

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI**

IA/1202/2020 in CP/1275/IB/2018

(filed under Section 33 of the Insolvency and Bankruptcy Code, 2016)

In the matter of **M/s. Karur KCP Packkagings Limited**

Aneetha Subramaniam

Resolution Professional of

M/s. Karur KCP Packkagings Limited

A-2, Sharadha Apartments, 17/6,

Sringeri Mutt Road, Mandaveli, R.A. Puram,

Chennai – 600 028

... Applicant / Resolution Professional

Order Pronounced on 15th March, 2021

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

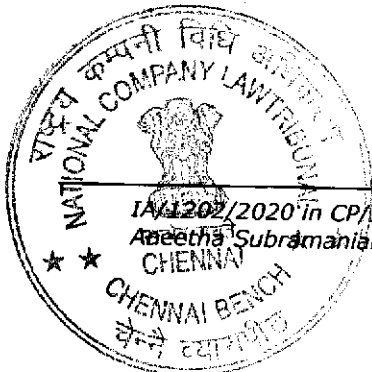
For Applicant : *Avinash Krishnan Ravi, Advocate*

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. This is an application filed under Section 33(1) r/w Section 34(1) of the Insolvency and Bankruptcy Code 2016 (in short 'IBC, 2016') seeking relief as follows:

- (i) That this Hon'ble Tribunal may be pleased to order the liquidation of the Corporate Debtor and consequently appoint the Resolution Professional as the Liquidator of

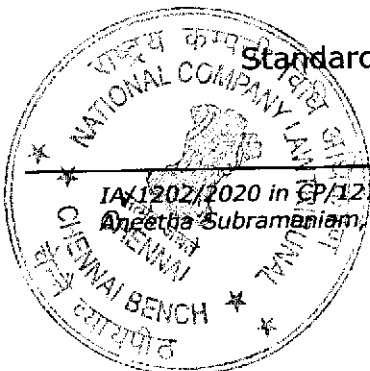


the Corporate Debtor as per Sections 33(1) r/w Section 34(1) of the Code.

- (ii) Pass such other order or orders as this Hon'ble Tribunal may deem fit.

2. In Section 7 application filed by the Financial Creditor under the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) against the Corporate Debtor viz., Karur KCP Packkagings Limited, this Tribunal vide order dated 24.04.2019 initiated the Corporate Insolvency Resolution Process (CIRP) in relation to the Corporate Debtor and appointed the Applicant herein as the Interim Resolution Professional (IRP) who was subsequently confirmed as the Resolution Professional (RP) in the 1st meeting of the Committee of Creditors held on 13.06.2019.

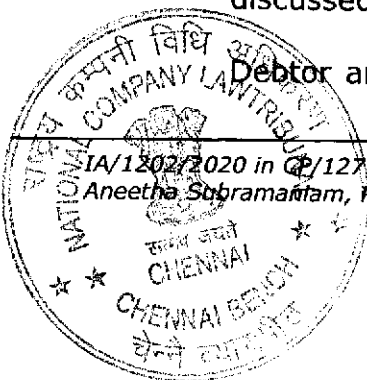
3. It is averred in the application that the delay in constitution of the CoC was due to the order passed by the Hon'ble NCLAT in Company Appeal (AT) No. 484/2019 dated 03.05.2019, wherein the Resolution Professional was directed not to constitute the Committee of Creditors and the said stay was vacated only on 30.05.2019. It is further submitted that the Applicant caused public notice in Business Standard in English and The Hindu in Tamil on 30.04.2019 to which a



claim for a total amount of ₹506,41,33,017/- was filed by the creditors in total.

4. It was submitted by the Learned Counsel for the Applicant that as per the provisions of IBC, 2016, the Applicant has appointed 2 Registered valuers for valuation of the Assets of the Corporate Debtor, however only partial valuation of the assets of the Corporate Debtor could be made owing to the non co-operation on the part of the promoters of the Corporate Debtor. Further, it was submitted that the Applicant has prepared an Information Memorandum as per Regulation 36 of the IBBI (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 and issued Expression of Interest in Form G on 25.10.2019 in Business Standard and Dinakaran, pursuant thereto, the Applicant has received four expression of interest. However in the meantime, the period of 180 days of the CIRP came to an end and this Tribunal vide order dated 23.10.2019 passed in MA/1110/2019 granted extension of the CIRP for 90 days from 23.10.2019.

5. It was submitted that in the 6th Meeting of the CoC, it was discussed that several others have evinced interest in the Corporate Debtor and the CoC requested the Applicant seeking for exclusion of



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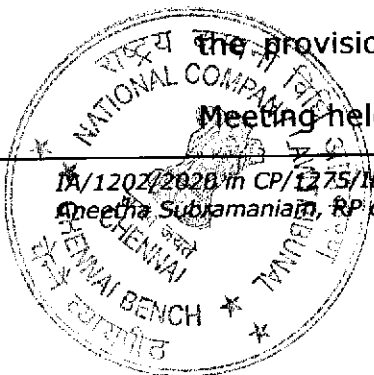
Aneetha Subramaniam, RP of M/s. Karur KCP Packagings Limited

the time from this Tribunal for 60 days, to enable to issue fresh Expression of Interest in order to invite new prospective Resolution Applicant. Accordingly, the Applicant has filed MA/64/2020 before this Tribunal for exclusion of 60 days time period and this Tribunal vide order dated 30.01.2020 passed the following order.

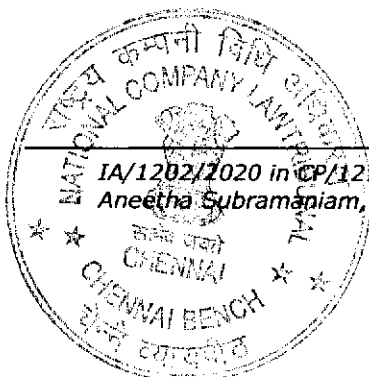
11. Thus, taking into consideration, the decision of the Hon'ble Supreme Court as rendered in **Essar Steels (supra)** and the provision of law, the Application stands allowed and the period of 60 days stands excluded from the CIRP timeline and as a result thereof, the Corporate Insolvency Resolution Process of the Corporate Debtor is directed to be completed on or before 20.03.2020. Accordingly, the application stands **allowed**.

6. It was submitted that based on the said order, the Applicant issued second Expression of Interest on 02.02.2020 in Financial Express and The Hindu and the last date was fixed as 08.03.2020 and since no EOI was received by the Applicant and also in view of the fact that the last date for completion of CIRP was 20.03.2020, the 8th CoC meeting was convened and the said facts were deliberated and discussed by the members of the CoC and the member of the CoC has unanimously decided to liquidate the Corporate Debtor, owing to the non -- receipt of Resolution Plan within the stipulated timeline under the provisions of IBC. The Resolution Passed by the CoC in its 8th Meeting held on 20.03.2020 is extracted hereunder;

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Sneha Subramanian, RP of M/s. Karur KCP Packagings Limited



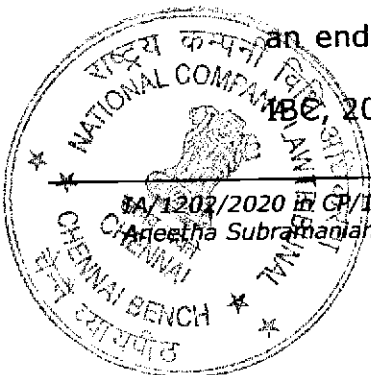
- a. RESOLVED THAT the consent of all members of the Committee of Creditors present at the meeting be and is hereby approved for making an application to the Adjudicating Authority for liquidation under section 33(1)(a) since no resolution plan under sub-section (6) of the Section 30 being received;
- b. RESOLVED THAT Ms. Subramaniam Aneetha, the present Resolution Professional, Reg. No. IBBI/IPA-IP-001/IP-P00376/2017-18/10633 be and is hereby recommended to be appointed as the Liquidator of Karur KCP Packkagings Limited.
- c. RESOLVED FURTHER THAT Ms. Subramaniam Aneetha be and is hereby authorized to file the necessary application and other necessary documents, in this connection with Hon'ble NCLT Chennai Bench.
- d. RESOLVED FURTHER THAT a sum of Rs.42,00,000/- (Rupees Forty Two Lakhs Only) be and is hereby approved as the estimated expenditure to be incurred in connection with the liquidation of the Corporate Debtor and the Resolution Professional be authorized to mention this amount in the Application made to the Hon'ble NCLT pursuant to Section 33B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (as amended).
- e. RESOLVED FURTHER THAT the Liquidator Ms. Subramaniam Annetha be directed to first explore the possibility of sale of the Corporate Debtor as a going concern pursuant to Section 33C of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (as amended).
- f. RESOLVED FURTHER THAT the Processional fees payable to the Liquidator be and is hereby approved to be fixed at Rs.2,50,000/- per month (inclusive of other expenses) plus applicable GST under pursuant to Section 33D of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (as amended).



7. Thus, it was submitted by the Learned Counsel for the Applicant that in consonance with the Resolution Passed by the CoC in its 8th Meeting held on 20.03.2020, the instant application is filed for Liquidation of the Corporate Debtor.

8. Heard the submissions made by the Learned Counsel for the Applicant, from the orders passed by this Tribunal, it is seen that at first a 90 days extension was granted by this Tribunal in relation to the CIRP period and subsequently a further exclusion of 60 days was granted by this Tribunal in MA/64/2020 and as such, the CIRP period in relation to the Corporate Debtor was directed by this Tribunal to be completed on or before 20.03.2020. Thus, in so far as the present Application for the Liquidation of the Corporate Debtor is concerned, from the facts narrated above, it is seen that this Tribunal vide order dated 30.01.2021 passed in MA/64/2020 after discussing the decision of the Supreme Court in the matter of **Committee of Creditors of Essar Steel India Ltd. -Vs- Satish Kumar Gupta & Ors.** in *Civil Appeal No.8766 - 67 of 2019*, has finally directed the Resolution Professional to complete the CIRP period on or before 20.03.2020. Thus, the 330 days CIRP period of the Corporate Debtor also came to an end. At this juncture, it is relevant to refer to Section 33(1)(a) of

IBC, 2016, which is extracted hereunder;



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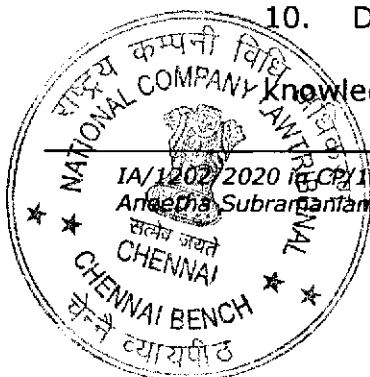
Aradhya Subrahmaniam, RP of M/s. Karur KCP Packagings Limited

33 (1) Where the Adjudicating Authority, -

- (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or
- (b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall –
 - (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
 - (ii) issue a public announcement stating that the corporate debtor is in liquidation; and
 - (iii) require such order to be sent to the authority with which the corporate debtor is registered.

9. Section 33(1) of IBC, 2016 contemplates that this Tribunal can pass an order of Liquidation of the Corporate Debtor if the maximum period permitted for the completion of the CIRP is over. Admittedly, in the present case, the 330 days of CIRP period has expired and as such by operation of Section 33(1)(a) of IBC, 2016, the Corporate Debtor is necessarily required to be ordered for liquidation as stipulated under 33(1)(b)(i) of IBC, 2016.

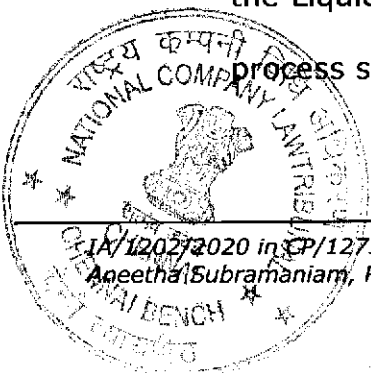
10. During the course of submissions, it was brought to the knowledge of this Tribunal that the promoters / suspended Directors



of the Corporate Debtor are in talks with the CoC for settlement proposal. However in the present case, it is to be noted that the 330 days period of CIRP has already expired and the CoC in its 8th meeting held on 20.03.2020 has unanimously resolved to liquidate the Corporate Debtor. Further, even during the Liquidation process, subject to Section 29A of the IBC, 2016 and as per Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016, a further period of 90 days time is provided to submit a Scheme as contemplated under Section 230 of the Companies Act, 2013, and if the Promoter / Director of the Corporate Debtor is otherwise found eligible can very well submit a Scheme for the revival of the Corporate Debtor

11. Thus, in view of the facts and circumstances of the case and also in view of the fact that the Applicant has given consent in Form AA and also produced the Authorization for Assignment (AFA) issued by the Indian Institute of Insolvency Professionals of ICAI for the period 27.12.2020 to 26.12.2021, this Tribunal hereby order, liquidation of the Corporate Debtor by appointing **SUBRAMANIAM ANEETHA**, IBBI Reg. No. *IBBI/IPA-001/IP-P00376/2017-18/10633* as the Liquidator of the Corporate Debtor and to carryout the liquidation

process subject to the following terms of the directions.



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- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon him.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.
- d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;
- e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and

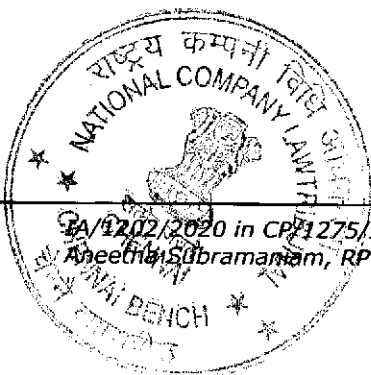


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regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

- f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- g) The Liquidator is directed 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.
- h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- i) The Liquidator shall submit a Preliminary report to this Tribunal within such time period prescribed from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant



Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

- j) Copy of this order be sent to the Financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

12. The application IA/1202/2020 stands **disposed of** with the aforesaid directions.

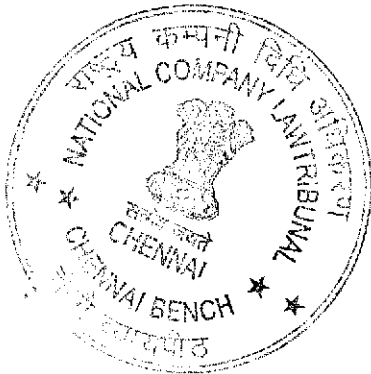
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ANIL KUMAR B
MEMBER (TECHNICAL)

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R. VARADHARAJAN
MEMBER (JUDICIAL)

Raymond



K. N. S. 17/3/2021
DEPUTY REGISTRAR
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