



Date: 16th March, 2018

To, The Manager (Listing) BSE Limited Phiroze Jeejeebhoy Towers Dalal Street, Mumbai - 400 001 Scrip Code: 505052	To, Assistant Vice President, Nation Stock Exchange of India Limited "Exchange Plaza" Bandra-Kurla Complex Bandra (East) Mumbai 400051 Scrip code: CLUTCHAUTO
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Sub.: Liquidation of Clutch Auto Limited and appointment of Liquidator under section 34 (1) of the Insolvency and Bankruptcy Code, 2016

Scrip code: CLUTCHAUTO

Dear Sir,

This is in reference of captioned subject, the Hon'ble National Company Law Tribunal, Principle Bench, New Delhi, vide its order dated 15/02/2018 ordered the liquidation of Clutch Auto Limited and appointed Mr. Sandeep Kumar Gupta as Liquidator under section 34 (1) of the Insolvency and Bankruptcy Code, 2016.

This is for your information and place the same on your record.

Thanking you,

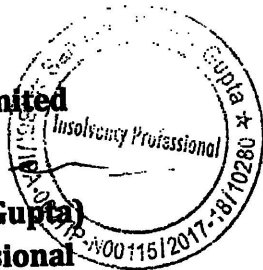
Yours Faithfully,

For Clutch Auto Limited

(Sandeep Kumar Gupta)

Insolvency Professional

IBBI/IPA-002/IP-N00115/2017-18/10280



CLUTCH AUTO LIMITED

Works : Plot No. SP-173 & 174, RIICO Industrial Area, Kahrani, Bhiwadi-301019, Distt. Alwar (Rajasthan) India
Tel.: 01493-511132 E-mail: calbhiwadi@gmail.com Website : www.clutchauto.com
Regd. Off. : 2E/14, (First Floor) Jhandewalan Extension, New Delhi-110 055 INDIA Telefax : 91-11-2368548

IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH

IN THE MATTER OF:

Clutch Auto Limited

SECTION:

Under Section 10 of Insolvency & Bankruptcy Code, 2016

Coram:

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

S. K. MOHAPATRA

HON'BLE MEMBER (TECHNICAL)

PRESENTS:

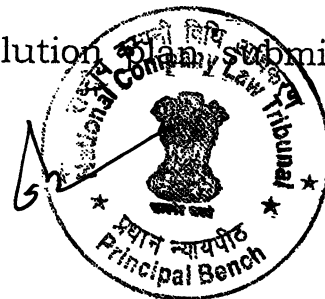
For the Resolution Professional(s): Mr. Krishnendu Datta, Mr. Ashu Kansal, Mr. Karan Batura and Mr. Shantanu Parashar, Advocates for Resolution Professional with Mr. Sandeep Kumar Gupta, Resolution Professional

For the Resolution Applicant(s): Dr. U.K. Chaudhary, Senior Advocate with Mr. Y. Suryanarayana and Mr. Mansumyer Singh, Advocates
Mr. Karan Gandhi, Advocate for Applicants in C.A. No. 53 & C.A. No. 32
Mr. Anuj Bhandari, Advocate for RIICO

ORDER

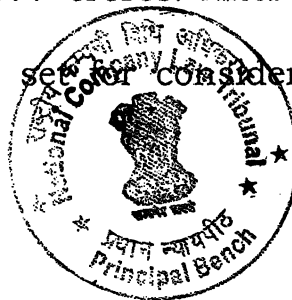
This order shall dispose of C.A. No. 31(PB)/2018 filed by the Resolution Professional under Section 33 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer for allowing the application and initiation of liquidation process of the Corporate Debtor in terms of the aforesaid provisions. However, C.A. No. 71(PB)/2018 has been filed by Resolution Applicant namely Prometrik Engineering Limited under Section 60 (5) of the Code with a prayer that the resolution submitted by the

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DD/DR/AR/Court Officer
National Company Law Tribunal
New Delhi
Order delivered on 15.02.2018
Shankar 16.03.18



Resolution Applicant has been unfairly rejected and direction has been sought that the Resolution Professional and/or the Committee of Creditors to re-consider the resolution plan submitted by the Resolution Applicant on merits.

The brief facts of the case necessary for disposal of the aforesaid applications are that C.P. (IB) No. 15(PB)/2017 was admitted by this Tribunal vide order dated 10.04.2017 which was filed by the Corporate Debtor under Section 10 of the Code. The Interim Resolution Professional was appointed but it had to be changed on 28.06.2017 and Resolution Professional namely Shri Sandeep Kumar Gupta was appointed by the Committee of Creditors which was duly approved by the Adjudicating Authority-NCLT vide order dated 28.06.2017. Initially the erstwhile Interim Resolution Professional had appointed two valuers who have assessed the liquidation value of the assets of the Corporate Debtor at approximately Rs. 48 crores and Rs. 74 crores. Keeping in view the wide variation between the two valuations the new Resolution Professional appointed a third valuer who assessed the value of the assets of the Corporate Debtor at Rs. 44.24 crores. It is appropriate to mention that the total debt owed by the Corporate Debtor is approximately Rs. 477 crores. After various formal steps were taken, the stage was set for considering the

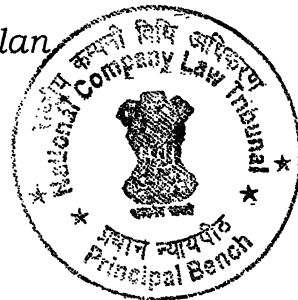
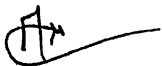


resolution plan. Only two resolution plans were submitted one was by the Ex-workers of the Corporate Debtor and the other one was by the applicant in C.A. No. 71(PB)/2018 namely Prometrik Engineering Limited. The Resolution plan submitted by the Ex-workers was rejected on the ground that the plan was initiated at the instance of the promoters which was violative of amended provisions of Section 29A of the Code. The aforesaid facts are clear from the minutes of meeting dated 03.01.2018 (Annexure-4 (colly) with C.A. No. 31(PB)/2018). The only surviving plan was the one filed by the Resolution Applicant in C.A. No. 71(PB)/2018 namely Prometrik Engineering Limited. Under the item No. 5 the plan submitted by the Resolution Applicant-Prometrik Engineering Limited was considered which had three proposals and the aforesaid three proposals read as under:-

“Proposal No. 1: Taking over of only business of Clutch Auto along with all the IPRs including all current assets, Plant and Machinery, dies Moulds, company Name and Logo without any liability whatsoever:

At a Value: INR 3.5 Cr.

Payment Terms-Entire Amount will be paid with in One month from the date of approval of Resolution Plan



“Proposal No. 2: Taking over of the entire business of Clutch Auto Ltd. by way of slump sale/business transfer/hive off including lands at Bhiwadi and Faridabad:

At a Value: INR 57 Cr.

Values assigned

Land at Faridabad-INR 40 Cr.

Land at Bhiwadi-INR 12.5 Cr.

Business at Proposal No. 1 -INR 3.5 Cr.

Payment Terms-10% of the total Amount with in One month from the date of approval of Resolution Plan.

Balance 90% in six Bimonthly Instalments.

Bank Guaranty will be provided for the 40% of the amount.

“Proposal No. 3: Taking over of the entire business of Clutch Auto Ltd. by way of slump sale/business transfer/hive off including land only at Faridabad:

At a Value: INR 44.5 Cr.

Values assigned

Land at Faridabad-INR 40 Cr.





Business at Proposal No. 1 -INR 3.5 Cr.

Provision for Liabilities (all types) – INR 1 Cr.

Payment Terms-10% of the total Amount within One month from the date of approval of Resolution Plan.

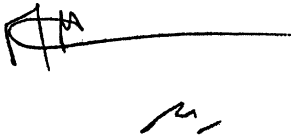
Balance 90% in six Bimonthly Instalments.

Bank Guaranty will be provided for the 40% of the amount.

Business transfer will be made to wholly owned subsidiary.”

The Committee of Creditors advised the Resolution Applicant-Prometrik Engineering Limited to consider further revision of the offered amount and thereafter further revision was made and to that effect email was sent on 03.01.2018 at 10.38 PM which is to the following effect:-

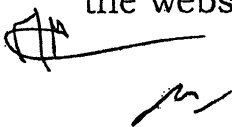
- “1. Our proposal envisages payment to existing employees (as per the list provided by you) who are willing to continue working with us and required by us will be paid of the salary dues if any upto 24 months as per IBC Act.*
- 2. Workmen not willing to continue work with us or not required by us will be settled as per the IBC Act or mutual agreement basis.*



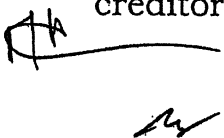


3. *We are willing to increase the offer by another INR 04 Crores if Faridabad land transferred to us free of encroachment, attachment, encumbrances, litigation and payment of statutory dues if any. The payment is linked subject to the same.*
4. *Monitoring Official may be appointed by COC and reasonable cost for the same will be paid by us during the implementation period”.*

The item was then discussed which included disqualification of the Director of Prometrik Engineering Limited and many other issues. Under the issues of disqualification of the Director as reported by the Resolution Professional, the Committee of Creditors noted that the resignation by one Mr. Maruti Venkata Subba Rao Polluri had been filed w.e.f. 30.11.2017 and also the appointment of Mr. Rohit Asawa w.e.f. 01.09.2017. All these filings were done on 13.12.2017. It was also observed that in order to overcome the Insolvency and Bankruptcy (Amendment) Ordinance, 2017 dated 23.11.2017 the Disqualified Director has been shown to have resigned on a back date and since intimation could not be filed on the back dates, therefore, they were filed on the website of the Ministry of Corporate Affairs on 13.12.2017 i.e.



after the submission of the Resolution Plan. The Committee of Creditors also went to the issues of proposal providing for payment terms and that there was no cash flow of Prometrik or any comfort letter from any Bank, which shows that the funds to be paid by Prometrik under the plan were not properly tied up and that the Resolution Professional was not in a position to confirm the viability and feasibility of the Resolution Plan in terms of amended Section 30 (4) of the Code. The Committee of Creditors considered the amended plan increasing the offer by Rs. 4 Crores and it was subject to the Faridabad land transferred to them free from encroachment, attachment, encumbrances, litigation and payments of statutory dues. Thus, it was concluded that there was no clarity on how and who would be responsible for the purpose of providing the Prometrik with the Faridabad land free from the encroachment, attachment, encumbrances, litigation and payments of statutory dues. Therefore, the amended plan enhancing the offer was also not accepted. As per the request of the Committee of Creditors considering the amount of Rs. 60 Crores being distributed amongst financial creditors, the distribution as per the percentage of voting share of the financial creditors was determined which is reflected in the following table:-





Sl. NO.	Name of Creditors	Amount claimed by the Creditors in INR	Amount admitted in INR	Percentage Share in Committee of Creditors	Amount (Rs.) to be received by the Financial Creditors on distribution of Rs. 56 Crores in case land at Faridabad is provided on 'as is where is' basis (Option-A)	Amount (Rs.) to be received by the Financial Creditors on distribution of Rs. 60 Crores in case land at Faridabad is provided free from all encumbrances and encroachments (Option-B)
A	FINANCIAL CREDITORS					
1	Edelweiss Asset Reconstruction Company Limited	86,351,025	86,351,025	1.81	10,120,171.85	10,843,041.26
2	State Bank of India	402,189,954	402,189,954	8.42	47,135,878.81	50,502,727.29
3	Canara Bank	210,529,515	210,529,515	4.41	24,673,648.87	26,436,052.36
4	Rajasthan State Industrial Development and Investment Corporation	677,087,863	677,087,863	14.17	79,353,378.01	85,021,476.44
5	Deutsche Investitions - und Entwicklungsgesellschaft mbH	1,094,125,147	1,094,125,147	22.90	128,229,335.00	137,388,573.21
6	Central Bank of India	310,688,308	310,688,308	6.50	36,412,064.22	39,012,925.95
7	Assets Care & Reconstruction Enterprise Limited	339,938,284	338,448,797	7.08	39,665,539.43	42,498,792.25
8	Alchemist Assets Reconstruction Company Limited	702,130,154	702,130,154	14.69	82,288,285.72	88,166,020.41
9	LIC Mutual Fund Assets Management Ltd.	677,426,938	677,426,938	14.18	79,393,116.94	85,064,053.87
10	Council of Scientific & Industrial Research	273,675,500	273,675,500	5.73	32,074,235.25	34,365,252.06
11	ICICI Bank	4,660,493	4,660,493	0.10	546,200.70	585,215.03



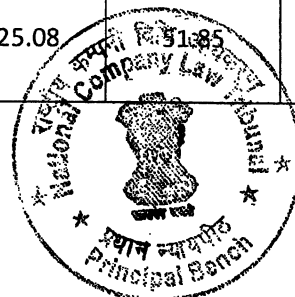
12	Kotak Mahindra Prime Limited	981,347	922,756	0.02	108,145.20	115,869.86
	Total of Financial Creditors	4,779,784,528	4,778,236,450.29	100.00	560,000,000.00	600,000,000.00

It is further pertinent to notice that the total percentage of the Committee of Creditors present in the meeting were 92.35%. However, at the time of voting on the resolution B.1(A) the following was the result:-

B1 (A)	Resolution voted upon:	Yes (%)	No (%)	Abstain (%)	Total (%)
	To vote for approval upon the Resolution Plan submitted by Prometrik Engineering Limited wherein Faridabad Land will be taken over by the Resolution Applicant on as is where is basis and the plan is for Rs. 57.00 crore (including Rs. 1.00 crore for OC & Other Liabilities) with distribution among Financial Creditors as circulated in the CoC minutes dated 03.01.2018.	23.07	25.08	51.85	100
	Name of the Financial Creditors	Edelweiss, ACRE, LIC	Canara, RIICO, CBI	SBI, DEG, AARCL, CSIR, ICICI, Kotak	

The voting pattern on the increased offer was styled as item No. B1(B) and the voting pattern was as follows:-

B1 (B)	Resolution voted upon:	Yes (%)	No (%)	Abstain (%)	Total (%)
	To vote for approval upon the resolution plan submitted by Prometrik Engineering Limited	23.07	25.08	51.85	100



	wherein the CoC will ensure that Faridabad land is made available to the resolution applicant free from all encumbrances, encroachments and liabilities and the plan is for Rs. 61.00 crore (including Rs. 1.00 crore for OC & other liabilities) with distribution among financial creditors as circulated in the CoC minutes dated 03.01.2018				
	Name of the Financial Creditors	Edelweiss, ACRE, LIC	Canara, RIICO, CBI	SBI, DEG, AARCL, CSIR, ICICI, Kotak	

It is in aforesaid facts and circumstances that these applications are required to be considered.

Mr. K. Dutta, learned counsel for the Resolution Professional has argued that all steps required for discussion of resolution plan was taken strictly in accordance with the provisions of the Code. In that regard learned counsel has pointed out that due authorization was obtained under Section 28 (1) (h) of the Code by delegating the power to one Mr. Devendra Singh-Insolvency Professional who was to act as a Resolution Professional in place of Mr. Sandeep Kumar Gupta the Resolution Professional. It is only after the approval was given by the Committee of Creditors that the aforesaid person namely Mr. Devendra Singh presided the meeting. It was also pointed out by Mr. Dutta that the petition was admitted on 10.04.2017 and the replaced Resolution



Professional was appointed on 28.06.2017 by this Tribunal and if the period between these two dates are excluded than 270 days may expire on 05.03.2018. However, according to Mr. Dutta such a view cannot be taken because on the language of Section 12 a strict time line is required to be adhered to and in that regard reference has been made to the provisions of extending the time limit beyond the initial period of 180 days and only the further period of 90 days could be granted by the Adjudicating Authority-NCLT if such authorization is made by the Committee of Creditors to the Resolution Professional by vote of 75% of the voting shares. It is on receipt of such an application that the Adjudicating authority after recording its satisfaction may extend the period not exceeding 90 days. According to Mr. Dutta the proviso makes it further clear that any extension of the period of Corporate Insolvency Resolution Process under the Section shall not be granted more than once. The submission made by Mr. Dutta is that the period of 270 days has already come to an end on 05.01.2018 and there is no possibility of granting any further extension in the teeth of the language particularly provided under proviso to sub section 3 of Section 12 which contains prohibition.

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On the other hand, Mr. Chaudhary, learned Senior Counsel has argued that there was virtually no Chairman of the meeting as the voting has taken place after Mr. Devendra Singh took the chair. According to the learned counsel it was no meeting in the eyes of law. A further submission made by learned Senior Counsel is that there could not be any implication of necessary function by the Resolution Professional and such functions are not within the sweep of Section 28 (1) and therefore, no delegation could have taken place.

We have thoughtfully considered the aforesaid submission and are of the view that the application filed by the Resolution Professional under Section 33 of the Code deserves to be accepted and the one filed by the Resolution Applicant namely Prometrik Engineering Limited is liable to be rejected.

The principal reason for us to take this view is that under Section 12 of the Code the speed is an essence of the Insolvency Code as has been observed by Hon'ble the Supreme Court in para 27 of the judgment rendered in the case of **Mobilox Innovations Private Limited v. Kirusa Software Private Limited**, Civil Appeal No. 9405/2017 decided on 21.09.2017. The paradigm shift in the erstwhile regime and the approach adopted by the



Insolvency Code is that time line is required to be followed failing which the value of the assets would fast deplete which would defeat the basic object of maximizing the value of assets of the company. Moreover, in the present case the liquidation value assessed by the valuers appointed by the Interim Resolution Professional/Resolution Professional was approximately 46 crores and 74 crores and the third valuer appointed later by the new Resolution Professional was Rs. 44.24 crores whereas the offer which has been made is about 57 crores. The amount enhanced to Rs. 61 crores with unreasonable and unworkable pre-condition was not considered possible for the Committee of Creditors to accept. Moreover, the result of e-voting was in favour of the Resolution plan Applicant to the extend of 23.07 and against 25.08 and there was no voting by 51.85%. According to the clarification issued by the Insolvency Bankruptcy Board of India on 01.01.2018 the dissenting financial creditor means the financial creditor who voted against the Resolution plan or abstain from voting for the resolution plan. Therefore, the plan submitted by the Resolution plan Applicant has been shotted down by 76.93% votes. The acceptance of Commercial decisions of Committee of Creditors ought to be a rule and interference with it should be an exception. The Commercial wisdom in such like



circumstances and the decision by the Committee of Creditors meets our approval.

Accordingly, we allow the application namely C.A. No. 31(PB)/2018 and dismiss the C.A. No. 71(PB)/2018. We appoint the Resolution Professional namely Mr. Sandeep Kumar Gupta as the Liquidator as per the provisions of Section 34 (1) of the Code who shall exercise all the powers which are detailed in Section 35 and also shall carry on the business of the Corporate Debtor for its beneficial liquidation as he considers necessary. It is expected that the Liquidator shall follow all the provisions of the Code as well as Rules and Regulations of the Code. We are of the view that the Corporate Debtor namely Clutch India Limited needs to be liquidated in a manner as laid down in chapter-III.

15.02.2018



(M. M. KUMAR)
PRESIDENT

(S. K. MOHAPATRA)
MEMBER (TECHNICAL)

Registrar
National Company Law Tribunal
New Delhi

VINEET

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Shraddha
DWP/AB/Court Officer
National Company Law Tribunal
New Delhi
16.03.18

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Date of Delivery of Copy... 19.03.18

IN THE NATIONAL COMPANY LAW TRIBUNAL NEW DELHI
PRINCIPAL BENCH

IN THE MATTER OF:
Clutch Auto Limited

SECTION:

Under Section 10 of Insolvency & Bankruptcy Code, 2016

DD/DR/AR/Court Officer
Order delivered National Company Law Tribunal
New Delhi

Coram:

CHIEF JUSTICE (RETD.) M. M. KUMAR
Hon'ble President

S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

PRESENTS:

For the Applicant / Petitioner : Mr. Karan Batura, Advocate for Liquidator
For the Resolution Professional: Mr. Karan Gandhi, Advocate for R-1

ORDER

C.A. No. 196(PB)/2018

In the second last line of the order dated 15.02.2018 the name of the Corporate Debtor has been erroneously mentioned as 'Clutch India Limited' whereas it should have been 'Clutch Auto Limited'. The word 'India' be substituted by the word 'Auto'.

The corrected copy of the order be issued by the Office.

The application stands disposed of.

C.A. No. 197(PB)/2018

Notice of the application.

* Mr. Karan Gandhi, learned counsel for the non applicant-respondent No.1 accepts notice.

Let notice be served dasti to the non applicant-Respondent No. 2.

List for further consideration on 27.03.2018.



13.03.2018
VINEET

Sd/-
(M. M. KUMAR)
PRESIDENT

Sd/-
(S. K. MOHAPATRA)
MEMBER (TECHNICAL)

16/3/2018
Registrar
National Company Law Tribunal
New Delhi