

**THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. IV
AT NEW DELHI**

**IA No. 4148/ND/2020
IN
Company Petition No. (IB)-492(ND)/2018**

IN THE MATTER OF:

VAIVA METALS AND ALLOYS PRIVATE LIMITED

...OPERATIONAL CREDITOR

VERSUS

SUNGIL INDIA PRIVATE LIMITED

...CORPORATE DEBTOR

AND IN THE MATTER OF:

KIRAN MARTIN GOLLA

...APPLICANT/RESOLUTION PROFESSIONAL

VERSUS

SUNGIL INDIA PRIVATE LIMITED

...CORPORATE DEBTOR

*Under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for
liquidation of the corporate debtor*

Order delivered on: 19.11.2020

Coram:

**DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)
SMT. SUMITA PURKAYASTHA
HON'BLE MEMBER (TECHNICAL)**

For Resolution Professional: Mr. Davesh Bhatia
For Respondent : Mr. Alok Shukla

Memo of Parties

VAIVA METALS AND ALLOYS PRIVATE LIMITED

...OPERATIONAL CREDITOR

VERSUS

SUNGIL INDIA PRIVATE LIMITED

...CORPORATE DEBTOR

AND IN THE MATTER OF:

KIRAN MARTIN GOLLA

RESOLUTION PROFESSIONAL

Having registered office at:

810, 8th Floor, Vakratunda Corporate Park,

Vishveswar Nagar Road, Off Aery Road

Goregaon East, Mumbai

Maharashtra, 400063

...APPLICANT

VERSUS

SUNGIL INDIA LIMITED

...CORPORATE DEBTOR

ORDER

AS PER SUMITA PURKAYASTHA (TECHNICAL)

1. This is an application filed by the Resolution Professional under Section 33 (1) of Insolvency and Bankruptcy Code, 2016 (**hereinafter referred as the “Code”**) for issuance of directions for liquidation of the corporate debtor, Sungil India Private Limited.

2. The facts in brief are that the an application for Corporate Insolvency Resolution Process was preferred by Vaiva Metals and Alloys

Private Limited, herein the Operational Creditor in the matter of Sungil India Private Limited, herein the Corporate Debtor, under Section 9 of the IBC on account of default. The Adjudicating Authority vide order dated 01.06.2018 admitted the said application and appointed Mr. Rajesh Kumar Parakh as the Interim Resolution Professional.

3. The IRP issued a Public Announcement dated 26.06.2018 under Regulation 6 of IBBI Regulations and invited claims from the creditors of the Corporate Debtor. On receiving the claims the IRP constituted the CoC of the Corporate debtor. The first meeting of CoC was held on 27.07.2018 wherein the IRP was not appointed as the Resolution Professional. However the IRP received the claims of various Creditors and as per the available records and information, the IRP classified them as the Financial Creditors. The revised list of Creditors was submitted by the IRP to the Adjudicating Authority on 10.08.2018.
4. The second meeting of COC was held on 13.08.2018 wherein the members passed the resolution and resolved to appoint Mr. Rajesh Kumar Parakh as the Resolution Professional. Further the Resolution Professional carried the CIRP and conducted total 6 (six) CoC meetings.
5. In order to consider this application it is pertinent to look into the background of this case. That Sinhan Bank (one of the CoC member holding 14.96% voting rights) had filed C.A 184/2018 in IB 492(ND)/2018 challenging the status of all other CoC members as

financial creditors, being individuals who claim to be financial creditors on the basis of their lending of money to the Corporate Debtor as unsecured loan. The main issue decided by the Adjudicating Authority as reiterated from the Order dated 09.07.2019 Para 21- ***“Whether the respondents No. 3 to 11, the members of CoC as on date are Financial Creditors as defined under Section 5 (7) while considering the money advanced by them, and/or, will fall under the category of Financial Debt under Section 5(8)(a).”***

The Adjudicating Authority observed that *“The money advanced by the respondent Nos. 3 to 11 since is not in pursuance of any loan agreement/ document but merely a letter by lender for advance to the Corporate Debtor, it is important to consider that whether the sum advanced can fall under the category of deposit/loan to the Corporate Debtor which is governed by Section 73 to 76 of the Companies Act, 2013 or whether money advanced is not deposit but an unsecured loan/ short term loan to the Corporate Debtor based on the agreement between the parties which is supported by a letter and correspondences between the Corporate Debtor and Respondents Nos.3 to 11, fixing the rate of interest, to be paid thereon. The Corporate Debtor has paid interest against the said advanced loan for a certain period and thereafter has defaulted, reveals that the said terms of advance of money was agreed and accepted by parties.”*

Para 23- *“On perusal of Section 73(1) of the Companies Act, 2013 read with Rule 2(c) of Companies (Acceptance of Deposit) Rules and after*

analysing the transactions between the Corporate Debtor and Respondents No. 3 to 11, it can be said that the said advance of money was accepted by Corporate Debtor as loan. Section 73(2) will not apply since none of the respondents no. 3-11 are members of Corporate debtor advancing such money” The Adjudicating Authority has placed its reliance on the judgment of **Sanjay Kewalramani vs. Sunil ParmanandKewalramani&Ors. Company Appeal (AT) (Insolvency No. 57 of 2018)** while explaining, why the money advanced by the Respondents no. 3-11 is not a Financial Debt as defined in Section 5(8).

The Adjudicating Authority observed that “*Para 26- if such advance is considered as loan with term of interest then carrying the rate of interest which is exorbitant and nowhere near business standards as prevailing in the market shall attract Section 50 of the IBC Code which deals with the Extortionate Credit Transactions. Generally, in private loans maximum 24% p.a. is the rate of interest accepted by the parties but in the present transaction, the accepted and the agreed rate of interest is 42% to 60% (as corrected vide order 29.07.2019) in cases of loans given by all respondents no.3-11 which leads us to consider these transactions as Extortionate Credit transaction.*”

6. The Adjudicating Authority while allowing C.A 184/2018 in IB 492(ND)/2018 declared that Respondents no. 3-11 do not fall under the category of Financial Creditors but may be considered as unsecured creditors who may avail other remedies to recover their

debt. Further it was ordered that the COC meetings held on 13.08.18(*as corrected vide order 29.07.2019*), 29.08.18, 12.09.18 and 29.09.18 are non-est and resolutions passed if any therein such meetings stands nullified.

7. In consequence to the Application filed by Shinhan Bank, who was declared as the sole Financial Creditor vide order dated 09.07.2019, Shinhan Bank filed application C.A. 88/2018 in IB 492(ND)/2018 wherein the Adjudicating Authority appointed Ms.Kiran Martin Golla as the Resolution Professional of the Corporate Debtor vide order dated 18.09.2019. The Resolution Professional herein the applicant took over the charge of the Corporate Debtor on 03.10.2019 and appointed two Registeredvaluers to determine the fair value and liquidation value of the Corporate Debtor. Further the Applicant prepared the Information Memorandum, based on the information available and submitted to the members of the CoC on 17.10.2019. The Applicant in compliance of Regulation 36A of the CIRP regulations 2016, published Form G on 02.11.2019 in two newspapers named the Financial Express and Jansatta. The last date of receipt of Expression of Interest was decided to be 17.11.2019, however no Expression of Interest was received by the Applicant.

8. The Applicant sought exclusion of approximately 424 days from the CIRP as the said days were lost in the legal proceedings. As per the amendment of Section 12 the corporate insolvency resolution process

shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor. In view of the same the Adjudicating Authority vide its order dated 15.01.2020 did not consider exclusion but granted extension of 90 days to complete the CIRP and find a successful Resolution Applicant. However in the 5thCoC meeting held on 29.01.2020 it was resolved that in the light of present situation of the Corporate Debtor where there is no registered office, no operations going on in the Company/factory premise of the Corporate Debtor, no employees, workers, Directors working, the Corporate Debtor is completely shut down and it would be feasible and viable to liquidate the Corporate Debtor under Section 33(2) of the IBC, 2016 in the interest of various stakeholders of the Corporate Debtor.

9. The Resolution Professional represents that valuation report as required to be obtained under the provisions of IBC, 2016 in relation to the fair value of the assets of the corporate debtor as well as its liquidation value has been duly done by 2 registered valuers and 2 reports dated 22.10.2019 and 15.11.2019 have been submitted before the Adjudicating Authority. The average of the fair value of assets and

liquidation value as per the reports is Rs.1,65,00,000/- and Rs. 1,15,50,000/- respectively.

10. This Tribunal in the circumstances taking into consideration the provisions of law as well as on facts is constrained to order for liquidation of the corporate debtor and in the circumstances the corporate debtor stands liquidated and the incidence of liquidation to follow, on and from the date of this order in terms of the provisions of IBC, 2016 and more particularly as given in Chapter – III of IBC, 2016 and also in terms of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 along with the following directions:

- a. Ms.Kiran Martin Golla Resolution Professional holding registration no. IBBI/IPA-002/IP-N00787/2019-20/12483, is appointed as Liquidator and has given consent to act as the liquidator vide written consent (FORM AA) dated 29.01.2020, under section 34 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
- b. Ms. Kiran Martin Golla is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

- c. The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. Similarly in relation to other fiscal and regulatory authorities which governs the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation;
- e. 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;
- f. This order is deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- 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 and in accordance with the relevant regulations.
- h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the

Insolvency and Bankruptcy (Liquidation Process) Regulations,
2016.

11. Copy of this order be sent to the operational creditor, corporate debtor and the Liquidator for taking necessary steps.

12. IA.4148(ND) /2020 filed in IB 492 (ND)/ 2018 is disposed of in the aforesaid terms.

Sd/-

SUMITA PURKAYASTHA

MEMBER (T)

Sd/-

DR. DEEPTI MUKESH

MEMBER (J)