

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH-II, CHENNAI**

IA/196/(CHE)/2022

In

IBA/578/2019

*(filed under section 33(2) of the Insolvency and Bankruptcy Code, 2016
read with rule 11 of NCLT Rules, 2019)*

In the matter of **M/s. LEO PRIMECOMP PRIVATE LIMITED**

MATHUR SABHAPATHY VISWANATHAN

Resolution Professional of

M/s. Leo Primecomp Private Limited

...Applicant

INV. P (IBC)/3(CHE)/2022

In

IA/196/(CHE)/2022

*(filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016
read with rule 11 of NCLT Rules, 2019)*

V KARTHIKAYAN

Suspended Director of M/s. Leo Primecomp Private Limited,
392, II Main Road, Kappaleesswarar Nagar,
Neelankarai, Chennai – 15

...Applicant

-Versus-

1) Mathur Sabhapathy Viswanathan
Resolution Professional of
M/s. Leo Primecomp Private Limited

2) State Bank of India
Stressed Asset Management Branch

...Respondents

Order Pronounced on 6th June, 2022

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**JUSTICE (RETD.) RAMALINGAM SUDHAKAR, PRESIDENT
AINLKUMAR B, MEMBER (TECHNICAL)**

For Applicant in

IA/196/(CHE)/2022

: V. Manivannan, Advocate

For Applicant in

INV. P (IBC)/3(CHE)/2022

: Ravi Rajagopalan, Advocate



ORDER
JUSTICE (RETD.) RAMALINGAM SUDHAKAR, PRESIDENT

Under Consideration are two connected applications filed in IBA/578/2019 seeking reliefs as follows:

IA/196/(CHE)/2022

- a) Pass an order for the liquidation of the Corporate Debtor.
- b) Pass such other orders as it deems fit in the above circumstances of the case and thus render justice.

INV. P (IBC)/3(CHE)/2022

- a) Allow the applicant to intervene in IA/196/2022, file objections and make submissions in the said proceedings;
- b) Direct the 1st Respondent to place the proposal/resolution Plan from the Applicant herein for the consideration of the CoC/Sole Financial Creditor 2nd Respondent herein and direct the 2nd Respondent to consider the same;
- c) Grant such other incidental reliefs as may be deemed fit and proper by this Hon'ble Adjudicating Authority.

2. Originally IBA/579/2019 was filed by State Bank Of India (hereinafter referred as "the Financial Creditor") against *M/s. Leo Primecomp Private Limited* (hereinafter referred as "the Corporate Debtor") under Section 7 of the Insolvency and Bankruptcy Code (hereinafter referred as "IBC, 2016") the same was Admitted vide order dated 24.07.2019 and the applicant herein M.S.Viswanathan was appointed as an Interim Resolution Professional (IRP) and subsequently as the Resolution Professional (RP) vide order dated 17.09.2019 in MA/966/2019 in IBA/578/2019.

3. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred that subsequent to the order in MA/966/2019 the Applicant herein caused public announcement in Form A under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 29.07.2019 in Deccan Chronicle (Chennai) and Daily Thanthi (Chennai).

4. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred that during the 1st CoC meeting held on 26.08.2019, the Applicant had submitted the Initial Information Memorandum to the CoC and upon deliberations approval was accorded for appointment of Registered Valuers for valuation the assets of the Corporate Debtor. It is further averred that during the 2nd CoC meeting held on 01.10.2019, it was decided to publish the EoI. Subsequently, Form G was published on 07.10.2019 in the Hindu newspaper (English) and Dinamalar (Tamil). The last date for submission of expression of interest was on 22.10.2019.

5. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred that during the 3rd CoC meeting held on 29.10.2019, the CoC was informed about the inefficacious response to the Form G published and that had accorded for publication of another EoI. It was further averred that during the 4th CoC meeting held on 03.01.2020, the Applicant has informed the CoC that another EOI

was published on 06.12.2019 in Business Standard (English) and Dinamalar (Tamil), Chennai edition. The last date of receipt of EOI was on 21.12.2019 and that the Resolution Professional has not received any enquiry for the same.

6. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred during the 5th CoC meeting held on 18.01.2020 it was resolved to seek extension of the CIRP time period since initial the period of 180 days was about to end on 20.01.2020. Consequently, an application in MA/114/2020 was moved before this Adjudicating Authority seeking extension of 90 days and the same was allowed vide order dated 19.02.2020. Accordingly, the CIRP period was extended up to 19.04.2020. It was further averred that the approval of CIRP extension was informed to the CoC members during the 6th CoC meeting held on 24.03.2020.

7. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred that during the 7th CoC meeting held on 16.05.2020 discussions were made regarding of the affairs of the Corporate Debtor as a going concern during the lockdown. It was further averred that during the 8th and 9th CoC meeting held on 12.10.2020 and 12.11.2020 respectively, the Resolution Professional had posted the agenda for publication of Form G for the third time. However, the same was deferred by the CoC during their 8th and 9th meetings and approval was accorded in the 10th



CoC meeting held on 27.11.2020; subsequently, publication was made on 30.11.2020. Further the applicant had contemplated for the filing of exclusion application based on the response for the Form G published.

8. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred that during the 11th CoC meeting held on 24.12.2020 discussions were carried out as regarding the inefficacious 3 EoI's published on 07.10.2019, 06.12.2019 & 30.11.2020. Further, the applicant had proposed issuance of another EoI for maximisation of the value of the Corporate Debtor. However, the CoC had resolved not to publish anymore EoI's.

9. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred that during the 12th CoC meeting held on 05.02.2021 discussions were carried out to replace the resolution professional due to operational needs and the application for the same was filed by SBI before this Adjudicating Authority in MA/80/2021 in IBA/578/2019. The same was not put for hearing due to non-submission of physical copy of the application filed.

10. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred that during the 13th CoC meeting held on 09.06.2021 it was informed to the CoC that he had only concentrated in protecting the assets of the Corporate Debtor and ensured that the Corporate Debtor was kept as a going concern. Since, no approval



was given by the CoC for another EoI publication, the applicant having informed that, with only 57 days left for CIRP period after lifting lockdown and that no Resolution plan is pending, the sole CoC member, The State Bank of India, has decided to seek legal opinion as to whether to continue CIRP or not.

11. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred that the 14th CoC was planned to be held on 25.06.2021 and the same was deferred to 29.06.2021 wherein the CoC had decided to liquidate the Corporate Debtor.

12. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred that during the 15th CoC meeting held on 04.08.2021, upon the submission made by the applicant that he has received enquiries for resolution plan and a fresh proposal for One Time Settlement by the erstwhile promoters, the sole CoC member had accepted the same. Consequently, the sole CoC Member had informed the applicant to continue as resolution professional and withdrew their proposal for liquidating the corporate debtor and had submitted an affidavit to that effect. The said Application was dismissed as withdrawn vide., order dated 06.09.2021.

13. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred that during the 16th CoC meeting held on 13.08.2021, the COC has decided for the issue of Form G and to apply for exclusion of Lockdown period before this Adjudicating Authority.



Accordingly, an application was filed before this Adjudicating Authority for the exclusion of 551 days which includes unconsumed CIRP period and also the Covid-19 lockdown period. The same was allowed vide., order dated 24.09.2021 in IA/895/2021 such that the CIRP period was to end on 21.11.2021.

14. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred that Consequent to the above mentioned order, the Applicant has issued Form G for the 4th time dated 30.09.2021. It was further averred that during the 17th CoC held on 04.10.2021 the applicant had placed the criteria contained in the Invitation of Expression of Interest & the Evaluation Matrix before the CoC and the same was approved. It was further averred that in furtherance of the above Invitation of EoI, an EoI was received from one Prospective Resolution Applicant (PRA) and the said PRA was included in the Provisional List on 25.10.2021 and the PRA has been provided with the Information Memorandum and Request for Resolution Plan on 30.10.2021. As per the Form G which was issued in accordance with the Timeline prescribed under the Code and Regulations, the date for issue of final list of PRAs was 09.11.2021 and the last date for submission of Resolution Plan was 29.11.2021. As per the extension and exclusion sought CIRP Period has expired on 21.11.2021 prior to the above mentioned last date for submission of Resolution Plan by the PRA. It was further submitted that that the above said Form G was issued by



the Applicant subject to the condition that it is issued as per time granted by this Adjudicating Authority in IA/895/2021 in IBA/578/2019 dated 24.09.2021. wherein, the Applicant was permitted to issue fresh Form G and that the timelines are subject to changes and further approval by this Adjudicating Authority.

15. That in the light of the above facts and circumstances, the COC in its 18th Meeting held on 01.11.2021 considering the Prospective Resolution Plan to be received in furtherance of the Invitation of EoI, had resolved and authorised the Applicant to file an application before this Adjudicating Authority for the exclusion/ extension of a period of 45 days from 21.11.2021 in order to enable them to assess the Resolution Plan which was to be submitted by 29.11.2021 by the PRA. The same was filed on 11.11.2021 in IA/1177/2021 and the same was ordered in such a way that the Resolution Plan is to be submitted before this Adjudicating Authority before 29.12.2021.

16. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred that during the 19th CoC meeting held on 03.12.2021, the applicant had informed the CoC that the Prospective Resolution Applicant (PRA) in the Final list submitted the Resolution plan on 29.11.2021 through e-mail in soft version through the password protected file and in hard copy in a sealed cover within the last date of submission of

Resolution plan i.e. 29.11.2021 and placed the sealed cover in the meeting and sought permission of the CoC for opening the sealed cover. The PRA also attended the CoC meeting to disclose the password for opening the soft version of the Resolution Plan sent through E-mail. The Applicant/Resolution Professional verified and confirmed the soft copy received with the physical copy and informed CoC that the applicant requires further time to submit the compliance report as per Section 30 of IBC read with regulation 37 and 38 of IBBI (Insolvency Resolution Process For Corporate Persons) Regulation, 2016.

17. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred that the Sole Financial Creditor, State Bank of India informed the applicant by E-mail dated 06.12.2021 asking further clarification with respect to the Resolution plan submitted and had asked the PRA to submit a revised resolution plan before 18.12.2021 for consideration.

18. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred that during the 20th CoC meeting held on 21.12.2021 the terms of the resolution plan were discussed in depth and allowed PRA to amend the plan within 2 to 3 days without substantially altering the same. Accordingly, the PRA has sent their Final revised plan to the applicant on 23.12.2021 for consideration of the CoC.



19. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred that during the 21st CoC meeting held on 03.01.2022 it was informed that due to the spread of Covid-19 in the Head Quarters of the sole financial creditor in the Committee of Creditors located at Mumbai and the consequent restrictions imposed by the government bodies, time was required to finalize the voting on the submitted Resolution Plan and passed a resolution with 100% voting authorizing the applicant to file the application seeking a further exclusion of lockdown period and extension of the CIRP Period till 05.02.2022. That the applicant has filed an application vide IA/19/2022 in pursuance of the resolution passed during the 21st CoC Meeting for extension of the CIRP period till 05.02.2022 enabling the CoC to decide upon the revised resolution plan and the said application is pending before this Adjudicating Authority.

20. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred that during the 22nd CoC meeting held on 03.02.2022 has resolved to file an application for further extension of the CIRP period till 15.02.2022 by which the voting can be conducted on the revised Resolution Plan submitted by the PRA. The Applicant on 06.02.2022 has filed an application vide IA/141/2022 for extending the CIRP Period till 15.02.2022. It was further averred that the applicant had conducted the voting on the resolution plan on 03.02.2022 in the 22nd CoC Meeting whereby the CoC has

voted for rejection of the revised Resolution Plan submitted by the PRA.

21. The Learned Counsel for the Applicant in IA/196/(CHE)/2022 has averred that in pursuance of the rejection of the Prospective Resolution Plan, the COC consisting of the sole financial creditor of the Corporate Debtor during the 23rd CoC Meeting held on 08.02.2022 has passed a resolution for liquidating the Corporate Debtor due to rejection of the Resolution Plan and appoint one Ms. J. Karthiga (Insolvency Professional) as the liquidator for the Corporate Debtor who has consented to act liquidator. The consent form, Authorisation for Assignment in Form B, and the certificate of registration of the said Ms. J. Karthiga is enclosed as Annexure 39 along with application filed.

22. It was further averred that during the 23rd CoC meeting discussions were made regarding estimate of the amount required to meet liquidation costs as Rs. 3.20 crore under Regulation 39B(1) of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 and as the estimate of the value of the Liquid assets itself computes to Rs. 4.36 crore approximately, and hence there is no requirement for the contribution plan under Regulation 39B(3). Furthermore, the COC has recommended under Regulation 39C(1) of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016, that the



Liquidator may first explore sale of the Corporate Debtor as a going concern under regulation 32(e) or sale of the business of the Corporate Debtor as a going concern under clause 32(f) of the IBBI (Liquidation Process) Regulations, 2016 & under 39C(2) has identified and grouped the assets and liabilities as All as one Lot primarily and if the same does not yield in sale, then they may be sold in separate lots.

23. The Applicant further submits that Corporate Debtor's business is a going concern with about 300 employees who are currently working with a turnover of approximately Rs. 3 crore per month and having good quality assets and receivables. It has a good order book with a good growth potential and viable to be sold as a going concern. The Compliance Certificate of the Applicant in Form H, as required is enclosed as Annexure 41.

24. Hence, the applicant has filed the present application praying liquidation of the Corporate Debtor as per the decision of the Committee of Creditors. The CoC has unanimously decided to liquidate the Corporate Debtor and appoint one Ms. J. Karthiga as the Liquidator. The operative part of the Resolution reads as follows: -

"Resolved that the Corporate Debtor - Leo Primecomp Private Limited be and is hereby decided to be liquidated Further Resolved that Mr. Mathur Sabapathy Viswanathan, Resolution professional be and is hereby authorised to file an

application before the Adjudicating authority to liquidate, M/s. Leo Primecomp private Limited - Corporate Debtor under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 **Further Resolved** that Ms. J. Karthiga (Registration No. IBBI/IPA-001/1P-P00752/2017-2018/11284) be and is hereby recommended to be appointed as the liquidator of the Corporate Debtor - Leo Primecomp Private Limited to oversee the liquidation process."

Further Resolved that a sum upto Rs. 3,20,00,000/- (Rupees Three Crores Twenty 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 33(2) of the Insolvency and Bankruptcy Code, 2016. Further Resolved that the liquidator be directed to first explore the possibility of sale of the Corporate Debtor as a going concern pursuant to Section 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Further Resolved that The Professional Fees payable to the Liquidator be and is hereby approved to be fixed at Rs. 1,00,000/- per month till the period if any, used for compromise or arrangement under Section 230 of Companies Act 2013 and thereafter fee as per sub-clause (b) of clause 2 of regulation 4 of IBBI (Liquidation Process) regulations 2016."

25. During the course of hearing of the liquidation application in IA/196/(CHE)/2022 an Intervening Petition was filed in Inv. P/3/(CHE)/2022 by the Unsuccessful Resolution Applicant viz., V Karthikayan and one another seeking intervention of the Unsuccessful Resolution Applicant in IA/196/(CHE)/2022 to file their objections and to direct the Resolution Professional to place



the Proposed Resolution Plan for Consideration before the CoC. The Unsuccessful Resolution Applicant had placed on record the few Judgments appraising that every possible effort should be made to revive the Corporate Debtor and make it a going concern. A Counter to the Intervention Application was filed by the sole CoC member. The same is extracted hereunder:

"3. I further submit that the Resolution plan submitted by the applicant and Mr.B. Athithyan not considered by COC on the following grounds:

- a) Plan value to the financial creditor is Rs.57.45 crores as against average liquidation value and fair value of Rs.109.69 Crores and Rs.133.03 Crores respectively.*
- b) Technical and Financial study was conducted by SPP & Co, Chartered Accountants and as per the report, plan is not financially viable and it is highly contingent on following two parameters. The report states that overall success of proposed business plan is highly contingent on following two parameters.*
 - Ability to raise debt lower cost for Plan settlement and working capital (Extreme Risk)*
 - Ability to increase business volume and maintain 20%+EBITDA (High Risk for profitability)*
- c) RA Consortium proposes that an amount of Rs.58crores will be facilitated by M/s. Metis Family Office Services Private Limited from number of individuals. The sources do not appear to be firm as RA Consortium have shown combined net worth of Rs.11.25 crores only. Further, as per Resolution Plan, they claim to have tied up for Rs.25 crores only and balance Rs.33 crores would be arranged in a year time by M/s. Metis Family Office Services Private Limited from number of individuals which is again uncertain.*



4. I further submit that the RP had placed the resolution plan in the last COC meeting held on 03.02.2022 for voting and last date of submission of plan to NCLT for getting approval fixed on 05.02,2022. The aforesaid resolution plan placed for voting on 03.02.2022 and the same was not considered by COC since the overall success of proposed business plan is highly contingent besides unacceptable various terms and conditions imposed by the resolution applicant. The COC has desired to reject the resolution plan on the following counts.

- a) Plan value to financial creditor is Rs.57.45 crores (Total plan value Rs.60 crores) against average liquidation value of Rs.109.69 Crores and average fair value Rs.133.03 Crores..
- b) Both RAs are sons of the promoters of the Corporate Debtor (CD). RAs have shown last 3-4years' experience working with previous management as their experience. As such RAs do not have any prior experience in CD's business.
- c) Resolution Plan proposes to hand over the CD to RAs on NCLT approval date i.e., even before receipt of any upfront payment under resolution plan.
- d) As proposed that an amount of Rs.58 crores will be facilitated by Metis Family Office Services Private Limited from number of individuals. The sources do not appear to be firm as RAs have shown combined net worth of Rs.11.25 crores only.
- e) Further, as per Resolution Plan, they claim to have tied up for Rs.25 crores only and balance Rs.33 crores would be arranged in a year time by Mets Family Office Services Private Limited from number of individuals, which is again uncertain.
- f) Currently company has cash balance of around Rs. 4.14 Crores and during negotiation on resolution plan value, financial creditor advised As to propose cash balance in company as on NCLT plan approval date to financial creditor, but they



are not inclined to offer the said amount to Financial Creditor.

g) SBI's share in liquidation value is Rs.109,69 crores and by assenting the resolution plan, SBI would be getting Rs.57.45 crores(NPV Rs. 54.90 Cores), which is \$2.37% of average liquidation value. Considering depreciation and other cost (Liquidation cost is estimated at 2%) associated with the liquidation, NPV under liquidation scenario (Rs.80.93 Crores) is better than the NPV under resolution plan.

h) As the average liquidation value is higher than the amount to be received under resolution plan and in case CD goes into liquidation, sale of assets would fetch better value for assets.

5. I vehemently deny the statement made in Para No.9 that the resolution plan amount of Rs.60 Crores would be better than if the CD goes into liquidation. As stated supra, since the plan is not technically and financially viable, financial creditor has rejected the same."

26. At this Juncture, It is pertinent to mention that in the case of K. Sashidhar , Company Appeal (AT) (Insolvency) No. 274 & 291 of 2020 18 of 25 the Hon'ble Supreme Court has clearly laid down the law that upon receipt of rejected Resolution Plan the Adjudicating Authority is not expected to do anything more, but is obliged to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the Adjudicating Authority with the jurisdiction or authority to evaluate the commercial decision of the CoC. It is further held that NCLT or NCLAT has no jurisdiction to reverse to commercial wisdom of the Committee of Creditors.

27. It also appears that the Resolution Plan is not feasible and viable. Consequent to which, the CoC has proposed for liquidation of the Corporate Debtor and on voting the same was passed unanimously.

28. Based on the above discussion, we are of the considered opinion that the Intervening petition sans merit ***hence dismissed no order as to costs.***

29. Under the said Circumstances, **Ms. J. KARTHIGA, Reg: IBBI/IPA-001/IP-P00752/2017-2018/11284 (email-karthigasri@Hotmail.com)** is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions.

- 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 her.
- 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 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 75 (seventy-five) days 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.

30. Accordingly, IA/196/(Che)/2022 in IBA/578/2019 stands **disposed off** with the aforesaid terms.

-SD-

ANIL KUMAR B
MEMBER (TECHNICAL)

JUSTICE (Retd.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

-SD-

Mohanapriya