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IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH – I, CHENNAI

IA/IBC/485/CHE/2022 in CP (IB)/988 (CHE)/2018

(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 ***Vijai Spinners (RJPM) Private Limited***

Mr.B.Sathrukkanan,
Resolution Professional of
Vijai Spinners (RJPM) Private Limited,
No.9A/1, Ramraj Mansion,
1st Floor, NRG Street, KK Pudur,
Coimbatore – 641 038

... Applicant

Order Pronounced on ***19th September2022***

CORAM:

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

For Applicant : *M.S.Viswanathan, 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 and;

(ii) To pass such other orders as it deems fit in the above circumstances of the case and thus render justice.

2. From the averments made by the Applicant, it is evident that the CIRP of the Corporate Debtor was initiated on 09.12.2019 and the Applicant herein was appointed as the Interim Resolution Professional ("IRP" for brevity) and the IRP had caused the Public Announcement on 13.12.2019.

3. It was submitted the Ld. Counsel for the Applicant that the IRP has admitted claim from the Financial Creditor viz., Syndicate Bank and constituted CoC with the said Bank as sole member with 100% voting rights.

4. In the 1st meeting of the CoC held on 08.01.2020, the Applicant was appointed as Resolution Professional of the Corporate Debtor. Thereafter, the Applicant had admitted an operational claim of Rs.40,00,000/-.

5. During the course of CIRP, the erstwhile director of the Corporate Debtor has filed an appeal against the CIRP order in Company Appeal No.122 of 2020 before Hon'ble NCLAT, New Delhi wherein an interim order was passed directing the Applicant to ensure that the company remains as a going concern and also to take assistance of the suspended Board of Directors of the Corporate Debtor, the said status was communicated to the CoC in the 2nd meeting of the CoC. Thereafter, the appeal was transferred to

Hon'ble NCLAT Chennai Bench and numbered as TA (AT) No.166/2021 on 15.11.2021, which is pending *lis*. It is observed that Hon'ble NCLAT has not stayed the CIRP in the said matter.

6. It was further submitted that in the 4th and 5th meeting of the CoC appointment of valuer to value the assets of Corporate Debtor and publishing of invitation for expression of interest was approved by the CoC. In addition to that CoC has permitted the applicant to file the extension and exclusion application. Accordingly, the RP has filed IA/537/2021, before this Adjudicating Authority and prayed an extension and exclusion in the CIRP period and the same was allowed by this Tribunal.

7. In the 6th meeting of the CoC held on 01.07.2021, the CoC discussed about the Expression of Interest received from the 5 Prospective Resolution Applicants (PRA) and in the 7th meeting of the CoC held on 22.07.2021, the CoC approved to receive earnest money deposit (EMD) from the PRAs and asked the Applicant to incorporate the modifications suggested by the CoC in the plan.

8. On 12.11.2021 this Adjudicating Authority granted extension of 90 days and also excluded 354 days in the CIRP period and accordingly the CIRP was extended till 24.08.2021. Pursuant to that the Applicant conducted 8th CoC meeting on 29.11.2021, wherein the

CoC permitted the Applicant to file another Application to get further extension.

9. It was further submitted that in the 9th meeting of the CoC on 02.03.2022, the CoC passed a unanimous resolution recommending liquidation of the Corporate Debtor and then said resolution is placed as "*Annexure 19*" of the Application typeset.

10. Heard the submissions of the Ld. Counsel for the Applicant. It can be seen from the submissions that the CIRP of the Corporate Debtor ended on 24.08.2021 and the Committee of Creditors in the 9th COC meeting held on 03.03.2022 has resolved to liquidate the Corporate Debtor. In such circumstances, this Adjudicating Authority concludes that this present application deserves to be allowed.

11. The Section 33 (2) of the IBC, 2016 is extracted hereunder:-

> **Section 33 (2)**
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> "Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)."

12. It is also seen from the records that the Applicant herein has accorded the written consent, Form AA to act as the Liquidator of the Corporate Debtor and further from the IBBI website it can be seen that the Applicant has valid AFA.

13. In the circumstances, as the CIRP of the Corporate Debtor has come to an end on 24.08.2021 and the COC vide meeting dated 02.03.2022 has unanimously resolved to liquidate the Corporate Debtor. It is noted that a period of 863 days have passed since commencement of CIRP till the date of this Application. As such this Adjudicating Authority is left with no other choice but to liquidate the Corporate Debtor. We hereby order the liquidation of Corporate Debtor. **Mr. Arumugam Arumugam** with Reg No: *IBBI/IPA-003/IP-N00094/2017-2018/10936* **(email id:** arumuru2008@gmail.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.

k) Further in view of the NCLAT order dated 05.02.2020, the Liquidator appointed *Supra* is directed

i) To keep the unit as a going concern till final order is issued by Hon'ble NCLAT in TA (AT) No 166/2021.

ii) to take steps to sell the Corporate Debtor as a Going Concern.

14. With the above directions, this IA/IBC/485/CHE/2022 stands **disposed of**.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT