

**IN THE NATIONAL COMPANY TRIBUNAL  
ALLAHABAD BENCH**

**CA NO.121 OF 2019 IN  
CP(IB) NO.64/ALD/2017**

**IN THE MATTER OF :  
VARANASI AUTO SALES LIMITED**

**.....CORPORATE APPLICANT**

**IN THE MATTER OF:  
YOGESH GUPTA  
Resolution Professional**

**ORDER DELIVERED ON :16.03.2021**

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Hon'ble Mr. Justice(Retd.) Rajesh Dayal Khare, Member, Judicial.**

**APPEARANCE:**

For the Resolution Professional : Mr. Saurabh Basu Adv alongwith  
Mr. Ranjan Mukherjee, Adv and  
Mr. Yogesh Gupta-RP in Person  
For the Suspended Management : Ms. Gunjan Jadhvani, Adv

**AS PER : MR. JUSTICE RAJESH DAYAL KHARE, MEMBER, JUDICIAL**

**ORDER**

1. The present application is filed under Section 33(1)(a) read with 33(2) of the Insolvency and Bankruptcy Code by the Resolution Professional, through his Counsel seeking order of the liquidation and appointment of liquidator under Section 33 and 34 of the Insolvency & Bankruptcy Code with such prayer, to pass an order for the liquidation of the Corporate Debtor Company i.e. Varanasi Auto Sales Limited.
2. The Adjudicating Authority vide its order dated 26.04.2018 based on a petition filed by the Corporate Applicant under Section 10 of the Code, initiated the CIRP in respect of Corporate Debtor Company and appointed Mr. Hemant Sharma as IRP who was




later replaced by Mr. Yogesh Gupta by COC on 30.05.2018 which was affirmed by this Tribunal vide order dated 07.06.2018 .

3. It is further stated that subsequently, the Resolution Professional complied with the requirements specified of IB Code for the progress of the CIRP and also floated the Expression of Interest on 3<sup>rd</sup> August, 2018 and against such Expression of Interest , no resolution Plan was submitted to the Committee of Creditors by 8<sup>th</sup> October, 2018, which was the last date for submission of the Resolution Plan.
4. Further stated that the COC on 6<sup>th</sup> October, 2018 passed two conditional resolutions, i.e., if any Resolution Plan is submitted before the last date i.e. 8<sup>th</sup> October, 2018, the applicant shall make an application to this Tribunal for extension of the CIRP and in absence of the Resolution plan, the corporate Debtor to be recommended for liquidation.
5. It is further stated that due to non-availability of the resolution plan for the corporate debtor, the COC in its 4<sup>th</sup> meeting held on 06<sup>th</sup> October, 2018 passed a resolution with 89.18% voting share recommending for the liquidation of the corporate debtor pursuant to the provisions of Sec 33 IBC.
6. The objections raised on behalf of Prospective Resolution applicant in the present application is the Mr. Amit Gupta had proposed to become the Resolution Applicant. However, the Resolution Professional without giving any reasons, rejected his proposal to become the Resolution Applicant, thus submitted that such act of the Resolution Professional is arbitrary and contrary to the

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provisions of law. It is further stated that the procedure to submit the Resolution Plan arises only after the Information Memorandum is shared with the Resolution Applicant and the Resolution Plan is made on the basis of Information Memorandum provided by the Resolution Professional. It is also submitted that section 29 of the IB Code, 2016 stipulates the Preparation of Information Memorandum has all the information required by the Resolution Applicant to make the Resolution Plan for the Corporate Debtor. Therefore, in the present case no Information Memorandum was shared with Mr. Amit Gupta hence, he could not submit any Resolution Plan. Moreover, no liquidation process could be initiated on the request of one Financial Creditor whose vote is less than 66% of the voting share as provided under Section 33 of the IB Code, 2016. It is submitted that State Bank of India has about 26.23% of voting share, which is far less than the threshold provided under Section 33 of the IB Code, 2016.

7. In rebuttal, the learned counsel appearing for the liquidator contends that CA No. 259/2018 was filed by the Promoter/Directors i.e Mr. Amit Gupta of M/s Varanasi Auto Sales Pvt. Ltd. under Section 60 (5) read with Section 20 (2) (e) of the IBC Code, 2016 read with rule 11 of the NCLT Rules, seeking some direction to the RP to conduct the CIRP in accordance with the provision of I & B Code, which application got rejected by detailed order dated 09.08.2019. It is contended that the aforesaid order was challenged before the Hon'ble NCLAT and the Hon'ble NCLAT vide order dated 20.12.2019, dismissed the aforesaid appeal against which order then the promoter director filed proceedings before the Hon'ble





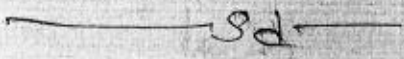
Apex Court by filing Civil Appeal No. 1435/2020, which was also dismissed by the Hon'ble Apex Court vide order dated 20.02.2020,.

8. It is further contended that as there was no resolution plan, the COC has passed the resolution for liquidation of the corporate debtor with 89.18% of voting shares and now since the proceedings have been finalized by the Hon'ble Apex Court, there is no impediment for passing the order.
9. Upon hearing the submissions made by the parties and going through the contents of the present Liquidation application and pursuing the documents annexed therewith, this Adjudicating Authority is of the view that the liquidation order can be passed in respect of Corporate Debtor i.e. Varanasi Auto Sales Limited, as no resolution plan has been received by any of the Resolution applicant and the Members of the COC with 89.18% are also in favour for liquidation of the Company and further RP has complied with the provision laid down under Insolvency and Bankruptcy Code. . The COC has also resolved the present RP to act as a liquidator in the matter and also the fee and expenses of the liquidation has been fixed in the COC meeting held on 17.01.2020.
10. Further, it is observed that the arguments raised by the prospective resolution applicant cannot be taken into consideration, in view of the order of the passed by this Tribunal vide order dated 09.08.2019 which was later affirmed by the Hon'ble Supreme Court vide order dated 20.02.2020, thus it is not sustainable.
11. Therefore, by exercising the power under Section 33(1) it is hereby directed that the Corporate Debtor i.e Varanasi Auto Sales Limited

— 81 —

shall go into Liquidation and the moratorium declared for the Corporate Debtor under Liquidation shall cease to have effect from pronouncement of this Order.

12. This Adjudicating Authority hereby appoint the Resolution Professional Mr. Yogesh Gupta, having Registration Number as IBBI/IPA-001/ IP-P00349/2017-18/10650, as 'Liquidator' under Section 34(1) of the Code as he is not disqualified as per Section 34(4) of the IBC. The Liquidator shall send an intimation to the ROC, Kanpur, U.P with which the Corporate Debtor Company is registered. The liquidator shall cause public announcement in newspaper by declaring that the Corporate Debtor has gone under liquidation.
13. The Liquidator shall act as per section 35 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC") subject to direction time to time as may be issued by this Adjudicating Authority.
14. The liquidator shall file progress report of every three months.
15. With the aforesaid observations, the present CA No. 121/2019 is allowed and accordingly stands disposed of.

  
**JUSTICE RAJESH DAYAL KHARE**  
**MEMBER (J)**

**Date: 16.03.2021**

Swati Gupta  
(LRA)