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

IA(IBC)/204(CHE)/2023 IN TCP/1/2021

(filed under Section 33(1)(a), 33(2) & 34(1) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016)

IN THE MATTER OF:

CA M. Suresh Kumar
Resolution Professional of
Hindustan Photo Films Mfg. Co. Ltd.
M/s. SPP & Co., Chartered Accountants,
No.27/9, Nivesh Vikas,
Pankaja Mill Road, Puliyakulam,
Coimbatore – 641 045

... Applicant

Present:

For RP : *T.K. Bhaskar, Advocate*
A.G. Sathyanarayana, Advocate

CORAM:

Justice RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

*Order Pronounced on **31st March 2023***

ORDER

Per: **Justice RAMALINGAM SUDHAKAR, PRESIDENT**

This Application has been filed by the RP seeking the following reliefs:-

a) *That this Hon'ble Tribunal may be pleased to pass an order for Liquidation of the Corporate Debtor namely M/s. Hindustan Photo Films Mfg. Co. Limited;*

b) *That this Hon'ble Tribunal may be pleased to pass an order by appointing CA. Mahalingam Suresh Kumar, Resolution Professional of the Corporate Debtor having IBBI/IPA-001/IP-P00110/2017-18/10217) as Liquidator for administering the Liquidation Process of the Corporate Debtor; and*

c) *To pass such other orders or further orders which may deem to be fit and proper in the interest of justice.*

2. The Corporate Debtor viz. The Hindustan Photo Films Mfg. Co. Ltd. was incorporated in the year 1960 as a Public Sector Enterprise which is a 100% subsidiary of the Union of India through the Ministry of Heavy Industries for the purpose of Constructing an Industrial Plant for the Manufacturing of Photo Films, having its registered office at Indu Nagar, Ootacamund, Nilgiris District, Tamilnadu – 643 005 with the Registrar of Companies, Coimbatore and it has stopped its business activities from the year 2013.

3. In the meantime, the Corporate Debtor became sick and reference was made to Board for Industrial and Financial Restructuring (BIFR) and the BIFR vide order dt. 31.03.2003 has passed an order to wound up since there is no feasibility and viability to revive the Corporate Debtor and the same was forwarded to the Hon'ble High Court of Madras and was numbered as C.P. No. 114 of 2003. As against the same, the Corporate Debtor preferred an Appeal No. 98 of 2003 before the Appellate Authority (AAIFR) and the said Appellate Authority vide its order dated 07.06.2005 dismissed the said appeal. Further,

the Corporate Debtor has challenged the said order of AAIFR by way of a Writ Petition No. 20017/2005 before the Hon'ble High Court of Madras and the same was also dismissed by its order dated 29.08.2015.

4. One of the Financial Creditors of the Corporate Debtor viz. Canara bank filed an Application CA No. 429/2019 before the Hon'ble High Court of Madras to transfer the CP/114/2003 pending of the file of the Hon'ble High Court of Madras to this Tribunal for initiation of Corporate Insolvency Resolution Process under Section 7 of IBC, 2016. The Hon'ble High Court of Madras vide its order dated 18.05.2020 has allowed the said Appeal and accordingly CP/114/2003 was transferred and numbered as TCP/1/2021 on the file of this Tribunal and was listed for hearing on 07.01.2022 and on the said date, the order of admission was passed by this Tribunal and one Mr. C. Prabakaran was appointed as the IRP.

5. The IRP has caused public announcement about initiation of CIRP on 10.01.2022 in Form A in "Trinity Mirror" and "Makkal Kural" and pursuant to the public announcement, several claims were filed with the IRP. It was submitted that the IRP on analysis of the claim has constituted the CoC with the following Financial Creditors;

S. No	Name of the Financial Creditor	Amount Claimed (In Crores)			Amount Admitted (In Crores)		
		Principal (A)	**Interest (B)**	**Total (C)**	**Principal (A)**	**Interest (B)**	**Total (C)**
1	Life Insurance Corporation of India	19.98	657.58	677.56	19.98	657.58	677.56
2	The Administrator of the Specified Undertaking of the Trust of India (SUUTI)	45.93	5,672.84	5,718.77	45.93	5,550.46	5,596.38
3	UTI Trustee Company Private Limited	7.61	914.76	922.38	7.61	889.84	897.45
4	Canbank Financial Services Limited	0.15	4.30	4.45	0.15	0.48	0.63
5	Indian Bank	5.11	578.22	583.33	5.11	578.22	583.33
6	Canara Bank (Asset Recovery Management)	10.49	1,659.16	1,669.65	10.49	1,659.16	1,669.65
7	Canara Bank, Ootacamund Branch	6.23	47.02	53.25	6.23	47.02	53.25
8	State Bank of India (SAMB, Cbe)	277.79	30,499.10	30,776.90	277.79	29,344.98	29,622.77
9	Ministry of Heavy Industries, Govt of India	557.57	1,888.60	2,446.17	557.57	1,888.60	2,446.17
10	Peerless General Finance and Investment Co. Ltd	30.25	105.95	136.20	30.25	105.95	136.20
11	Punjab NationalBank	0.70	21.65	22.35	0.70	2.45	3.15
12	United India Insurance Company Limited	0.85	95.60	96.45	0.85	2.98	3.83
13	Canbank Mutual Fund	0.80	8.31	9.11	0.80	2.80	3.60
14	SBI Fund Management Limited	5.00	144.92	149.92	5.00	17.51	22.51
15	The New India Assurance Company Ltd	1.00	582.53	583.53	1.00	3.50	4.50
16	KIOCL Limited	18.00	133.59	151.59	18.00	133.59	151.59
Total		**987.47**	**43,014.13**	**44,001.60**	**987.47**	**40,885.12**	**41,872.59**

6. The details of the Assets of the CD and its status are as follows:

S. No.	Asset Particulars
A	**Land & building**
1	Leased Land 201.17 acres
2	Lease land 90 acres
3	Free Land 12.19 acres
4	Free Land 4.49 acres (Ambattur)
B	**Plant & Machinery**
5	Unit I & III
6	Unit IV
7	Unit II (Ambattur)
C	**Securities & Financial Assets**
8	Stock & Book Debts

7. The CoC in its 2nd CoC meeting has proposed to appoint the Applicant herein as the Resolution Professional in respect of the Corporate Debtor and has also passed a Resolution to the said effect. Pursuant to the same the CoC has filed IA/355/2022 and this Tribunal vide its order dated 12.04.2022 has appointed the Applicant herein as the RP in respect of the Corporate Debtor.

8. The 1st Form – G was published on 23.03.2022 by the erstwhile IRP. Thereafter when the Applicant was appointed, it was submitted that the Information Memorandum was updated and then prepared the Evaluation matrix and Request for Resolution Plan and the same was

placed in the 3rd CoC meeting held on 06.05.2022 for its approval. Thereafter, the 2nd Form – G was issued on 27.06.2022 in "Economic Times" (All India Edition) & "Dinamani" (Tamil Nadu Edition).

9. Pursuant to the same, it was submitted that the Applicant has received a Resolution Plan from one Mr. M.K. Rajagopalan and the same was revised based upon discussions and deliberations which happened in the CoC meeting. Finally the revised Resolution Plan of M.K. Rajagopalan was submitted before the CoC on 31.10.2022 with the proposal to resolve "freehold assets" (i.e. only two assets) of the Corporate Debtor by way of Scheme of Demerger and the same was reviewed and placed before the CoC for its consideration. The Committee of Creditors has examined the Resolution Plan in detail and the said plan was considered and approved by the CoC members with **77.94%** voting in its favour. The E-voting was held from 17.11.2022 to 14.12.2022. **The CoC has passed a Resolution for part sale of the assets of the Corporate Debtor through a Resolution Plan and the remaining assets called as "Leasehold Assets" to undergo Liquidation, which is treated as "Excluded Assets" by the CoC** and the following Resolution was passed to the said effect;

> *"**RESOLVED THAT** the Revised Resolution Plan dt: 31.10.2022 submitted by Mr.M.K.Rajagopalan for acquisition of part of the assets of the Corporate Debtor is hereby approved and confirmed by this committee u/s. 30(4) of the Insolvency and Bankruptcy Code, 2016 and the RP is directed to take necessary steps for obtaining the approval of the Adjudicating Authority under the provisions of IBC".*

RESOLVED FURTHER THAT *the amount allocated for the Secured Financial Creditors [Rs. 100.80 Crores] in the said Resolution Plan shall be apportioned among the secured financial creditors [after payment of the expenses and the liquidation value due to the dissenting creditors] as per the inter se agreement of the financial creditors in the following manner.*

a. First Charge Holders - 70% [on the basis of charge held on respective assets and related claim outstanding]

b. Second Charge Holders - 30% [on the basis of charge held on respective assets and related claim outstanding]"

AND

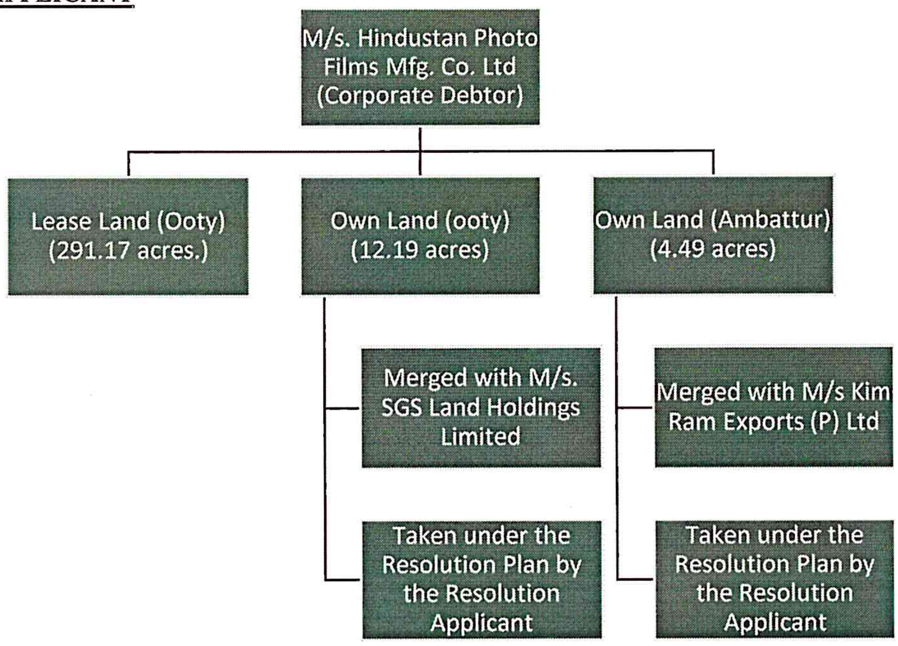
*"**RESOLVED FURTHER THAT** the Corporate debtor along with its remaining assets be liquidated, subject to the approval of Hon'ble National Company Law Tribunal, Chennai Bench under Sec 33 of IBC 2016, as there is no viable Resolution Plan received for the remaining assets of the Corporate Debtor, and there is no scope for revival of the business of the Corporate Debtor for the reason of technological obsolescence, lack of working capital & lack of active market for the Corporate Debtors products"*

*"**RESOLVED FURTHER** that the CoC hereby authorize the RP to file application before Adjudicating authority for liquidation of the Corporate debtor"*

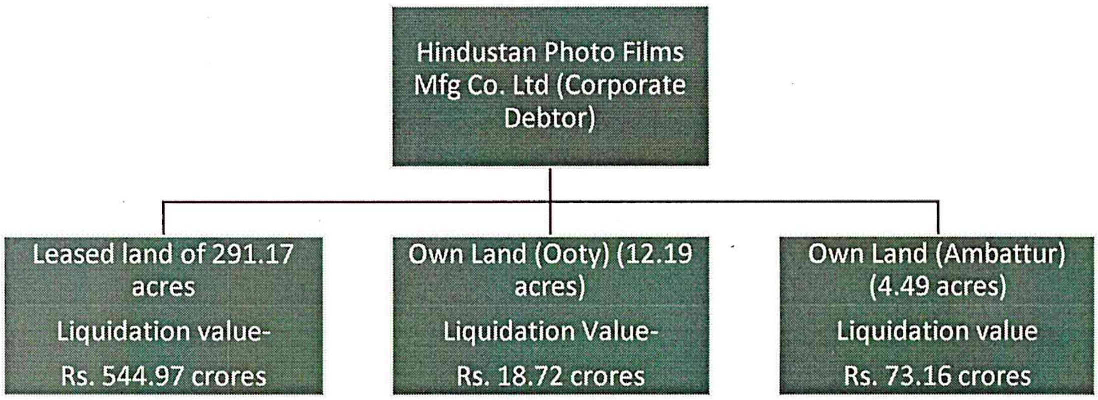
***RESOLVED FURTHER** the COC hereby recommends to appoint the present RP (CA. Mahalingam Suresh Kumar) as the Liquidator to manage the Liquidation process of the CD and the Liquidator fees shall be paid at such rates as specified under Regulation 4(2) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 on realization and distribution of assets of the Corporate Debtor.*

(emphasis supplied)

10. **<u>STRUCTURE OF THE RESOLUTION PLAN SUBMITTED BY THE RESOLUTION APPLICANT</u>**



11. **<u>LIQUIDATION VALUE OF CORPORATE DEBTOR FOR THE PROPOSED ASSETS UNDER THE RESOLUTION PLAN</u>**



Total Liquidation Rs. 91.87 Crores
Resolution Plan Amount- Rs. 100.80 Crores
(+) CIRP costs – Rs.1.80 Crores

12. The Applicant has also filed Form – H in accordance with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

13. The present Application is filed for Liquidation of "Excluded Assets" of the Corporate Debtor based upon the recommendation and approval of the CoC with 77.94% voting rights exercising its commercial wisdom.

14. Heard the submissions of the Learned Counsel for the Applicant. Regulation 37(m) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides for sale of one or more of the assets to one or more successful Resolution Applicant and the manner of dealing with remaining assets. It is seen that based upon the above referred Regulation, in so far as the Free hold assets of the Corporate Debtor is concerned, which is termed as "Identified Assets" has fetched a Resolution Plan from a Resolution Applicant, however in so far as the Leasehold lands of the Corporate Debtor is concerned, which is termed as "Excluded Assets" are sought to be liquidated. At this juncture, it is relevant to reproduce Section-33 of the Insolvency and bankruptcy as follows:

> *"**33. Initiation of liquidation.** –*
>
> *(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors 1 [approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a*

liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

*[**Explanation**. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]*

15. Taking into consideration the above, we are inclined to order for liquidation of the Corporate Debtor. The existing RP has expressed his willingness to be appointed as the Liquidator and Form-AA attached at page No. 215 of the Application. Further, AFA is valid till **20.11.2023**.

16. In view of the facts and circumstances of the case, we are inclined to order for liquidation of the Corporate Debtor. The Corporate Debtor is ordered for liquidation, **Mr. CA. Mahalingam Suresh Kumar, having Reg. No. IBBI/IPA-001/IP-P00110/2017-18/10217** the Applicant herein is hereby appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process in so far as the **"Excluded Assets"** of the Corporate Debtor is concerned, 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.

17. With the above said directions, **IA(IBC)/204(CHE)/2023** stands **allowed.**

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Raymond