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**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 25.02.2020

CAUSE LIST - 2

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB)No. 41/BB/2019	For hearing IA 603/19 , IA 113/2020 - CIRP	Sec 9 of I&B code 2016	M/s Vansun Intermediates Pvt Ltd	D Peruman Saranyan Advocate	M/s Sura Leathers Pvt Ltd	V Duraisamy RP

ADVOCATE FOR PETITIONER/s:

V-DURAISAMY - RP

R. Senthil Kumar
COUNSEL FOR RP
9962059300
R. Senthil Kumar
25/02/20

ADVOCATE FOR RESPONDENT/s:

I.A. 603/2019
PRATHAP K.

9742798422

DEEPAK BASAVARAJ
9901490094

ORDER

Heard Mr. V. Duraisamy Learned RP, Mr. Senthil Kumar Learned Counsel for the RP and Mr. Prathap.K along with Mr. Deepak Basavaraj Learned Counsel for the Respondent. I.A. No. 113 of 2020 is allowed by separate order. Post the case on 20.03.2020.


MEMBER (T)


MEMBER (J)

Verified


Court Officer

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A. No.113 of 2020 in
C.P. (IB) No.41/BB/2019
U/s 33 (2) and 34 (1) of the I & B, Code

IN THE MATTER OF:

Mr. V. Duraisamy,
Resolution Professional of
M/s. Sura Leathers Private Limited,
No.397, Precision Plaza,
Third Floor, No.23,
Anna salai, Teynampet,
Chennai – 600018

- Applicant /RP

Date of Order: 25thFebruary 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant/RP : Mr. V. Duriasamy

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A. No.113 of 2020 in C.P. (IB) No.41/BB/2019 is filed by Mr. V. Duraisamy, Resolution Professional of M/s. Sura Leathers Private Limited (hereinafter referred to as 'Applicant/Resolution Professional') under Section 33 (2) and 34(1) of the I & B Code inter alia seeking to pass necessary orders that Corporate Debtor M/s Sura Leathers Private limited to be liquidated in the manner as laid down under the Code as per the Section 30 (2) of the code in view of the recommendation of COC for liquidation of Corporate Debtor etc.,
2. Briefs facts of the case, as mentioned in Application, are as follows:
 - (1) The initial Company Petition bearing C.P.(IB) No.41/BB/2019 was filed by M/s Vansun Intermediates Private Limited under Section 9 of

the IBC, 2016, R/w Rule 6 of I & B (AAA) Rules, 2016 for initiating CIRP process in respect of the Corporate Debtor namely M/s Sura Leather Private Limited, and it was admitted by the Adjudicating Authority on 31.05.2019 and appointed the Applicant Mr. Duraisamy as IRP. Further the IRP received the copy of the order on 11.06.2019.

- (2) Pursuant to the order, the IRP gave a public announcement as per Regulation 6 in Business Standard (English newspaper) and Udaya Vani (Kannada Newspaper) on 12.06.2019 and also in the website of Insolvency and Bankruptcy Board of India on 14.06.2019. Further as per Regulation 6, the intimation of Initiation of CIRP was sent to the Banks, Corporate Debtor and other stakeholders by email. The IRP constituted Committee of Creditors based on the claim received and the report of constitution of Committee of Creditors was communicated to the Hon'ble Adjudicating Authority vide report dated 28.06.2019.
- (3) It is stated that, the undersigned RP conducted first CoC meeting on 08.07.2019 at State Bank of India, 2nd Floor, LHO Campus, No.65, St. Mark's Road, Bengaluru - 560 001 and State Bank of India is a sole member of COC, resolved that the existing IRP Mr. V. Duraisamy appointed as Resolution Professional till the completion of the CIRP. Further it was resolved that IRP shall intimate the decision of the confirming IRP as RP to the Hon'ble Adjudicating Authority. Accordingly, a report filed on 15.07.2019 intimating appointment of IRP as RP wherein the RP declared that there is no disciplinary proceeding pending against him in the IBBI and hence he may be confirmed as RP to conduct the remaining period of CIRP. Accordingly, the Adjudicating Authority vide order dated 06.09.2019 in I.A. No. 437 of 2019 approved the appointment of RP.
- (4) It is stated that in view of the 3rd CoC decision, Expression of Interest was published in two leading daily news papers one in Kannada



Vijayavani and Business Standard in English daily newspaper. In the response, two persons viz., M/s. Vansun Intermediates Private Limited and M/s. Precept Leathers expressed interest. Accordingly the Applicant invited both resolution Applicants to submit the resolution plans. The Resolution Applicants submitted their resolution plans and after initial scrutiny of the resolution plan, the same was forwarded to the COC members along with report on the Resolution plan.

- (5) It is stated that the Resolution Applicants were also invited to present the resolution plan in the 4th CoC meeting held on 14.11.2019 and the Resolution Applicants presented the resolution plan to the CoC in its 4th meeting. After discussion and deliberation the COC requested the Resolution Applicants to improve their offer and granted time till 19.11.2019 to convey their willingness to improve their offer. Since the CIRP period which was initiated on 31.05.2019 was going to end on 27.11.2019 the RP proposed for extension of CIRP for further period of 90 days in the 5th COC meeting held on 25.11.2019 for the purpose to make decision on resolution plans submitted by the Resolution Applicants. Accordingly, the CoC decided to extend the CIRP for further period of 90 days and passed unanimous resolution to that effect in the 5th CoC meeting, and based on unanimous resolution of CoC, an application was filed for extension by RP before this Hon'ble Tribunal. The Hon'ble Tribunal after hearing passed an order dated 27.11.2019 in I.A No. 622/2019 by extending the CIRP period for further 90 days.
- (6) The RP called for 6th COC meeting on 23.01.2020 and the agenda related to the approval of the resolution plan was taken up and RP informed that the revised resolution plans received from the Resolution Applicant. The State Bank of India COC member informed that the revised offers and additional particulars submitted by the



resolution Applicants are being scrutinized and decision will be informed in the next COC and therefore requested for deferment of the same. Further the RP sent communication for 7th CoC attaching notice and agenda to conduct CoC on 14.02.2020 to all the COC members. In the meeting the COC members discussed and deliberated the resolution plan submitted by both the Resolution Applicants.

- (7) It is stated that the first resolution plan of M/s. Vansun Intermediates Private Limited was discussed and COC members decided to reject the resolution plan as their offer is very much lower than the liquidation value and further RP also informed that the Resolution Applicant was offering only part of CIRP cost which is unacceptable and SBI Member pointed that the Resolution plan contains a specific condition of transfer of land in the name of Mr. Sriharsha in favour of the Resolution Applicant is unacceptable proposal and the same has no legal basis as the same is mortgaged to SBI in a personal capacity of guarantor Mr. Sriharsha. Therefore condition of transfer of rights of 3rd party property through Resolution plan render the resolution plan is not legally maintainable. Further the resolution to reject the Resolution plan was passed unanimously with 100 % voting. Hence the resolution plan to the Resolution Applicant M/s. Vansun Intermediates Private limited was rejected.
- (8) It is further stated that another Resolution Applicant M/s. Percept leathers improved the offer and RP further pointed out that another Resolution Applicant has increased offer of total plan value from 7.0 crores to 9.5 crores. Further the increase 2.5 crores was increased only towards payment of SBI from 5.0 crores to 7.5 crores. However the Resolution Applicant retained the following relies and sought extinguishments in their resolution plan.

- i. The factory land property in the name of Mr. Sri Harsh to be assigned to resolution applicant
 - ii. The Resolution Applicant sought general relief from the proceeding against the other claimants including guarantor.
- (9) It is stated that the factory land is owned by Mr. Sri Harsha and the building owned by the company and the same is not considered for transfer or assignment in favour of Resolution Applicant as the same is not legally maintainable in the CIRP process. Further the COC concluded that as the resolution plans are not feasible and viable and further proposed resolution recommending liquidation of Corporate Debtor and also proposed resolution authorizing RP to file an suitable application for liquidation to inform the decision of COC to this Hon'ble Tribunal. Further COC members proposed the resolution to appoint the present RP as Liquidator. Further the CoC member have giving 100 % voting right in favour of two resolutions recommending passed order of liquidation of corporate debtor and appointing present RP as Liquidator.
- (10) It is stated that in terms of Section 33 (2) of the Code, as per the recommendation of the COC members Corporate Debtor may be ordered for liquidation and the Applicant may be appointed as Liquidator in terms of Section 34 (1) of the Code and the consent to act as Liquidator in prescribed consent form.
3. Heard Mr. Senthil Kumar Learned Counsel for the RP, Mr. V. Duraisamy Learned Resolution Professional and Mr. Prathap.K Learned Counsel for the Respondent. We have carefully perused the pleadings of the parties and extant provisions of the Code and the Rules made thereunder and the Law on the issue.
4. Mr. Senthil Kumar Learned Counsel for the RP, while reiterating the steps he has taken during the process of CIRP, as briefly stated supra, has further submitted that during the 7th CoC Meeting held on



14.02.2020, it was *inter alia* decided to reject both the resolution plans as the resolution plans are not feasible and viable. Since CoC present Members having 100% voting right have recommended that the Corporate Debtor may be ordered for Liquidation and the present RP be appointed as Liquidator for the Corporate Debtor. Hence, the RP requested the Adjudicating Authority to appoint him as Liquidator u/s 34(1) of the Code. Accordingly, he also has filed his written consent dated 17.02.2020, by inter alia stating that he is eligible to be appointed as Liquidator of the Corporate Debtor and also declared that he is not subject to any disciplinary proceedings initiated by the Board or the Insolvency Professionals Agency.

5. The above facts and circumstances as mentioned above clearly establishes that the efforts of the learned Resolution Professional and the Committee of Creditors to revive the Company by way of Resolution Plan could not succeed and thus there is no other alternative for CoC except to recommend the Corporate Debtor to liquidate in the manner as laid down in Chapter III of the I&B Code. The existing Resolution Professional, Mr. V. Duraisamy, who is a qualified Insolvency Professional, also has filed his written consent dated 17.02.2020 to act as Liquidator in respect of the Corporate Debtor. Section 33 of the I&B Code provides that if no Resolution Plan is received by the Adjudicating Authority before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the CIRP under Section 12 or the fast track CIRP u/s 56, as the case may be, then order of liquidation has to be passed against the Corporate Debtor. Therefore, it is a fit case to initiate liquidation in respect of the Corporate Debtor.
6. In the result, the Adjudicating Authority, by exercising powers conferred under Section 33 of the I&B Code, 2016, I.A. No.113 of 2020 in C.P. (IB) No.41/BB/2019 is disposed of the with the following directions:



- (1) We hereby appointed **Mr. V Duraisamy** holding IBBI Registration No. IBBI/IPA-002/IP-N00609/2018-19/11862 as Liquidator to liquidate the Corporate Debtor i.e. **M/s. Sura Leathers Private Limited** in the manner as laid down in Chapter III of the Code and relevant Rules made thereon by the IBBI from time to time;
- (2) Mr. V. Duraisamy is directed to issue public announcement stating that the Corporate Debtor is in liquidation, one in English language and one in Vernacular language, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- (3) The Liquidator is directed to take expedite steps to conclude the liquidation process without waiting statutory period of liquidation to lapse;
- (4) The Liquidator is directed to 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 Board of India (Liquidation Process) Regulations, 2016;
- (5) The Registry is directed to communicate this Order to the Registrar of Companies, Karnataka and to the Insolvency and Bankruptcy Board of India.
- (6) Post the case for report of the Liquidator on **20.03.2020**.



**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**



**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**