(1)

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

IA(IBC)/480(CHE)/2022 in IBA/241/2019

(filed under Section 60(5) read with Section 33 of the Insolvency and Bankruptcy Code, 2016)

In the matter of ***M/s. Shaan Technologies India Private Limited***

CA U V Sujatha,
Resolution Professional of
Shaan Technologies Private Limited
"Ram's Court",
10/2, Balaji Nagar, 1st Cross,
Advaitha Ashram Road,
Salem – 636 004

... Applicant

-Vs-

The Committee of Creditors of
Shaan Technologies Private Limited
Represented by V-Con Integrated Solutions Pvt. Ltd.
Arihant Insight,
F-141, Phase 8B, Industrial Area,
Mohali, Punjab – 160 055

... Respondents

Order Pronounced on ***29th June 2022***

CORAM:
Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant(s): *S. Sathiyanarayanan, Advocate*
Pavithra Dayalan, Advocate

ORDER

Per: **SAMEER KAKAR, MEMBER (TECHNICAL)**

IA(IBC)/480(CHE)/2022 is an Application filed by the Resolution Professional of the Corporate Debtor under Section 60(5) read with 33(2) of IBC, 2016 seeking relief as follows;

a) *Direct the Respondent to pay the remuneration of Rs. 3,33,200/- to the Applicant RP;*

b) *Pass an order of Liquidation of the Corporate Debtor viz. M/s. Shaan Technologies India Pvt Ltd.;*

c) *Appoint of an Insolvency professional on the basis of IBBI recommendation to act as the Company Liquidator,*

d) *Pass such further or other orders/reliefs as may be deemed fit and proper in the facts and circumstances of the case and thus render justice.*

2. It was submitted that this Tribunal on an Application filed under Section 9 of IBC, 2016 vide its order dated 23.12.2020 initiated the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor viz. M/s. Shaan Technologies India Private Limited and appointed the Applicant herein as the Interim Resolution Professional.

3. It was submitted that the Applicant immediately on his appointment made a public announcement in Form A on 27.12.2020 in English Daily "The New Indian Express" and in Tamil Daily "Dina Thanthi" and fixed the last date for submission of Claims on 06.01.2021.

4. It was submitted that no claims were received from any Financial Creditors and the Committee of Creditors comprised of the sole Operational Creditor. The Learned Counsel for the

Applicant submitted that from the initiation of CIRP there was complete non-cooperation from the suspended management of the Corporate Debtor and the Applicant has sent several emails to the suspended management of the Corporate Debtor requesting them to provide all required documents, information and records of the Corporate Debtor. However, nothing turned fruitful.

5. It was submitted that the Applicant had filed an Application viz. IA/483/2021 under Section 19(2) of IBC, 2016 against the suspended directors of the Corporate Debtor before Hon'ble Tribunal and this Tribunal vide order dated 06.12.2021 allowed the said Application and directed the respondents therein to co-operate with the Applicant and to submit all records and documents requested for within 10 days. However, it was submitted that the suspended directors in complete disregard to the order of this Tribunal failed to handover the documents and records of the Corporate Debtor. It was further submitted that in contravention to the provision of the Code, the suspended management proceeded to finalize financial statement for the FY 2019 2020. Further, from the MCA site it is evident that the financial statements of the Corporate Debtor were filed with the ROC. The suspended management of the Corporate Debtor deliberately proceeded to finalize the accounts of the Corporate Debtor without the knowledge of the Applicant RP and the CoC.

6. It was submitted that in the COC meeting held on 28.02.2022, the suspended director, Mr. Shanmugam, agreed to settle the dues of the sole operational creditor and the CIRP cost of the Corporate Debtor. However, no settlement/ resolution plan was submitted by Mr. Shanmugam till date. Further, it was submitted that in the first COC Meeting the sole COC member chose neither to replace the IRP with new RP nor chose to confirm the appointment of RP. After repeated requests to comply with the statutory mandate and after the expiry of 330 days of CIRP period, the COC in its 5th Meeting held on 15.03.2022 confirmed the appointment of the Applicant as the RP of the Corporate Debtor. Even in the said meeting the remuneration payable to the Applicant RP was deliberately not confirmed by the COC.

7. It was submitted that the Applicant appraised the COC about the completion of 330 days of CIRP and recommended the further course of action that is required to be taken. However, the sole operational creditor conveyed its inability to fund the CIRP cost and chose not to take any firm decision with respect to the further course of action.

8. Thus, it was submitted that the 330 days CIRP period already expired on 18.11.2021 and the Applicant RP did not

receive any settlement proposal or resolution plan for the revival of the Corporate Debtor. Further, neither the suspended management or the COC is co-operating with the Applicant RP in carrying out the CIRP. Even after repeated requests the remuneration of the RP neither confirmed by the COC nor paid. In view of the above facts and circumstances, the Applicant prayed for liquidation of the Corporate Debtor be ordered and a liquidator be appointed as the Applicant RP do not want to continue as liquidator of the Corporate Debtor. Further, the Applicant requested that the Respondent be directed to pay the Applicant the remuneration cost of Rs.3,33,200/-.

9. Heard the submissions made by the Learned Counsel for the Applicant. In the present case as pointed out by the Applicant the 330 day CIRP in respect of the Corporate Debtor came to an end as early as on 18.11.2021 and as such by operation of Section 33(1)(a) of IBC, 2016, the Corporate Debtor is necessarily required to be ordered for liquidation.

10. Further, it has been brought to our knowledge that the remuneration of the Applicant and other CIRP Cost has not been paid. Under the said circumstances, we hereby direct the 1st Respondent to pay a sum of Rs.3,33,200/- to the Applicant within a period of 15 days from the date of this order failing which,

contempt proceedings will be initiated as against the 1st Respondent.

11. In so far as prayer (b) is concerned, the Applicant has not given her written consent to act as the Liquidator. In the said circumstances, from the latest list provided by IBBI for the period from January 2022 till June 2022 we hereby appoint ***Mr. T Charan Kumar Reddy*** with Reg No. IBBI/IPA-001/IP-P02596/2021-2022/13955 (email id: charan@mcacas.com) 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.

12. Accordingly, IA(IBC)/480(CHE)/2022 stands **disposed of**.

13. For compliance of directions given under 10 above and the matter is posted on 18.07.2022.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Raymond