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

**IA/1036/CHE/2022 in TCP/141/IB/2017**

*(Application filed under Section 12A of the Insolvency and Bankruptcy Code, 2016 in terms of Regulation 30A of IBBI(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 Read with Rule 11 of the NCLT Rules, 2016)*

*In the matter of **SAFIRE MACHINERY COMPANY PRIVATE LIMITED***

**Mr.R.SUGUMARAN**

**IRP OF SAFIRE MACHINERY COMPANY PRIVATE LIMITED**

CEEBROS SHYAMALA GARDEN,  
136, ARCOT ROAD, SALIGRAMAM,  
CHENNAI – 600 093

*...Applicant/IRP*

**-Vs-**

**SAFIRE MACHINERY COMPANY PRIVATE LIMITED,**

NEW No:16 (OLD No.31) BALAJI NAGAR, 1<sup>ST</sup> STREET,  
ROYAPETTAH, CHENNAI – 600 014

*... Respondent No.1/Corporate Debtor*

**JOIN UP CORPORATION**

2-31, SHIMOENJAKU 4 –CHROME  
MITAKA CITY  
TOKYO 181-0013, JAPAN

*... Respondent No.2/Operational creditor*

**Along with**

**IA/1035/CHE/2022 in TCP/141/IB/2017**

*(Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 Read with Rule 11 of the NCLT Rules, 2016)*

**Mr.A.GUNASEKARAN**

SON OF MR.AYYANATHAN  
NO.16, BALAJI NAGAR, 1<sup>ST</sup> STREET,  
ROYAPETTAH, CHENNAI – 600 014  
SUSPENDED DIRECTOR/PROMOTER OF  
SAFIRE MACHINERY COMPANY (P) LIMITED

*...Applicant/IRP*

**-Vs-**



**Mr.R.SUGUMARAN**  
**IRP OF SAFIRE MACHINERY COMPANY PRIVATE LIMITED**  
CEEBROS SHYAMALA GARDEN,  
No.136, ARCOT ROAD,SALIGRAMAM,  
CHENNAI – 600 093

... 1<sup>st</sup> Respondent/IRP

**JOIN UP CORPORATION**  
(A COMPANY INCORPORATED UNDER THE LAWS OF JAPAN)  
HAVING ITS OFFICE AT:  
2-31, SHIMOENJAKU 4 –CHROME,  
MITAKA CITY  
TOKYO 181-0013, JAPAN

... 2<sup>nd</sup> Respondent /Operational creditor

Order Pronounced on **09<sup>th</sup> November 2022**

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT**  
**SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Applicant: R.Sugumaran, IRP in IA/1036/CHE/2022*

*For Applicant: Om Prakash, Senior Advocate for John  
Acquinas, Advocate in IA/1035/CHE/2022*

*For Respondents: R.Sugumaran, IRP for R1 in  
IA/1035/CHE/2022*

**ORDER**

***Per: SAMEER KAKAR, MEMBER (TECHNICAL)***

**IA/1036/CHE/2022**

Under consideration is an Application filed under Section 12A of the Insolvency and Bankruptcy Act, 2016 (hereinafter the "IBC, 2016") read with Regulation 30A of the IBBI(Insolvency Resolution Process for Corporate Persons) Regulation, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter the "NCLT Rules"), seeking relief as follows;



- (i) *To approve the Settlement Agreement and order the implementation of the same within 30 days from the date of the order.*
- (ii) *To order Withdrawal of CIRP on completion of the settlement agreement.*
- (iii) *To order the pursuing of the Liquidation Petition, in case the said settlement agreement is not implemented within the said 30 days.*

2. The Corporate Insolvency Resolution Process in relation to the Corporate Debtor was ordered on 28.04.2022 and the Applicant herein was appointed as the Interim Resolution Professional (IRP). Thereafter, the IRP had issued public announcement in Form-A in "Business Standard" (English) and in "Makkal Kural", (Tamil) in Chennai Editions and invited claims to be filed by the Creditors of the Corporate Debtor.

3. It was submitted that the IRP has received claims from the following creditors:

- a) Secured Financial Creditor : Tamil Nadu Mercantile Bank:  
Admitted Claim : Rs. 2,94,93,382.63/-
- b) Operational Creditor – EPF, Admitted claim : Rs.4283/-
- c) Operational Creditor : Joinup Corporation, Admitted claim Rs.1,76,64,787/- claim under verification : Rs.1,98,68,889/- and claim not admitted : Rs.9,75,314/-

4. Consequent upon the verification of claim, the Committee of Creditors (CoC) was formed on 23.05.2022 with sole member of





Financial Creditor i.e.Tamil Nadu Mercantile Bank Limited. Thereafter, the 1<sup>st</sup> Meeting of COC was held on 30.05.2022, wherein it was decided to initiate Liquidation under Section 33(2) of IBC, 2016, since it was found out to be that the Corporate Debtor is not a going concern.

5. It is averred in the application that in the 2<sup>nd</sup> CoC meeting held on 10.06.2022 to approve the Liquidation cost and to authorize the present IRP, Mr.R.Sugumaran to file the Liquidation Application and the same was filed before this Tribunal bearing IA/786(CHE)/2022 and the same is pending for adjudication.

6. Pursuant thereto, it is averred that the Applicant received Form "FA" along with Settlement Agreement dated 09.09.2022 from the Operational Creditor and the same is annexed at Page Nos. 8 to 13 of the application typeset.

7. Perusal of the annexures filed along with the Application shows that the Settlement Agreement dated 09.09.2022 as between the Financial Creditor, Tamil Nadu Mercantile Bank and the Corporate Debtor which was placed before the 5<sup>th</sup> CoC Meeting on 12.09.2022 and the CoC has approved the same by passing resolutions with 100% Voting. Further, in terms of the Settlement Agreement, the parties have agreed to file an Application under





Section 12A of the IBC, 2016 by the IRP. Perusal of the Form FA shows that the Financial Creditor in TCP/141(IB)/2017 also expresses its willingness to withdraw the main Application.

8. The Learned IRP has relied up on a Supreme Court Judgement in the matter of ***Vallal RCK vs Siva Industries and Holding Limited in Civil Appeal Nos.1811-1812 of 2022***, quoting the decision of COC that when 90% or more of the creditors in their wisdom after due deliberations, find that it will be in the interest of all the stake holders to permit settlement and withdrawal of CIRP.

9. It is further averred in para 12 of the application it was averred that the details of the settlement agreement are as follows:

The admitted claims are :

- a) Tamil Nadu Mercantile Bank – Financial Creditor – Rs. Rs. 2,94,93,382.63/-
- b) EPF Authorities – Operational Creditor- Rs.4,283/-
- c) Assistant Commissioner (Sales Tax)- Operational Creditor – Rs. 1,35,37,021/-
- d) Joinup Corporation – Operational Creditor who initiated CIRP - Rs.1,76,64,787/-

10. Further, it is seen from the application that Mr.Gunasekaran, the Suspended Director on account of the Corporate Debtor viz,



Safire Machinery Company Private Limited, has deposited Rs. 3,00,00,000/- with Tamil Nadu Mercantile Bank towards for settlement of the Financial Creditor the Suspended Director proposed to settle 100% of the admitted claims of Tamil Nadu Mercantile Bank, EPF Authorities and Joinup Corporation.

11. Further, the Suspended Director shall provide a Bank Guarantee for the claim of the Assistant Commissioner of (Sales Tax), since the final claim can be reduced on the production of additional documents.

12. Taking into consideration the said submissions made by the Learned Counsel for the Applicant/IRP as well as the averments contained in the Application and also based on the Affidavit filed by the IRP/Applicant that the CoC has been constituted in relation to the CIRP of the Corporate Debtor, this instant Application IA/1036/CHE/2022 stands **allowed** and in the circumstances, TCP/141(IB)/2017 stands **withdrawn**. Consequently, the CIRP initiated against the Corporate Debtor also stands withdrawn.

13. In relation to **IA/1035/CHE/2022** is concerned, it is an Application filed by one Mr. A. Guansearakan, the suspended Director of the Corporate Debtor under Section 60(5) of the Insolvency and Bankruptcy Act, 2016 (hereinafter the "IBC, 2016")



read with Rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter the "NCLT Rules"), seeking relief as follows;

- a) To Raise the Restrain order of Attachment dated 04.07.2019 over the Property measuring around 27873 sq. feet in land and building comprised in Survey No. 176, 5/11, 5/11 part 5/12 New No. 5/49 as per TSLR, Arcot Road, Saligramam Village, Mambalam Taluk and bounded on the North by Land in RS No. 5/7, South by Arcot Road, East by Land in Survey No. 5/13 owned by G. Banumathi, West by Land in RS No 5/11 part and RS No. 5/12, HLC Technologies limited, within the registration District of South Chennai and within the Sub- Registrar, Virugambakkam and to communicate the order to the Sub Registrar of Virugambakkam to make necessary endorsement in its Register; and
- b) To pass such further orders as this Tribunal may deem fit and proper in the circumstances of the present case.

14. It is seen that at the time of initiation CIRP as against the Corporate Debtor on 28.04.2022, this tribunal in para 8 has observed as follows;

8. It is also seen that this Tribunal vide order dated 02.05.2019 that based upon the details of the list of assets produced by the Director of the Corporate Debtor, has restrained the Corporate Debtor from selling the vacant land situated at Arcot Road, comprised in T.S. No. 5/11 without the permission of this Authority. The said restraining order remains in force till date. Under the said circumstances, MA(IBC)/7(CHE)/2021 to raise the attachment order. Since we are inclined to admit the present. Petition, the restraining order passed against the property situated Arcot Road, comprised in T.S. No. 5/11, stands intact. Accordingly, MA(IBC)/7(CHE)/2022 stands dismissed. Let the Resolution Professional take appropriate steps during CIRP stage.



15. Since we are inclined to allow the Application filed under Section 12A of IBC, 2016 and in view of the main Company Petition being *dismissed as withdrawn*, the restrain order passed by this Tribunal on 04.07.2019 in respect of the property measuring around 27873 sq. feet in land and building comprised in Survey No. 176, 5/11, 5/11 part 5/12 New No. 5/49 as per TSLR, Arcot Road, Saligram Village, Mambalam Taluk and bounded on the North by Land in RS No. 5/7, South by Arcot Road, East by Land in Survey No. 5/13 owned by G. Banumathi, West by Land in RS No 5/11 part and RS No. 5/12, HLC Technologies limited, within the registration District of South Chennai and within the Sub- Registrar, Virugambakkam, stands **vacated** and the Applicant shall forward a copy of this order to the concerned office of the Sub – Registrar to make necessary endorsement. Accordingly, IA/1035(CHE)/2022 stands **allowed**.

16. The IRP is directed to hand over the management to the Board of Directors whose powers stood suspended by virtue of the initiation of the CIRP by this Tribunal while admitting the Petition in TCP/141(IB)/2017 vide Order dated 28.04.2022 and whose powers stand restored consequent to the withdrawal of CIRP in relation to the Corporate Debtor viz., *Safire Machinery Company Private Limited*. IRP is discharged from the assignment.



17. It is seen that though IA/786(CHE)/2022 is filed for liquidation, no liquidation has been ordered as of now. In terms of the order of the Hon'ble Supreme Court in the matter of ***Swiss Ribbons Private Limited and Anr. -vs- Union of India and others - (2019) 4 SCC 17*** wherein it was held that Section 12-A of IBC, 2016 can be allowed before liquidation is ordered. Since the main Petition is withdrawn, the IA for Liquidation viz. IA/786(CHE)/2022 also stands **dismissed** as *infructuous*.

18. Accordingly IA/1036(CHE)/2022 stands **allowed** TCP/141(IB)/2017 stands **dismissed as withdrawn**. However, the prayer (c) sought in the application bearing IA/1036(CHE)/2022 i.e. to order the pursuing of the Liquidation Petition, in case the said settlement agreement is not implemented within the said 30 days; the said prayer stands **rejected**. Accordingly, TCP/141(IB)/2017 sent to records.

- Sd -

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

- Sd -

**JUSTICE RAMALINGAM SUDHAKAR**  
PRESIDENT

*Sriram Ananth.V*