the creditors such as execution

of other guarantees was not acceptable;

c) Net-worth certificates provided by the resolution applicant was ambiguous and did not disclose all the details called for by the CoC in spite of another opportunity being afforded;

d) The resolution plan did not disclose the source of funds from which creditors would be paid and how further investments, as proposed in the resolution plan, would be made;

e) The representative of the resolution applicant in his oral submissions at the CoC meeting quoted different figures of investment as opposed to what was submitted in the revised resolution plan; and

f) The resolution plan scored very low on the evaluation matrix.

4. The Resolution Professional stated that as there were no other Resolution Plans available and since time was insufficient for a further issue of invitation for Expression of Interest and since the previous two invitations for Expression of Interest did not yield any positive results, the CoC at its 10th meeting held on 08th July 2022 decided to follow the strict process laid down in the IBC and resolved to seek directions from this Adjudicating Authority to liquidate the Corporate Debtor under Sec. 33(2) of the IBC, 2016. Consequently, the CoC had directed the Applicant through a resolution with 97.70% voting to seek the direction of this Adjudicating Authority for liquidation of the Corporate Debtor.

5. It is submitted that in the event that this Adjudicating Authority issues an order for liquidation of the Corporate Debtor under Section 33(2) of the IBC, the CoC has also resolved to appoint the Applicant as the Liquidator of the Corporate Debtor at a fee equivalent to 50% of the fee prescribed under Regulation 4(2)(6) of the IBBI (Liquidation Process) Regulations, 2016 with applicable GST. The Applicant's consent to act as the Liquidator of the Corporate Debtor has been produced as Annexure II and valid Authorisation for Assignment is also produced as Annexure III.

6. The CoC at the meeting held on 08.07.2022 also resolved to approve the estimated liquidation costs and contributions which was fixed at Rs. 9,62,000/- in addition to the Liquidator's fees. Further, the total CIRP expenditure incurred since the date of appointment of the Applicant was ratified at Rs. 20,79,594/-.

7. Vide order dated 19.07.2022 this Adjudicating Authority directed the Resolution Professional to serve a copy of this application calling for the objection of any of the suspended management of the Corporate Debtor. Pursuant thereto, one of the suspended directors filed an affidavit objecting to the liquidation of the Corporate Debtor M/s. Platino Classic Motors (India) Pvt. Ltd. He has stated that M/s. Platino Classic Motors (India) Pvt. Ltd is an MSME Unit and has produced a certificate to that effect. He further stated that the CoC in the 3rd meeting decided to liquidate M/s. Platino Classic Motors (India) Pvt. Ltd. by filing IA/109/KOB/2021 which was rejected by this Adjudicating Authority vide order dated

18.11.2021 directing to continue the CIRP as per rules. The EOI for the first time for resolving the debts of the Corporate Debtor was issued after a year of initiation of CIRP.

8. His further submission is that he has filed a resolution plan with the Resolution Professional. He has produced the last Resolution Plan submitted by him before the CoC as Annexure H seeking a joint resolution plan in the matter of M/s. Platino Classic Motors (India) Pvt. Ltd. and M/s. Koyenco Autos Private Limited which was struck down vide the 10th CoC minutes dated 08.07.2022 on the ground that the joint proposals cannot be accepted. The BMW Group is the largest claimant in the Corporate Debtor which is having a voting share of 68.15% in the CoC. The main issue raised by the deponent in the affidavit is justification for group insolvency. Due to the alleged threat and pressure from BMW India and BMW FS, the Platino Classic Motors (India) Pvt. Ltd had to add its group company M/s. Koyenco Autos Private Limited as a co-borrower to all the agreements entered into by M/s. Platino Classic Motors (India) Pvt. Ltd and an agreement took place to add M/s. Koyenco Autos Private Limited as the co-borrower. M/s. Koyenco Autos Private Limited is also under CIRP before this Adjudicating Authority and both companies had the same set of directors and the ownership control was in the hands of Mr P. P. Ashique and Mrs. Shamina Ashique. Even though they tried to settle the matter, BMW and BMW FS did not accept their request. They have further stated that they are improving their offer under the resolution plan to Rs. 42 Crore. Hence, they prayed that this Adjudicating Authority to pass appropriate order directing the CoC to combine or otherwise qua both the Corporate Debtors to reconsider the revised proposal.

OBSERVATIONS: -

I. We have heard the learned Applicant/Resolution Professional and the learned counsel for the ex-management Shri. Arjun Sheth and perused the entire case records/documents. It is seen from the available records that the CoC of the Corporate Debtor with 97.70% voting share has resolved to apply to this Adjudicating Authority for liquidating the Corporate Debtor.

II. M/s. Platino Classic Motors (India) Pvt. Ltd. and M/s. Koyenco Autos Private Limited were ordered to CIRP in separate applications filed against them have been admitted for CIRP and different IRPs appointed in these cases. Therefore, the request of the suspended directions of Corporate Debtor to combine both the Corporate Debtors cannot be considered. It is also seen that sufficient time was given to the ex-management to submit their resolution plan in order to see that the Corporate Debtor be continued as a going concern, but they fail to do so. Now their intention is to stand in the way of liquidation of the Corporate Debtor. Therefore, the affidavit filed by the ex-management is only for the sake of objecting and hence stands rejected.

III. For the sake of ready reference, the relevant provision of Section 33(2) of the Code, which is applicable is reproduced hereunder:

(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 66% 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).

[Explanation: for the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of Section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum].

IV. Considering the documents and submission made by the Resolution Professional, since the COC in its commercial wisdom has resolved to take the Corporate Debtor in liquidation, we are of opinion that the decision of the COC should not be interfered with. The present application seeking liquidation of the Corporate Debtor M/s. Platino Classic Motors (India) Pvt. Ltd., in the manner laid down in Chapter III of Part II of the Code is allowed.

V. We appoint Mr. Reuben George Joseph, having registration No. IBBI/ IPA-001/IP-P02134/2020-2021/13326, office at 37/2038, 1st Floor, Muttathil Lane, Kadavanthra, Ernakulam, Kerala, 682020 who has consented to act as Liquidator and filed his written consent in Form AA, as Liquidator in terms of Section 34(1) of the Code with the following directions:

a) The liquidator to issue a 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;

b) The liquidator is 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 and in accordance with the relevant rules and regulations;

c) The liquidator to follow up and continue to investigate the financial affairs of the corporate debtor to determine any undervalued and preferential transactions, etc;

d) This order is deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

e) The Liquidator to 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.

VI. As a consequence of the application being allowed, the moratorium as envisaged under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall

cease to have its effect and a fresh moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence.

VII. The application is ALLOWED and disposed of accordingly.

VIII. A copy of this Order shall also be forwarded to IBBI for its records and ROC, Kerala at Kochi for updating the Master Data. ROC shall send a compliance report to this Adjudicating Authority.

IX. Certified copy of this Order, if applied for, be issued upon compliance with all requisite formalities.

X. File be consigned to records.