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

**IA/324/CHE/2022 in IBA/355/2020**

*(Filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016  
read with Rule 11 of the NCLT Rules, 2016)*

In the matter of ***Kapico Motors India Private Limited***

**Mr. Kannan Samabasivam**

Resolution Professional of  
Kapico Motors India Private Limited  
No.27, "SKYLINE CASTLE"  
Abdul Razack Street,  
Saidapet, Chennai – 600 015

*... Applicant /Resolution Professional*

*Order Pronounced on 28<sup>th</sup> April, 2022*

CORAM:

**R. SUCHARITHA, MEMBER (JUDICIAL)  
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant : *V.Manivannan, Advocate*

**ORDER**

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

This is an application filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read with Rule of the NCLT Rules, 2016) seeking relief as follows:

- (i) To pass an order of Liquidation of the Corporate Debtor
- (ii) To pass such other orders as it deems fit in the above circumstances of the case and thus render justice.

2. It is averred in the application that the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor viz. Kapico Motors India Private Limited by this Tribunal on 28.01.2021 and the Applicant herein was appointed as the Interim Resolution Professional (IRP) by this Tribunal. Pursuant to the order, Public Announcement was made by the IRP on 22.03.2021 and the IRP had received 2 claims from the Financial Creditor in Form C.

3. It is further averred in the application that in the first CoC meeting held on 20.04.2021, the Committee, of Creditors (CoC) decided to appoint the existing Interim Resolution Professional, (the Applicant herein) as Resolution Professional (RP). Further it was stated that due to the Covid – 19 pandemic and the attendant lockdowns imposed by the State Government, Tamil Nadu issued state wide lockdown, 1<sup>st</sup> CoC meeting was conducted on 21.04.2021 and the applicant was unable to carry out the CIRP in respect of the Corporate Debtor.

4. It is further averred in the application that the Applicant conducted the 2<sup>nd</sup> CoC meeting on 06.07.2021, after the Lockdown ended on 04.07.2021. During this period there were 11 financial creditors who have filed their claims out of which 10 got admitted one operational creditor and one other creditor also filed their

claims was admitted. The Applicant has put to e-vote certain agenda before CoC in the 2<sup>nd</sup> CoC meeting. The CoC through a 100% voting passed a resolution to file an application for an exclusion and extension of the CIRP time period due to Covid-19 lock down. Further passed a resolution with 89.66% voting for filing application under Section 19(2) of IBC, 2016 against the suspended directors of the Corporate Debtor.

5. Pursuant to the resolution passed by the CoC, the Applicant herein had filed an application before this Tribunal on 23.07.2021 to exclude 74 days i.e. 21.04.2021 to 04.07.2021 from the CIRP period and the same was allowed by this Tribunal in IA/755/CHE/2021 vide order dated 07.09.2021 by excluding the 74 days of the CIRP Period. Further it was averred that the total period of CIRP after the exclusion was extended till 06.02.2021.

6. In pursuance to the resolution passed in the 2<sup>nd</sup> CoC meeting, the Applicant had also filed an application bearing IA/791/CHE/2021 under section 19(2) & 19(3) of the IBC, 2016 against the suspended Board of Directors of the Corporate Debtor for non-cooperation in providing the relevant documents with regards to the Corporate Debtor. Further the Corporate Debtor did not submit the reconciliation of Provident Fund account and address of claims and incentives, receivables till date. The above

said IA/791/CHE/2021 is currently pending before this Tribunal for adjudication and this said matter is posted to 26.05.2022.

7. It is further averred in the application that the Applicant conducted the 3<sup>rd</sup> CoC meeting on 04.12.2021 and the applicant had informed the CoC that the Suspended Directors of the Corporate Debtor has not yet identified all the assets of the Corporate Debtor and failed to provide the address of sundry debtors, Insurance claims & Incentives receivables in spite of several reminders. Further, it was informed to the CoC that the transactional auditor is yet to submit the final report and as the CIRP period has ended on 06.12.2021, a further extension of CIRP period is needed to publish Form G for the Corporate Debtor. In considering all the above points raised by the applicant in the meeting, the CoC with 100% voting has passed a resolution to file an application for extension of 90 days from 06.12.2021 of the CIRP of the Corporate Debtor.

8. Pursuant to the resolution passed by the CoC in its 3<sup>rd</sup> CoC meeting, the Applicant had filed an application for extension of the CIRP period for a further period of 90 days and the same was allowed by this Tribunal in IA/1274/CHE/2021 vide order dated 13.01.2022 by extending the CIRP period till 26.02.2022.

9. It is further averred in the application that the Provident Fund Department has freezed the bank account of the Corporate Debtor and an amount of Rs.16,92,06,347/- is withheld with the bank, the claim filed by PF Department admitted is Rs. 84,47,746 (Eighty Four Lakhs Forty Seven Thousand Seven Hundred and Forty Six Rupees only). Further the RP is taking steps to defreeze the account and add the amount with the Liquidation Estate and the payment to Provident Fund Department will be dealt as per the IBC 2016.

10. It is further averred in the application that the applicant conducted 4<sup>th</sup> CoC Meeting on 19.01.2022 wherein the Applicant had informed the CoC that only 3 cars that are the assets of the Corporate Debtor is handed over to the Resolution Professional and the same is kept in a private yard and further it was informed to the CoC that forensic/transaction auditor have completed the audit and submitted final report to the applicant on 05.12.2021

11. It is further averred in the application that petitions were filed by TATA Financial Services Limited against the Corporate Debtor and the erstwhile promoters of the Corporate Debtor before the Hon'ble Madras High Court and the same was ordered by the Hon'ble Madras High Court in OA/52/2021 and A.Nos.304 to 306 of 2021 vide order dated 15.02.2022 by disposing of the petitions

making it clear that the same can be presented before the Arbitral Tribunal qua the Guarantors. TATA Financial Services Limited being the unsecured Financial Creditor had submitted their claim forms belatedly only on 14.09.2021 and there was continuous correspondence with the Applicant till February 2022. The said unsecured Financial Creditor entered into settlement agreement with the Corporate Debtor and the erstwhile promoters of the Corporate Debtor on 10.03.2021 before the initiation of CIRP.

12. In pursuance to the Order dated 15.02.2022 of the Hon'ble High Court, Madras in O.A No. 52 of 2021 the Applicant, accepted the claim filed by the Unsecured Financial Creditor, Tata Capital Financial Services Limited. That the Applicant in furtherance to the newly admitted claim had filed an updated list of creditors dated 22.02.2022 and further filed a Report certifying CoC dated 22.02.2022 before this Tribunal on 23.02.2022.

13. It is further averred in the application that the 5<sup>th</sup> CoC Meeting was held on 23.02.2022 wherein the newly admitted financial creditor also participated. The Applicant put forth a resolution to file an application for extension of CIRP period for publishing Form G, to complete the pending 19(2) application and to further file applications against the suspended directors of the Corporate Debtor under Sections 43, 45, 49 and 50 under the

IBC, 2016. The CoC informed the Applicant to share the applications under Sections 43, 45, 49 and 50 under the IB Code, 2016. The applicant further states that some of the COC members were not interested to issue a fresh EOI and some of them suggested to proceed for Liquidation. Finally, all COC members opined that this can be decided in E-VOTING which was scheduled on 2<sup>nd</sup> to 3<sup>rd</sup> March, 2022.

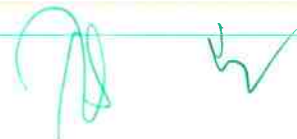
14. It is further averred in the application that due to technical difficulties, the E voting on resolutions was only conducted on 3<sup>rd</sup> and 4<sup>th</sup> March, 2022. Further it was submitted that 98.43% of the CoC Members disapproved the resolution to publish fresh Form G and calling for expression of Interest. Thereafter, the CoC passed a resolution through 100% voting to liquidate the Corporate Debtor - to sell the Corporate Debtor as a going concern or to sell the assets of the Corporate Debtor and appoint the applicant as the liquidator.

15. It is further averred in the application that the CoC through 75.13% voting has rejected the resolution of filing of the PUFEE Transaction applications before this Tribunal. However, the applicant is collecting certain details for proceeding to file the Application. The CoC has made an estimate of amount required to meet liquidation cost as Rs. 6,61,000/- under the Regulation 39B(1) of the IBBI

(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and as the estimate of the value of the Liquidation assets itself commutes to Rs. 7,50,000/- approximately, hence there is no requirement for the contribution plan under Regulation 39B(3), in case of any short recovery the COC has agreed to fund the Liquidation Cost. Furthermore, the COC opined there are no valuable assets or License are available with the CD to sell as going concern. The RP brought to the Knowledge of the CoC to approve the expense incurred after 4th COC, which was disapproved by M/s. Tata Capital Financial Services Limited who have 72.54 % of voting share. RP has not made any further averments on disapproval of expenses.

16. The Applicant had placed the Compliance Certificate in Form H which is enclosed at Annexure 23 of the typed set of the Application.

17. Heard the submissions of the Learned Applicant Counsel. It is seen from the application that the Applicant had placed the copy of 5<sup>th</sup> CoC meeting held on 23.02.2022 that 100% of the CoC members had resolved in favor of Liquidation of the Corporate Debtor and the same is enclosed at Annexure 16 of the typed set of the Application.



18. It is also seen from the records that the Applicant herein has annexed the written consent of Mr. Sambasivam Kannan in Form AA to act as the Liquidator of the Corporate Debtor and also on verification from the IBBI Website, it is seen that the Authorization for Assignment (AFA) for the RP is valid up to 22.12.2022.

19. In the circumstances, we hereby appoint **Mr. Sambasivam Kannan**, with **Reg. No. IBBI/IPA-001/IP-P00755/2017-2018/11287 (email Id: charitarthkannan@gmail.com)** 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.

20. Accordingly, IA/324/CHE/2022 filed for Liquidation of the Corporate Debtor stands **allowed**.

-Sd-

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

-Sd-

**R. SUCHARITHA**  
MEMBER (JUDICIAL)

*Sriram Ananth .V*