

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

MA/1218/2019 in IBA/265/2019
filed under Section 33(2) of the
IBC, 2016 and **IA No. 260/2020**
in IBA/265/2019 filed Promoter
Director for Impleading as
intervening party.

In the matter of *M/s. Marutham Steel Industries Private Limited*

MA/1218/2019:-

Ravindranath Narayana Rao
Resolution Professional of
M/s. Marutham Steel Industries Private Limited,
#522/C, 1st D Cross, 15th Main, 3rd Stage, 4th Block,
WCR, Basaveshwaranagar, Bangalore-560079.

---Applicant/ RP

IA/260/IB/2020:-

Maruthanayagam Kathiresh
Promoter and Director of
M/s. Marutham Steel Industries Private Limited
No. 16, Lakshmipuram, Sathy Road,
Coimbatore North,
Coimbatore-641006

---Intervenor/Applicant

CORAM:

R.VARADHARAJAN, MEMBER (JUDICIAL)
S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

MA/1218/2019:-

For the Applicant : *Shri. Ravindranath Narayan Rao, RP*
For Financial Creditor : *Ms. Sheelavenkatesh, Advocate*

IA/260/IB/2020:-

For the Applicant : *Shri. J. Manivannan, Advocate*
Shri. T.R. Sundaram, Advocate
Counsel for RP : *Shri. Jerin Ahen, Advocate*

COMMON ORDER

Per: S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Order Pronounced on: 03.07.2020

It is an **MA/1218/2019** filed by the Resolution Professional under Section 33 (2) of the IBC, 2016, seeking relief as follows;

1. To Consider and approve the proposal stated in the resolution passed by the Committee of Creditors for initiation of Liquidation process under section 33(2) of the IBC, 2016; and

2. To appoint the Liquidator for initiation of liquidation process for the Corporate Debtor;

2. The **IA/260/IB/2020** is an application for Intervention filed by one Mr. Maruthanayagam Kathiresh (Promoter and Director of the Corporate Debtor) stating that the Resolution Professional has rejected the Expression of Interest (EoI) submitted by the Applicant without due verification of records which led to the liquidation of Corporate Debtor. In the circumstances, the applicant seeks the following reliefs:

- (i) to pass appropriate orders permitting the applicant to be impleaded as intervening party in the present application;*
- (ii) to quash and set aside the decision of RP for rejecting Expression of Interested submitted by the applicant; and*
- (iii) pass such further or other orders as this Tribunal may deem fit under the circumstances of the case.*

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3. Upon perusing the records and after hearing the arguments, the facts relevant to this case for the purpose adjudicating of the petition is as follows:

4. From the averments made by the Applicant/RP, it is evident that the CIRP of the Corporate Debtor was initiated on 11.03.2019 and the Applicant herein was appointed as IRP on the same day. The IRP caused public announcement calling for the claimants from the Creditors of the Corporate Debtor by virtue of publication dated 14.03.2019, subsequently, claims were filed by the Financial Creditors, Operational Creditors and other stakeholders. Pursuant to that the CoC was constituted on 29.03.2019 and the 1st meeting of the CoC was held on 05.04.2019. Thereafter, the CoC resolved to appoint the Applicant as the Resolution Professional on 05.04.2019. Thereafter, the Resolution Professional has appointed 2 IBBI Registered Valuers on 11.04.2019 for valuation of assets of the Corporate Debtor and from **Form-H** filed by the Resolution Professional, it is evident that the fair value and liquidation value of the Corporate Debtor are as follows;

S. No	Particulars	Valuation Amount
1	Fair Value	Rs.12,59,67,291/-
2	Liquidation Value	Rs.7,97,00,000/-

5. It is also evident from the records that the 2nd COC meeting held was on 15.05.2019, in which the CoC has decided to issue Invitation for Expression of Interest and the invitation for EOI in Form-G was

published in newspapers on 05.06.2019 for inviting prospective resolution applicants. The counsel for the Applicant/RP submitted that in the 6th CoC meeting held on 21.08.2019 extension of time to submit resolution plan from one Malbar Ispat Limited was discussed. Considering the fact that Resolution Applicant has failed to come up with a plan till date though sufficient time was given on earlier three occasions from the day of publishing Form-G, the CoC members opined that the resolution applicant has no intention of submitting the plan at all. Further the CoC members discussed that Sakthi Ferro Alloys India Private Limited, another Resolution Applicant also has failed to submit the Resolution Plan in time. The CoC after considering various factors, including the fact that there is no viable on-going business and non-availability of any fixed assets in the Corporate Debtor, had decided and passed a Resolution to liquidate the Corporate Debtor. The counsel for the RP submitted that no application is pending under Section 43, 45, 50 and 66 of the IBC.

6. In the 6th CoC meeting held on 21.08.2019, the COC were not interested to extend the time for the submission of the Resolution Plan. The COC unanimously resolved to liquidate the Corporate Debtor and thereby directed the Applicant herein to approach this Tribunal for liquidation of the Corporate Debtor under Section 33(2) of the Insolvency and Bankruptcy Code, 2016. The 6th CoC meeting further approved the Resolution Professional Mr. Ravindranath Narayana Rao to act as Liquidator upon orders being passed by the NCLT.

Narayana Rao to act as Liquidator upon orders being passed by the NCLT.

7. In relation to IA/260/JB/2020, during the course of the hearing, the learned Counsel for the Promoter Director of the Corporate Debtor vehemently challenged the application filed by RP and sought for impleading Intervenor/Applicant as party in the present application filed by Resolution Professional under section 33(2) of the IBC, 2016. It is further submitted that the main purpose of filing this Intervention Application is that window is opened for MSME Promoters as per Section 240A of the Insolvency and Bankruptcy Code, 2016 wherein it is conveyed that to safeguard interest of Promoters of MSME interested in acquiring the Corporate Debtor but hit by the provisions of Section 29A of the Code. Such promoters can be restricted only if disqualified as "wilful defaulter" from bidding.

8. It is stated that the Intervenor/Applicant (Promoter Director) has submitted the Expression of Interest (EoI) on 10.06.2019 to the Resolution Professional in response to the invitation of EoI dated 21.05.2019. However, the RP rejected the said EoI on the premises that the Corporate Debtor, its promoters and directors were classified as "wilful defaulters" based on the information provided by the Sole CoC member (Indian Overseas Bank) vide E-mail dated 18.06.2019. However, due to lack of professional advice, the Intervenor/applicant was not able to challenge the said rejection at that time. The

Intervenor/Applicant contended that the RP entirely relied on the copy of minutes of the Review Committee of Sole CoC Member Bank for 'wilful defaulters' held on 12.03.2018 for declaring the Intervenor/Applicant ineligible for submitting EoI in terms of Sub Section (b) of Section 29A of IBC, 2016.

9. Apropos to the contention made by the Learned Counsel for the Intervenor / Applicant In IA/260/2020, this Tribunal is of the view that, since the Corporate Debtor is an MSME, even if the promoters-directors have been declared as 'wilful defaulters', they can apply under the provisions of Section 230 of the Companies Act, 2013 as they are exempted from Section 29A of IBC, 2016. Even after the declaration of initiation of liquidation proceedings, the promoters-directors still have a chance to tender definite plan for taking over the company as a going concern or under the provisions of Section 230 of the Companies Act, 2013. The Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016 contemplates that a period of 90 days has to be provided for completion of a Scheme of compromise or arrangement from the date of the order of liquidation, during which period the prospective Resolution Applicant can very well submit his Scheme under Section 230 of the Companies Act, 2013.

10. In terms of Section 240-A(1) "*notwithstanding anything to the contrary contained in this Code, the provisions of Clause (c) and (h) of*

Section 240-A shall not apply to the Resolution Applicant in respect of CIRP of any Micro, Small and Medium Enterprises (MSME)". It is seen that in the Review Committee for "wilful defaulters" held on 12.03.2018, the sole member of CoC (Financial Creditor - Indian Overseas Bank) has declared the promoter-director as 'wilful defaulter'. The minutes of the Review Committee report enclosed with the application has observed in para 4 as follows:

- That the Show Cause Notices were issued on 07.08.2015 to the above borrowers and their Directors;*
- The borrowers represented by Mr.M. Kathiresh (MD of M/s. Marutham Steel Industries and M/s. Marutham Steel Rolling Mills and Proprietor of M/s. Kovai Steel Corporation) replied to the Show Cause Notice vide letter dated 25.08.2015 denying the allegations. However, RO and ZO refuted the denial and again recommended for declaring the borrowers as wilful defaulters on the above grounds;*
- The Identification Committee accorded personal hearing to the borrowers and Mr. M. Kathiresh (The Managing Director) appeared before the Committee on 08.09.2017. Mr. M. Kathiresh admitted that the receipts were not routed through account (ground for wilful default) however money/proceeds out of stocks were utilized for meeting expenses of the borrower firm and were not diverted to any other account/place;*
- During the personal hearing meeting on 08.09.2017, the borrower has shown inclination towards settling the dues under OTS Scheme. However no OTS proposal has been submitted so far.*

In the above circumstances, the Identification Committee on 07.03.2018 passed orders declaring the borrowers/their Directors who were in charge of the day to day affairs of the company as 'wilful defaulters'. The Order dated 07.03.2018 issued by the Identification Committee has been placed before the Review Committee for review and confirmation as per directives contained in para 3(c) of the Master Circular of Wilful Defaulters by the RBI vide RBI/2015-16/100 DBR No.CID. BC.22/20.16.003/2015-16 dated 01.07.2015."

11. Hence, in view of the discussions made supra, this Tribunal is of the opinion that there is no need to interfere with the decision of the CoC as communicated by the Resolution Professional and hence proceeds to consider the application made under Section 33 for liquidation of the Corporate Debtor. Therefore, IA/260/IB/2020 filed by the Promoter-Director is liable to be **"dismissed"**.

12. Learned Counsel for the Resolution Professional submitted that as per the resolution passed by the 6th CoC approving the RP to act as a Liquidator is also extracted and that the written consent by the proposed Liquidator has been filed. On perusal it is seen that the RP has given his written consent to act as a Liquidator of the Corporate Debtor, if appointed by this Tribunal. In the circumstances, **Mr. Ravindranath Narayana Rao**, having Reg. No IBBI/IPA-001/IP-P00645/2017-18/11099 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 him;
- 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 governs 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; and
- 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-liquidation.

13. Accordingly, the intervening application In **IA/260/IB/2020** filed by the Promoter Director stands **dismissed** and **MA/1218/2019** filed for initiation of Liquidation process of the Corporate Debtor is hereby **allowed** with the aforesaid terms.

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[S. VIJAYARAGHAVAN]
Member (Technical)

SD
[R. VARADHARAJAN]
Member (Judicial)

TJS/KNP