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IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH-I, CHENNAI

MA/1413/2019 in CP/422/IB/2018 filed under *Sections 33 (2)* of the Insolvency and Bankruptcy Code, 2016

In the matter of *M/s. Everwin Textile Mills Private Limited*

J. Manivannan,

Applicant/Resolution Professional

CORAM:

R.VARADHARAJAN,
MEMBER (JUDICIAL)

ANIL KUMAR B,
MEMBER (TECHNICAL)

For Applicant : *J. Manivannan IRP in person*

ORDER

Per: **R.VARADHARAJAN, MEMBER (JUDICIAL)**

Order Pronounced on 08.05.2020

1. MA/1413/2019 in CP/422/IB/2018 has been filed by the Resolution Professional namely *J. Manivannan,*

under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, (in short 'I&B Code, 2016').

2. The prayers made by the Applicant in the Application are as follows:-

a. *That this Hon'ble Adjudicating Authority may be pleased to pass appropriate orders that the Corporate Debtor i.e. M/s. Everwin Textile Mills Private Limited to be liquidated in the manner as laid-down under the Code.*

b. *In term of Section 33/34 (1) of the Code to pass an order that existing Resolution Professional shall act as the Liquidator of the Corporate Debtor for the purpose of liquidation of the Corporate Debtor ;*

c. *For such other and further reliefs as the nature and circumstances of the case may require.*

3. CP/422/(IB)/2018 filed under Section 7 of the I&B Code, 2016 by the Financial Creditor namely Punjab National Bank against the Corporate Debtor viz., M/s. Everwin Textile Mills Private Limited, was admitted by this Authority vide Order dated 29.10.2018, the CIR Process was initiated against the Corporate Debtor and the Applicant namely J. Manivannan was appointed as Interim Resolution Professional (IRP).

4. It is contended that pursuant to the Order of this Authority dated 29.10.2018, the IRP had taken over the management of the Corporate Debtor and had issued the Newspaper Publication dated 09.11.2018 as per Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016, inviting the claims from the creditors.

5. Pursuant to the said publication dated 09.11.2018 the IRP has received claims from two Financial Creditors

namely Punjab National Bank (PNB) and Edelweiss Asset Reconstruction Company Limited (EARC) respectively. It is averred that after scrutiny of the claims received, the IRP constituted the Committee of Creditors (CoC), on 26.11.2018 as per Section 21 of the I&B Code, 2016.

6. In the 1st Meeting of the CoC held on 05.12.2018, one of the CoC members namely PNB having 52.48% voting rights proposed to replace the IRP, however, the resolution placed before the CoC for changing of IRP for appointing new RP was defeated as it could not get the prescribed voting limit i.e. 66%. Therefore, this Authority vide order dated 25.01.2019 in MA/43/2019 in CP/422/IB/2018 has appointed the IRP namely J. Maninivannan as Resolution Professional.

7. It is submitted that soon after the Applicant being appointed as Resolution Professional, he appointed two Registered Valuers to ascertain the fair value and liquidation value of the assets of the Corporate Debtor

and after obtaining approval from the CoC, the Resolution Professional prepared an Information Memorandum (IB) in accordance with provisions of Section 29 of the I&B Code, 2016.

8. It is stated that the Resolution Professional had invited for 'Expression of Interest' ('EoI') as per Section 25(2)(h) of the I&B Code, 2016 vide newspaper publication dated 04.02.2019, one in English and another in vernacular for submission of the Resolution Plans from the prospective Resolution Applicants by mentioning the last date for submitting the Resolution Plan, as 19.02.2019. Pursuant to the said publication, the Applicant received one 'EoI' from the Promoters, which was rejected by the Resolution Professional since Section 29A is applicable to the Promoters Resolution Applicant.

9. It is averred that the Promoters challenged the decision of the Resolution Professional before this

Authority in MA/347/IB/2019 wherein this Authority vide Order dated 01.05.2019 has directed the Resolution Professional and CoC to accept the 'EoI' submitted by the Promoters-Resolution Applicant and declared the Corporate Debtor is falling under the MSME category and allowed the Promoters to submit Resolution Plan within 60 days and also *suo-moto* extended the time period of CIR Process by 60 days beyond 180 days.

10. Subsequent to the Order dated 01.05.2019 the Resolution Professional reviewed the Resolution Plan submitted by the Promoters-Resolution Applicant on 13.06.2019 and fixed the CoC meeting to be held on 26.09.2019. In the meantime, the Resolution Professional approached this Authority for extension ofthe remaining period of CIR Process for 30 days and this Authority vide Order in MA/643/2019 dated 27.06.2019 has granted the extension as prayed for 30 more days.

11. In the interregnum, one of the CoC members namely PNB filed an Appeal before the Hon'ble NCLAT challenging the Order passed by this Authority on 01.05.2019 seeking stay on operation of the Order. It is averred that the maximum period of 270 days for conclusion of the CIR process has expired on 27.07.2019. Since the Appeal filed by the PNB was pending before the Hon'ble NCLAT, the Resolution Plan submitted by the Promoters' Resolution Applicant was not considered by the CoC, and therefore, the Resolution Professional filed an Application for extension of CIR Process period as per the amended provisions of Section 12 of the I&B Code, 2016, and this Authority has extended the time period of CIR Process by another 90 daysw.e.f.16.08.2019as per the amended provisions of Section 12 of the I&B Code, 2016, vide its Order dated 24.09.2019.

12. In the meanwhile, the Appeal filed by the PNB was rejected by the Hon'ble NCLAT vide its order in Comp. App.(AT) (Ins) No.646/2019 dated 30.08.2019 and upheld

the Order passed by the NCLT and made the Promoters are eligible to submit the Resolution Plan.

13. The Resolution Professional submits that pursuant to the Hon'ble NCLAT Order dated 30.08.2019 and the direction given by the NCLT vide Order dated 24.09.2019, the Resolution Plan submitted by the Promoters-Resolution Applicant was placed before the CoC in the 5thMeeting of the CoC held on 22.10.2019 and during the deliberations, the Promoter-Resolution Applicant expressed that the Resolution Plan submitted earlier needs to be revised, and accordingly, the CoC acceded to and requested the Promoter Resolution Applicant to submit a revised Resolution Plan.

14. In the 6th Meeting of the CoC held on 14.11.2019 the revised Resolution Plan submitted by the Promoters-Resolution Applicant was placed before the CoC by the Resolution Professional for the evaluation and consideration. However, the representative from the PNB

refused to consider the Plan since the Resolution Plan Value is very low compared to the amount due to it thereby involving a huge hair-cut and further they have demanded around Rs.24 Crores against their outstanding dues.

15. It is stated that the Resolution Professional sought justifications from PNB for dissenting the Plan to be placed before the NCLT and the Hon'ble NCLAT by way of a status report, however, the PNB reiterated the same stand that the amount offered under the Plan was not acceptable to them.

16. As regards, the other CoC member namely EARC, it has pointed out that the Resolution Plan submitted by the Promoters-Resolution Applicant provides short tenure i.e. on or before 31.03.2020 for the entire payment to be made to PNB, whereas in relation to EARC, the payment to be made in tranches over a long period of time i.e. upto March, 2023. The EARC is ready to consider the Resolution Plan subject to removal of differential

treatment given in the Resolution Plan. It is further stated that irrespective of these factors the other CoC members namely PNB who hold 52.48% of voting rights has already rejected the Plan, and in these circumstances, even if EARC who holds 47.52% gives assent, the Resolution Plan will not get minimum voting of 66% for approval of Plan as mandated under the I&B Code, 2016. However, EARC still wants to support the revival of the Company namely, Corporate Debtor and is willing to consider a Resolution Plan submitted by the Promoters Resolution Applicant, nevertheless, EARC prefers to be treated on par with PNB in terms of the payment as per the Resolution Plan given the fact that PNB and EARC are both secured creditors having *pari passu* charge over the entire movable and immovable assets of the Corporate Debtor. In the circumstances, in the interest of the stakeholders and taking into consideration the Statement of Object and Reasons for which IBC, 2016 was enacted and also the decision of the Hon'ble Supreme Court as held in ***Arcelormittal India***

Private Limited -vs- Satish Kumar Gupta & Ors *in Civil Appeal Nos.9402–9405 of 2018* and subsequently also reiterated in other judgements including ***Committee of Creditors of Essar Steel India Limited -vs- Satish Kumar Gupta & Ors*** *in Civil Appeal Nos.8766–67 of 2019* wherein it has been held that resolution of insolvency should be the norm and liquidation to be an exception it was explored during the hearings to break the deadlock situation prevalent between the two financial creditors as well as based on the strength of the representation made by the Resolution Professional that the Corporate Debtor is a viable setup. However, the efforts were not successful and in the circumstances taking into consideration Section 33(1) of the IBC, 2016 as well as the decision of the Apex Court recorded in ***K.Sashidhar -vs- Indian Overseas Bank & Ors*** *in Civil Appeal No.10673 of 2018* is perforce required to order for liquidation.

17. Upon a query posed to the Resolution Professional whether he is willing to act as a Liquidator, if appointed by this Authority, the Resolution Professional submitted that he is willing to act as Liquidator and the written consent has also been placed on record along with the Application. A perusal of it shows that the Resolution Professional has given a written consent by the signed letter dated 14.11.2019 to act as a Liquidator of the Corporate Debtor, if appointed by this Authority. In the circumstances, J. Manivannan is appointed as the Liquidator in relation to the Liquidation proceedings ordered hereby of the Corporate Debtor which is presently under CIR Process.

18. In view of the facts and circumstances recorded by the Resolution Professional in MA/1413/2019 in CP/422/IB/2018and since, no Resolution Plan has been received by this Authority under Sub-section (6) of Section 30 of the I&B Code, 2016, before the expiry of the maximum period of CIR Process, 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 the Liquidation Order as follows:-

a) J. Manivannan [Reg. No. IBBI/IPA-002/IP-N00534/2017-2018/11695] Plot No.53B, 8/330, Vishalakshi Nagar, Fourth Cross Street, Santhosapuram, Chennai,Tamil Nadu – 600 073 Ph: 91-9962378774Email ID: equitablelegal@gmail.com is appointed as the Liquidator of the Corporate Debtor. He shall strictly act in accordance with the provisions of I&B Code, 2016 and the attendant Rules and regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as enjoined upon him.

b) Mr. J. Manivannan 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.

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 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 as 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 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 Authority within 75 (seventy-five) days from the liquidation commencement date as per

Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.

j) Copy of this Order be sent to the Financial Creditors, Corporate Debtor and the Liquidator for taking necessary steps.

19. The Application stands ***disposed of*** with the above said terms.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

P. ATHISTAMANI

Order pronounced by concord in terms of NCLT circular dated 14/04/2020 through video conferencing platform. Member (J) present in person at Chennai and Member (T) through video conference from Kochi and the respective parties intimated to be present through video conferencing and after duly listing and uploading the cause list dated 08/05/2020 for Chennai Bench-I.

N. SRIRAMASUBRAMANIAN
ASSISTANT REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
CHENNAI BENCH
CORPORATE BHAVAN, 3rd FLOOR
29, RAJAJI SALAI, CHENNAI-600001