

402

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

IA(IBC)/392(CHE)2023

IN

CP(IB)/114(CHE)2021

*(filed under Section 33(2) & 34 of the Insolvency & Bankruptcy Code,
2016 r/w Rule 11 of NCLT Rule, 2016)*

*In the matter of **M/s. Sical Iron Ore Terminals Limited***

Mr. S. Shivashanker,
Resolution Professional of
M/s. Sical Iron Ore Terminals Limited,
A-102, Swaraj Illam, Shreya Block,
Ponni Delta, North Kallanai Road, T.V. Koil,
Thiruchirapalli-620 005

... Applicant

along with

IA(IBC)/519(CHE)2023

IN

CP(IB)/114(CHE)2021

(filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016)

M/s. Aec Electro-Mech Projects Private Limited,
CIN:U74999TN2014PTC096724

Rep. By its Director Mr. A. Satish Kumar

Plot No. 28, Door No. 4a,
2nd Cross Rathna Avenue,
Minjur, Chennai-601 203

...Applicant

-Vs-

Mr. S. Shivashanker,
Resolution Professional of
M/s. Sical Iron Ore Terminals Limited,
A-102, Swaraj Illam, Shreya Block,
Ponni Delta, North Kallanai Road, T.V. Koil,
Thiruchirapalli-620 005

...Respondent

Order Pronounced on **23rd June, 2023**

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : Mr. B. Dhanaraj, Advocate, in
IA(IBC)/392(CHE)/2023

For Applicant : Mr.T.V. Suresh Kumar, Advocate &
MR. K. Balaganesh, Advocate in
IA(IBC/519(CHE)/2023

For Respondent : Mr. Akhil Bhansali, Advocate in
IA(IBC)/519(CHE)/2023

COMMON ORDER

(Hearing conducted through VC)

Per: SANJIV JAIN, MEMBER (JUDICIAL)

(a) IA(IBC)/392/CHE/2023:

This application has been filed under Section 33(2) & 34 the of Insolvency & Bankruptcy Code, 2016 ("**IBC, 2016**") read with Rule 11 of NCLT Rules, 2016 by the Resolution Professional of **M/s. Sical Iron Ore Terminals Limited, Corporate Debtor** herein seeking following reliefs:

- a) *Pass an order of liquidation of the Corporate Debtor "M/s. Sical Iron Ore Terminals Limited" under Section 33(2) of I&B Code, 2016, unanimously resolved in the adjourned 7th CoC Meeting dated 29.11.2022 and its respective voting.*
- b) *Appoint Mr. N. Veerapandian as the Liquidator of the Corporate Debtor "M/s. Sical Iron Ore Terminals Limited" as unanimously resolved in the adjourned 7th CoC Meeting dated 29.11.2022 and its respective voting.*

c) *Pass such further or other orders which this Hon'ble Tribunal may deem fit and proper in the circumstances of this case and thus render justice."*

(a) IA(IBC)/392/CHE/2023:

This application has been filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 ("**IBC, 2016**") by the Applicant, **M/s. Aec Electro-Mech Projects Private Limited** seeking following reliefs:

- a) *Set aside the order of rejection dated 06.01.2023 passed by the Respondent rejecting the claim of the Applicant and direct the Resolution Professional to accept the claim admitted by the Applicant to the tune of Rs.27,29,320/-;*
- b) *And pass any such orders as this Hon'ble Tribunal may deem fit and thus render justice.*

2. The facts giving rise to these applications are that M/s. ITD Cementations India Limited, the Operational Creditor had preferred an application bearing CP(IB)/114(CHE)2021 under Section 9 of IBC, 2016 for initiation of Corporate Insolvency & Resolution Process ("**CIRP**") against the Corporate Debtor M/s. Sical Iron Ore Terminals Limited. The application was allowed by the Tribunal by its order dated 01.03.2022. Sri. S. Shivasanker was appointed as Interim Resolution Professional ("**IRP**"). He caused the paper publication of the public announcement in Form-A dated 03.03.2022 calling upon all the Creditors to submit their claims on or before 15.03.2022. Upon collation and verification of claims, he

constituted the Committee of Creditors (“CoC”) which in the 1st meeting dated 01.04.2022 appointed Sri. S. Shivasanker as the Resolution Professional (“RP”).

3. RP caused paper publication inviting Expression of Interest (“EOI”) in Form-G dated 28.05.2022 fixing the last date for submission of EOI as 13.06.2022. Three prospective Resolution Applicants expressed their interest to submit a Resolution Plan. Extension of time was sought for a period of 90 days which was allowed vide order dated 01.09.2022. Later during the 5th CoC meeting held on 07.11.2022, RP informed the CoC that only M/s. JSW Infrastructure Limited, the prospective Resolution Applicant has submitted the Resolution Plan.

4. The plan was discussed by the CoC members which did not find favour and the CoC resolved for the rejection of the Resolution Plan for liquidation of the Corporate Debtor by e-voting in the 7th CoC meeting held on 29.11.2022 with 100% majority. It also proposed to appoint Mr. N. Veerapandian as the Liquidator of the Corporate Debtor. During the process, CoC member viz., Yes Bank assigned its debts to M/s. JC Flowers Asset Reconstructions Private Limited vide Assignment Deed dated 16.12.2022. The voting was concluded on 10.01.2023. The proposed Liquidator also gave his consent as per the document as **Annexure-II(17)**.

5. Grievance of the Applicant in IA(IBC)/519(CHE)2023 is that it being into the business of installation services and sales of electrical automation products, had provided services to the Corporate Debtor vide Agreement dated 25.10.2018/Purchase Order dated 14.06.2019. It raised the invoices but the Corporate Debtor defaulted in making payments to the tune of Rs.27,29,320/- (Rupees Twenty Seven Lakhs Twenty Nine Thousand Three Hundred and Twenty only). It filed a complaint before the MSME Council, Chennai on 22.12.2020. In the meantime, CIRP was initiated against the Corporate Debtor. It is stated that the Applicant is a MSME and very new to the IBC proceedings. It submitted its claim in Form-B on 02.01.2023 on 308th day from the date of commencement of CIRP but the RP vide email dated 06.01.2023, rejected its claim on the ground that the claim was filed after the expiry of 90 days. Against the rejection, the Applicant has filed the present application/appeal after a delay of 52 days from the date of rejection of the claim by the RP.

6. We have heard Ld. Counsel Mr. B. Dhanaraj for the Liquidator of the Corporate Debtor in IA(IB)/392(CHE)/2023, Ld. Counsel Mr. Bala Ganesh for the Applicant and Ld. Counsel Ms. Viswanthini for the Respondent in IA(IBC)/519(CHE)/2023.

7. It is submitted that the Resolution for liquidation of the Corporate Debtor was approved in the 7th CoC meeting dated

23.11.2022 vide Item No. 1 of the agenda with 100% voting in favour of liquidation.

8. Upon perusal of the documents and the application and considering the submissions made by the Counsel for the Applicant/Resolution Professional, we find that the Resolution Plan submitted by the proposed Resolution Applicants did not find favour with the CoC and it was unanimously resolved by the CoC in the 7th meeting held on 29.11.2022 by 100% voting to liquidate the Corporate Debtor pursuant to Section 33(1) of IBC, 2016 and other applicable provisions. The Resolution Professional has also submitted the record of summary of decision by voting through e-mail circulation and voting results as **Annexure-II(6)** including Resolution No.1.

9. The CoC in the same meeting has also proposed the name of the Liquidator of the Corporate Debtor i.e Mr. N. Veerapandian, Resolution Professional who has given his consent vide letter dated 28.11.2022 as **Annexure-II(17)** giving declaration as required under IBBI Regulations, 2016.

10. The Resolution Professional has also submitted Compliance Certificate in Form-H giving details at Page-262 of the application.

11. For the aforesaid reasons and the fact that the Resolution Plan submitted by the proposed Resolution Applicants did not find

favour with the CoC and the CoC with 100% voting, has resolved to liquidate the Corporate Debtor, we order for the liquidation of the Corporate Debtor M/s. Sical Iron Ore Terminals Ltd. under Section 33(2) of IBC, 2016 and appoint Sri. N. Veerapandian 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.

12. Accordingly, **IA(IBC)/392(CHE)/2023** filed for Liquidation of the Corporate Debtor stands **Allowed**.

13. Since the liquidation of the Corporate Debtor has been initiated, the Applicant in IA(IBC)519(CHE)/2023 has a fresh opportunity to file its claim during liquidation process of the Corporate Debtor.

14. We are of the view that there is no need to acknowledge or admit the claim at this stage as prayed for. Rejecting the application will not cause any prejudice to the Applicant nor will it result in any financial burden on the Applicant.

15. For the aforesaid reasons, we **dismiss IA(IBC)/519(CHE)2023** with no orders as to costs and with liberty to the Applicant to file fresh claim before the Liquidator within the time specified as per law.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

Suguna

- Sd -

SANJIV JAIN
MEMBER (JUDICIAL)