

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

IA/IBC/229/CHE/2023 in CP(IB)/61/CHE/2021

(Filed under Section 33(1) of the Insolvency and Bankruptcy Code, 2016)

In the matter of *BALSARA ENGINEERING PRODUCTS LIMITED*

Mr.Nithyanantham Ramachandran,
Resolution Professional of
Balsara Engineering Products Limited
No.3/716, Avin Nagar,
Surveyor Colony,
Madurai, Tamil Nadu - 625007

... Applicant

Order Pronounced on 28th June 2023

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : *T.Ravichandran, Advocate*

ORDER

(Hearing Conducted through VC)

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This is an application filed under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows:

- (a) to pass an order that the Corporate Debtor Balsara Engineering Products Limited be liquidated as laid down under the Code;



(b) Pass such other orders which are deemed fit and necessary in the nature and circumstances of the case and thus render justice.

2. From the averments made in the application, it is seen that the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated on 08.03.2022 and one Mr. Ravindra Beleyur was appointed as the Interim Resolution Professional (IRP).

3. Pursuant to the order of CIRP, the IRP effected Public Announcement on 10.03.2022 and fixed the last date for submission of claims on 22.03.2021.

4. It is stated that pursuant to the receipt of claims from Axis Bank, Karur Vysya Bank and some operational creditors, the IRP constituted the Committee of Creditors (CoC) as contemplated under Regulation 17 of Regulations and submitted the list of members of CoC before the Tribunal.

5. It is stated that the IRP had published Form G on 19.05.2022 seeking Expression of Interest (EoI) from prospective resolution Applicants which was duly approved by the CoC in its 3rd meeting held on 11.05. 2022.



6. It is stated that an application bearing IA/626/CHE/2022 was filed by Axis Bank under Section 22(3) of the IBC, 2016 seeking appointment of Applicant herein namely Mr.Nithyanantham Ramachandran as Resolution Professional(RP) and the same was allowed by this Tribunal vide order dated 21.06.2022.

7. The Applicant so far had conducted 11 meetings of the CoC i.e., 6th to 16th meetings of CoC.

8. It is further stated that the applicant had filed an application bearing IA/1374/(CHE)/2022 seeking permission to avail the period of 330 days of CIRP. This Tribunal vide order dated 23.12.2022 allowed the RP to avail the CIRP period of 330 days which ended on 31.01.2023.

9. Pursuant to the above order dated 23.12.2022, the Applicant conducted CIRP. The Resolution Plan submitted by the promoter was placed before the Committee of Creditors after considering the feasibility and viability of the final Resolution Plan in the 16th meeting of the CoC held on 25.01.2023.



10. The same was put for voting and the last date was fixed as 30.01.2023. The voting lines were kept open till 2.00 P.M. on 31.01.2023. The Resolution Plan of the Promoter did not pass the requisite muster of 66% as contemplated under the Code and accordingly, the Resolution Plan stood rejected.

11. The Applicant filed a memo vide *S.R.No.2230* dated *05.06.2023* to place on record the subsequent developments.

12. According to Applicant, in the 17th meeting of CoC the Resolution Plan was submitted by the Promoter of the Corporate Debtor which is an MSME. The matter was discussed in the 17th, 18th and 19th meetings of the CoC. Copies of the minutes are enclosed as *Annexure A1- A3* of the Memo typeset.

13. It is further stated that the resolution was put for voting in the 19th CoC meeting and the time was extended as per the request of the CoC till 29.05.2023. The Resolution Plan submitted by the Promoter did not pass muster and accordingly the said resolution was not passed. Copy of the voting results is submitted as *Annexure A4* of the Memo typeset.



14. The Applicant filed a further memo vide *S.R.No.2581* dated *22.06.2023* stating that the Applicant had called for the 20th meeting of CoC on *21.06.2023* to discuss various issues relating to the CIRP of the corporate debtor including the appointment of liquidator. One Mr. V.M Gurusamy has submitted Form AA and the CoC approved the resolution to appoint Mr. V.M Gurusamy as Liquidator with 100% voting. A copy of the minutes of 20th meeting of CoC is enclosed as *Annexure-1* of the Memo typeset. Copy of Form AA along with authorization for assignment are enclosed at *Annexure-2&3* respectively of the Memo typeset.

15. The discussions recorded in the CoC meeting held on *19.06.2023* are reproduced below:-

Item No.10:-Appointment of Liquidator for Liquidation Process of Balsara Engineering Products Limited:-

Application for Liquidation of Balsara Engineering Products Limited was filed with Honorable National Company Law Tribunal, Chennai on 31.01.2023. But, on 24.02.2023, the Adjudicating Authority directed the COC to take objective evaluation of the Resolution Plan submitted by the Promoter. Hence, the Resolution Plan was again considered in the 17th to 19th meetings of the COC. The Resolution Plan was again put for Voting in the 19th meeting of the COC. But, the Resolution Plan was not passed with requisite majority. Hence, the result was filed by the Advocate through a Memo Petition with the Adjudicating Authority.

The present Resolution Professional Mr. Nithiyanantham Ramachandran has attained the age of 70 years and hence he is not holding a valid Authorisation for Assignment. Hence, he can't be appointed as Liquidator.



Mr.V.M.Gurusamy, an Insolvency Professional has submitted Form AA for appointment as Liquidator for Balsara Engineering Products Limited. He has a valid Authorisation for Assignment.

The Committee of Creditors give their consent to appoint him as Liquidator for Balsara Engineering Products Limited and pass the following Resolution unanimously with 100%

Voting Power:-

RESOLVED THAT Thiru.V.M.Gurusamy, an Insolvency Professional (IBBI/IPA- 003/IP-N00193/2019-2020/12512) shall act as Liquidator upon passing of the Liquidation Order by the Adjudicating Authority and his fees will be fixed by the Committee of Creditors in their first meeting during Liquidation Process.

16. The applicant annexed **Form-H** as *Annexure-A8* of the Application typeset. It is seen from Form-H that some PUFEE applications are pending before this Tribunal.

17. Heard the submissions of the Applicant and perused the documents placed on record. From the minutes of the 20th CoC meeting, it is Clear to us that the CoC has;- a) Decided to liquidate the Corporate Debtor and b) Appoint Mr.V. M. Gurusamy as the Liquidator of the Corporate Debtor. Considering the circumstances this Tribunal has no other option but to order for liquidation of this Corporate Debtor viz., Balsara Engineering Products Limited under Section 33 (1) of IBC, 2016. We find that the present matter satisfies



the mandate under Section 33(1)(a) of the IBC, 2016. The Section 33(1)(a) of the IBC 2016 is extracted hereunder:

“33 (1) Where the Adjudicating Authority,-

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30, or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,

it shall -

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter:

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

18. In the present case, the Corporate Insolvency Resolution Process of the Corporate Debtor ended on 31.01.2023. In view of the aforesaid, we order for liquidation of the Corporate Debtor viz., Balsara Engineering Products Limited.

19. We hereby appoint Mr.V. M. Gurusamy, with Reg. No. IBBI/IPA-003/IP-N00193/2019-2020/12512 (E-Mail Id: vmgurusamy@yahoo.in) (AFA is valid up to 06.12.2023) 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 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.
- e) 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.



- f) 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.
- g) The Liquidator is directed to take necessary steps to sell the Corporate Debtor as a Going Concern as per Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016

20. The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;

21. 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.

22. 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.



23. With the above said directions, this IA/229/CHE/2023 filed for Liquidation of the Corporate Debtor stands **allowed**.



SAMEER KAKAR
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)

SriramAnanth.V