

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

MA/103/2020 in CP/1441/IB/2018
filed under *Sections 33 (2)* of the
Insolvency and Bankruptcy Code, 2016

In the matter of ***M/s. M.N. Horological Industries Limited***

L. V. SHYAM SUNDAR
IBBI Reg. No. IBBI/IPA-002/IP-N000262/2017-18/10775
Resolution professional of
M/s. M.N. Horological Industries Private Limited
No.17, 3rd Floor, Gandhi Road,
Alwathirunagar,
Chennai – 600 087

... Applicant /Resolution Professional

- Vs -

M/s. M.N. HOROLOGICAL INDUSTRIES PVT. LTD.,
No.106, Alinjivakkam Village,
Jaganathapuram, Ponneri Taluk,
Thiruvallur District,
Chennai – 600 067

Order Pronounced on 05.05.2020

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant : Jayanth Viswanathan, PCS
L.V. Shyam Sundar, RP in person

ORDER

Per:ANIL KUMAR B, MEMBER (TECHNICAL)

1. The above Application is filed by the Resolution Professional appointed by this Tribunal, seeking for the liquidation of the Corporate Debtor under Section 33 (2) of the

IBC, 2016. From the averments made by the Applicant, it is evident that the Corporate Insolvency Resolution Process (hereinafter called as "CIRP") of the Corporate Debtor was initiated and the Applicant herein was appointed as IRP on 23.07.2019. Pursuant to the same, the Applicant caused paper publication one in Business Standard (English) and other in Daily Thanthi (Tamil) on 30.07.2019, by fixing the last date for filing the claim as 05.08.2019. It is averred that, thereafter, the Applicant constituted the CoC with the Financial Creditor, who initiated the CIRP as against the Corporate Debtor as the sole member of the CoC and conducted the first meeting of the CoC on 19.08.2019.

2. It is averred in the application that after the completion of the 1st CoC meeting the Applicant, after receiving an undertaking from the members of the CoC to the effect that they shall maintain confidentiality of such information being produced to them, has submitted the Information Memorandum to the members of the CoC on 03.09.2019. Thereafter, the 2nd CoC meeting was convened on 05.10.2019, wherein the CoC discussed about the mail which they received from the erstwhile Directors to settle the Financial Creditor, further in the said meeting the CoC has also approved for the appointment of



Registered Valuer and for the issuance of the Expression of Interest.

3. It is averred in the application that the Applicant had appointed two registered valuers each for determining the fair value and the liquidation value of the Land and Building and Plant and Machinery of the Corporate Debtor and since there were no financial assets in the Corporate Debtor, no financial valuer was appointed by the Applicant. It is evident from Form-H filed by the Applicant that the *Fair Value* for the Land and Building is arrived at Rs.2,80,49,000/- and for Plant and Machinery is Rs.84,26,800/- and the *Liquidation Value* for the Land and Building is arrived at Rs.2,24,39,000/- and for the Plant and Machinery is Rs.50,07,850/-.

4. The Applicant has averred in the Application that to the best of his opinion the Corporate Debtor has not entered into any of the transactions as mentioned under Section 43, 45, 50 and 66 of the IBC, 2016. Further, it is stated that the Expression of Interest, duly approved by the CoC, was published in Form G in two newspapers one in New Today and the other in Malai Sudar on 08.10.2019. It is submitted that during the intermittent period, pursuant to Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons)



Regulations, 2016, the Bank of Baroda (erstwhile Vijaya Bank) vide an email dated 14.10.2019 had submitted their claim to the Applicant along with the necessary proof. Subsequent to the clarification sought by the Applicant, the claim of the Bank of Baroda was fully admitted by the Applicant.

5. On the basis of the publication of the Expression of Interest, the erstwhile Director of the Corporate Debtor had sent an email dated 21.10.2019 stating that they are interested in taking over the Company as the Resolution Applicant and apart from that the Applicant has not received any response for the Expression of Interest. It is averred in the application that the Corporate Debtor has become NPA and they have registered as MSME and the Applicant was of the prima facie view that the erstwhile Director of the Corporate Debtor is not disqualified under Section 29A. It is submitted that the Applicant replied to the mail sent by the erstwhile Director requesting them to submit a formal Expression of Interest, however, till now the formal expression of interest has not yet been received by the Applicant.

6. It was submitted that the CoC was reconstituted by the Applicant and the 3rd CoC meeting was held on 06.11.2019, and the list of Financial Creditor's of the Corporate Debtor being



members of the CoC and the distribution of their voting share is extracted hereunder;

Sl. No.	Name of Creditor	Voting Share (%)	Claim Amount
1	SR Marine and Offshore Engineering Pvt. Ltd.	39.03%	₹42,80,466/-
2	Bank of Baroda	60.97%	₹66,85,969/-
	TOTAL	100%	₹1,09,66,435

7. It was submitted that the last date of submission of the Resolution Plan was on 04.12.2019, however the Applicant sent various mails to the erstwhile Director of the Corporate Debtor to sign the mandatory Non - Disclosure Agreement in order to receive the Information Memorandum to submit a Resolution Plan and also to submit a Formal Expression of Interest in order to verify their eligibility as a Resolution Applicant under Section 29A of the IBC, 2016, however the erstwhile Director has sent a mail to the Applicant stating that they will be able to submit the Resolution Plan only by the end of December 2019. As no concrete document evincing interest to submit a Resolution Plan was forthcoming till 28.12.2019, the Applicant convened the 4th CoC meeting on 04.01.2020, wherein the representative of the erstwhile Managing Director has submitted a single page letter under the head "Resolution Plan" to the CoC. Further, the Applicant requested the erstwhile Director to submit the additional documents, in support of the Resolution Plan by

12.01.2020 before 6:00 PM, failing which, it was informed that the CoC will decide on merits.

8. It was submitted that the 5th CoC meeting was held on 13.01.2020 to decide whether to extend the time for completion of the CIRP or to approve the Liquidation of the Corporate Debtor as the Applicant has not received any formal Expression of Interest nor a Resolution Plan in compliance with the requirements of the Code, however the CoC has only deliberated on seeking extension based upon the letter submitted by the erstwhile Director of the Corporate Debtor and it was decided that the CoC will be in a position to deliberate on the approval of the Resolution Plan only after the receipt of a formal Resolution Plan and as such no deliberations took place as no formal Resolution Plan was submitted.

9. Thereafter, the 6th CoC meeting held on 18.01.2020, wherein the CoC has reiterated to liquidate the Corporate Debtor and has passed the Resolution to this effect, which is extracted hereunder;

The Committee noted that in its previous meeting, the Committee has resolved to liquidate the Corporate Debtor. However based on the request of the Resolution Applicant the CoC once again meet to consider extension of the CIRP period instead of Liquidation. The members of the Committee after deliberation reiterated the decision taken at the previous meeting of the Committee for Liquidating the



Corporate Debtor and directed the Resolution Professional to file a petition with NCLT for Liquidation of the Company. The Committee further decided that the Resolution Professional will continue as the Liquidator of the Company on the same terms.

10. Since, in the 5th CoC meeting held on 13.01.2020, the Committee of Creditors has deliberated about the current affairs of the Corporate Debtor and also on the future course of action to be taken and as such the CoC was unwilling to consider the Resolution Plan and extend the time limit for completion of the CIRP and based on its commercial wisdom has decided to liquidate the Corporate Debtor and thus by taking into consideration the provisions of Section 33 of IBC,2016 and in the absence of any opposition to the Application from the Promoters / Directors of the Corporate Debtor and also guided by the decision of the Hon'ble Supreme Court in the matter of **Mr. K. Sasidharan –Vs– Indian Overseas Bank (2019) SCC OnLine SC 257** this Tribunal orders for the liquidation of the Corporate Debtor.

11. The Learned Authorized Representative appearing on behalf of the Applicant has submitted that the CoC has passed a resolution by approving the Applicant / RP to act as a Liquidator and also the written consent of the Liquidator is being filed at page No. 6 of the Memo filed on 09.03.2020 vide Diary No.1670,



we hereby appoint **L. V. SHYAM SUNDAR**, IBBI Reg. No. IBBI/IPA-002/IP-N000262/2017-18/10775 as the Liquidator of the Corporate Debtor to carryout 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.



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.

12. The application stands **disposed of** with the aforesaid terms.

-SD-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond

Order pronounced by concord in terms of NCLT circular dated 14/04/2020 through video conferencing platform. Member (T) present in person at Chennai and Member (T) through video conference from Kochi and the respective parties intimated to be present through video conferencing and after duly listing and uploading the cause list dated 05/05/2020 for Chennai Bench - I.


N. SRIRAMASUBRAMANIAN
ASSISTANT REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
CHENNAI BENCH
CORPORATE BHAVAN, 3rd FLOOR
29, RAJAJI SALAI, CHENNAI-600001