

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI**

**IA(IBC)/462(CHE)/2021 in IBA/1048/2019**

*(Filed under Sec. 30(6) & 31 of the Insolvency & Bankruptcy Code, 2016)*

IN THE MATTER OF:

N. Kumar

*Resolution Professional of*

**M/s. Victory Vision Home Appliances Private Limited**

Old No. 8, New No. 3, Third Street,

Race View Colony, Guindy,

Chennai – 600 032

*... Applicant*

Present:

*For Resolution Professional*

:

*Rohan Rajasekaran, Advocate*

**CORAM:**

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

**ANIL KUMAR B, MEMBER (TECHNICAL)**

*Order Pronounced on 29<sup>th</sup> March 2022*

**ORDER**

***Per: Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)***

IA(IBC)/462(CHE)/2021 is an Application which is moved by the Resolution Professional of the Corporate Debtor viz., **M/s. Victory Vision Home Appliances Private Limited** under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'Regulation') seeking approval of the Resolution Plan submitted by the successful Resolution Applicant viz., *Mr. T. Rajasekaran*



2. In an Application filed under Section 10 of IBC, 2016 by the Corporate Debtor, this Adjudicating Authority in IBA/1048/2019 vide order dated 13.11.2019 had initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz. M/s. Victory Vision Home Appliances Private Limited and one Mr. N. Kumar was appointed as Interim Resolution Professional (IRP). Thereafter, the IRP had caused public announcement on 17.11.2019 in 'Trinity Mirror' and 'Makkal Kuarl' and based on the claims received from the stakeholders, the IRP constituted the Committee of Creditors (CoC) and the 1<sup>st</sup> CoC meeting was convened on 13.11.2019.

3. In the 2<sup>nd</sup> CoC meeting held on 23.01.2020, the CoC has resolved to continue with Mr. N. Kumar as the Resolution Professional of the Corporate Debtor

4. The Learned Counsel for the Applicant submitted that as per Regulation 27 of the IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016 the applicant herein had appointed two IBBI Registered valuers for valuation of the Plant & Machinery, land & Building subsequently, the valuers have submitted their report. Form - H filed along with the Application, it is evident that the Applicant had conducted a total of 8 CoC

meetings in relation to the Corporate Debtor and that the Fair Value and the Liquidation value is arrived at Rs.1,62,76,477/- and Rs.1,11,75,373/- respectively.

5. The Learned Counsel for the Applicant submitted that the necessary Form G was published by the RP on 02.03.2020 in two newspapers and the last date was fixed as 17.03.2020 since no EoI was received the same was extended and published on 18.03.2020 with the last date of Expression of Interest as 02.04.2020. Once again as per the discussion made during the 4<sup>th</sup> CoC another fresh Form G was published on 08.12.2020 with last date of submission of EoI as 23.12.2020. In the meantime, the CoC in their 7<sup>th</sup> CoC meeting, as the 180 days period of CIRP in relation to the Corporate Debtor was about to end, have accorded approval to file an Application before this Adjudicating Authority under Section 12(2) of IBC, 2016 and this Adjudicating Authority vide its order dated 06.08.2020 has allowed the exclusion of the lockdown period and accordingly has not extended the CIRP period as this application for approval of Resolution Plan was filed in the meantime.

6. The Suspended Director and Promoter Mr. T. Rajasekaran, had responded to the Expression of Interest issued. The CoC



during their 5<sup>th</sup> and 6<sup>th</sup> meeting discussed about the Resolution Plan submitted. And the CoC during their 7<sup>th</sup> CoC meeting held on 03.03.2021 had requested the prospective Resolution Applicant to revise and accordingly modify the Resolution Plan. Thereafter, in the 8<sup>th</sup> CoC meeting held on 22.03.2021, the same was discussed and deliberated. Finally, the Resolution Plan submitted by the successful Resolution Applicant was put to vote in the 8<sup>th</sup> CoC meeting held on 22.03.2021 and the said plan was approved with 76.62% majority by the CoC through e-voting which was concluded on 22.03.2021. In the meantime, since the Suspended Director being the only Resolution Applicant, it was decided by the CoC not to proceed further regarding the transaction audit.

7. The Learned Counsel for the Applicant submitted that after due verification of the eligibility of the Resolution Applicant in terms of Section 29A of IBC, 2016 considering the fact that the Corporate Debtor is an MSME and after satisfying himself that the Resolution Plan is in conformity with Section 30(2), the Applicant has placed the same for consideration before the CoC. It is also seen from the minutes of the 8<sup>th</sup> CoC meeting which was held on 22.03.2021 that the CoC with 76.62% voting has approved the Resolution Plan proposed by the Resolution Applicant. The said Resolution Plan was dissented by two of the Creditors viz., M/s.

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India Bulls Consumer Finance Limited with voting share of 14.09% and ICICI Bank Limited, Ambathur Branch, Chennai with voting share 9.29% which totally amounts to 23.38%

8. The total dues of the Corporate Debtor are as follows;

<b>S. No.</b>	<b>NAME OF CREDITORS</b>	<b>CLAIM ADMITTED BY RESOLUTION PROFESSIONAL (IN RUPEES)</b>
1	Financial Creditor	1,52,56,208
3	Operational Creditor	1,94,64,687
4	Statutory Dues	6,80,207
	<b>TOTAL</b>	<b>3,54,01,102</b>

9. The Resolution Applicant proposes to pay a sum of **Rs. 64,02,483/-** as against the total due of Rs. 3,54,01,102/- .

10. At this juncture on perusal of the records submitted, in specific to the MSME Certificate/ Registration. The MSME Certificate of the Corporate Debtor is found to be the old certificate obtained under the Udyog Aadhaar Memorandum. While the Government of India, by way of notification No. S.O. 2119(E) dated 26.06.2020 has notified certain criteria for classifying the enterprises as micro, small and medium enterprises and specifies the form and procedure for filing;

**MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES  
NOTIFICATION**

*New Delhi, the 26th June, 2020*

**S.O. 2119(E).**—In exercise of the powers conferred by sub-section (1) read with sub-section (9) of section 7 and sub-section (2) read with sub-section (3) of section 8, of the Micro, Small and Medium Enterprises Development Act, 2006, (27 of 2006), hereinafter referred to as the said Act, and in supersession of the notifications of the Government of India in the Ministry of Micro, Small and Medium Enterprises number S.O.1702 (E), dated the 1st June, 2020, S.O. 2052 (E), dated the 30th June, 2017, S.O.3322 (E ), dated the 1st November, 2013 and S.O.1722 (E ), dated the 5th October, 2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii), except as respects things done or omitted to be done before such supersession, the Central Government, after obtaining the recommendations of the Advisory Committee in this behalf, hereby notifies certain criteria for classifying the enterprises as micro, small and medium enterprises and specifies the form and procedure for filing the memorandum (hereafter in this notification to be known as —Udyam Registration), with effect from the 1st day of July, 2020, namely:--

**1. Classification of enterprises.-** An enterprise shall be classified as a micro, small or medium enterprise on the basis of the following criteria, namely:--

- (i) a micro enterprise, where the investment in plant and machinery or equipment does not exceed one crore rupees and turnover does not exceed five crore rupees;
- (ii) a small enterprise, where the investment in plant and machinery or equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees; and
- (iii) (a medium enterprise, where the investment in plant and machinery or equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty crore rupees.

**2. Becoming a micro, small or medium enterprise.—**

- (1) Any person who intends to establish a micro, small or medium enterprise may file Udyam Registration online in the Udyam Registration portal, based on self-declaration with no requirement to upload documents, papers, certificates or proof.
- (2) On registration, an enterprise (referred to as —Udyam in the Udyam Registration portal) will be assigned a permanent



identity number to be known as —Udyam Registration Number.

- (3) An e-certificate, namely, —Udyam Registration Certificate shall be issued on completion of the registration process.

**3. Composite criteria of investment and turnover for classification.—**

- (1) A composite criterion of investment and turnover shall apply for classification of an enterprise as micro, small or medium.
- (2) If an enterprise crosses the ceiling limits specified for its present category in either of the two criteria of investment or turnover, it will cease to exist in that category and be placed in the next higher category but no enterprise shall be placed in the lower category unless it goes below the ceiling limits specified for its present category in both the criteria of investment as well as turnover.
- (3) All units with Goods and Services Tax Identification Number (GSTIN) listed against the same Permanent Account Number (PAN) shall be collectively treated as one enterprise and the turnover and investment figures for all of such entities shall be seen together and only the aggregate values will be considered for deciding the category as micro, small or medium enterprise.

**4. Calculation of investment in plant and machinery or equipment.—**

- (1) The calculation of investment in plant and machinery or equipment will be linked to the Income Tax Return (ITR) of the previous years filed under the Income Tax Act, 1961.
- (2) In case of a new enterprise, where no prior ITR is available, the investment will be based on self-declaration of the promoter of the enterprise and such relaxation shall end after the 31st March of the financial year in which it files its first ITR.
- (3) The expression —plant and machinery or equipment of the enterprise, shall have the same meaning as assigned to the plant and machinery in the Income Tax Rules, 1962 framed under the Income Tax Act, 1961 and shall include all tangible assets (other than land and building, furniture and fittings).
- (4) The purchase (invoice) value of a plant and machinery or equipment, whether purchased first hand or second hand,

shall be taken into account excluding Goods and Services Tax (GST), on self-disclosure basis, if the enterprise is a new one without any ITR.

- (5) The cost of certain items specified in the Explanation I to sub-section (1) of section 7 of the Act shall be excluded from the calculation of the amount of investment in plant and machinery.

#### **5. Calculation of turnover.—**

- (1) Exports of goods or services or both, shall be excluded while calculating the turnover of any enterprise whether micro, small or medium, for the purposes of classification.
- (2) Information as regards turnover and exports turnover for an enterprise shall be linked to the Income Tax Act or the Central Goods and Services Act (CGST Act) and the GSTIN.
- (3) The turnover related figures of such enterprise which do not have PAN will be considered on self-declaration basis for a period up to 31st March, 2021 and thereafter, PAN and GSTIN shall be mandatory.

#### **6. Registration process.—**

- (1) The form for registration shall be as provided in the Udyam Registration portal.
- (2) There will be no fee for filing Udyam Registration.
- (3) Aadhaar number shall be required for Udyam Registration.
- (4) The Aadhaar number shall be of the proprietor in the case of a proprietorship firm, of the managing partner in the case of a partnership firm and of a karta in the case of a Hindu Undivided Family (HUF).
- (5) In case of a Company or a Limited Liability Partnership or a Cooperative Society or a Society or a Trust, the organisation or its authorised signatory shall provide its GSTIN and PAN along with its Aadhaar number.
- (6) In case an enterprise is duly registered as an Udyam with PAN, any deficiency of information for previous years when it did not have PAN shall be filled up on self-declaration basis.
- (7) No enterprise shall file more than one Udyam Registration: Provided that any number of activities including

manufacturing or service or both may be specified or added in one Udyam Registration.

- (8) Whoever intentionally misrepresents or attempts to suppress the self-declared facts and figures appearing in the Udyam Registration or updation process shall be liable to such penalty as specified under section 27 of the Act.

#### **7. Registration of existing enterprises.---**

- (1) All existing enterprises registered under EM-Part-II or UAM shall register again on the Udyam Registration portal on or after the 1 st day of July, 2020.
- (2) All enterprises registered till 30th June, 2020, shall be re-classified in accordance with this notification.
- (3) The existing enterprises registered prior to 30th June, 2020, shall continue to be valid only for a period up to the 31st day of March, 2021.
- (4) An enterprise registered with any other organisation under the Ministry of Micro, Small and Medium Enterprises shall register itself under Udyam Registration.

#### **8. Updation of information and transition period in classification.—**

- (1) An enterprise having Udyam Registration Number shall update its information online in the Udyam Registration portal, including the details of the ITR and the GST Return for the previous financial year and such other additional information as may be required, on self-declaration basis.
- (2) Failure to update the relevant information within the period specified in the online Udyam Registration portal will render the enterprise liable for suspension of its status.
- (3) Based on the information furnished or gathered from Government's sources including ITR or GST return, the classification of the enterprise will be updated.
- (4) In case of graduation (from a lower to a higher category) or reverse-graduation (sliding down to lower category) of an enterprise, a communication will be sent to the enterprise about the change in the status.
- (5) In case of an upward change in terms of investment in plant and machinery or equipment or turnover or both, and consequent re-classification, an enterprise will maintain its

prevailing status till expiry of one year from the close of the year of registration.

- (6) In case of reverse-graduation of an enterprise, whether as a result of re-classification or due to actual changes in investment in plant and machinery or equipment or turnover or both, and whether the enterprise is registered under the Act or not, the enterprise will continue in its present category till the closure of the financial year and it will be given the benefit of the changed status only with effect from 1st April of the financial year following the year in which such change took place.

#### **9. Facilitation and grievance redressal of enterprises.—**

- (1) The Champions Control Rooms functioning in various institutions and offices of the Ministry of Micro, Small and Medium Enterprises including the Development Institutes (MSME-DI) shall act as Single Window Systems for facilitating the registration process and further handholding the micro, small and medium enterprises in all possible manner.
- (2) The District Industries Centres (DICs) will also act as Single Window facilitation Systems in their Districts.
- (3) Any person who is not able to file the Udyam Registration for any reason including for lack of Aadhaar number, may approach any of the above Single Window Systems for Udyam Registration purposes with his Aadhaar enrolment identity slip or copy of Aadhaar enrolment request or bank photo pass book or voter identity card or passport or driving licence and the Single Window Systems will facilitate the process including getting an Aadhaar number and thereafter in the further process of Udyam Registration.
- (4) In case of any discrepancy or complaint, the General Manager of the District Industries Centre of the concerned District shall undertake an enquiry for verification of the details of Udyam Registration submitted by the enterprise and thereafter forward the matter with necessary remarks to the Director or Commissioner or Industry Secretary concerned of the State Government who after issuing a notice to the enterprise and after giving an opportunity to present its case and based on the findings, may amend the details or recommend to the Ministry of Micro, Small or Medium Enterprises, Government of India, for cancellation of the Udyam Registration Certificate.

[F. No. 21(5)/2019-P&G/Policy (Pt-IV)]

A. K. SHARMA, Secy.



11. Thus, from the above said notification, it is manifest that all the enterprises which have been registered as MSME before 30.06.2020 are required to register again after 01.07.2020, afresh. Further, the old MSME Registration Certificate was valid only up to 31.03.2021. In the instant matter, even considering the date of filing of the application it is seen that the application was filed on 18.05.2021 which is beyond the validity period of the old MSME Registration.

12. It is also pertinent to note here that Section 4 of the above said notification describes about the calculation of investment in Plant and Machinery or equipment and how it is required to be done. A conjoint reading of the Section 7 and 4 of the above notification afore-extracted provisions would show that an enterprise which claims to be an MSME is required to satisfy the conditions as laid down in Section 4 and is required to register afresh as per stated in the notification.

13. Thus, taking the said notification and the old MSME Certificate in light of this, the Adjudicating Authority is constrained to reject the instant application seeking approval of the Resolution Plan as submitted by the Successful Resolution Applicant who is the suspended director cum promoter of the Corporate Debtor. Further, this Adjudicating Authority in consideration of the intent of

the Code and in particular to Section 29A of the Insolvency and Bankruptcy Code, 2016 is obliged to dismiss the instant application, failing which it shall cause hindrance to the object of the code and shall be hit by Section 29A. Thus, under the said circumstances, this Adjudicating Authority is dismissing the application in IA(IBC)/462(CHE)/2021 with liberty to file afresh upon compliance with the new regime of MSME coupled with the necessary approval of the Committee of Creditors of the Corporate Debtor.

14. Accordingly, **IA(IBC)/462(CHE)/2021** stands **Dismissed with Liberty to file afresh.**

15. The Resolution Professional is directed to file a status report in relation to the MSME Registration within a period of 30 days from the date of this order. If there is no such progress, then this Adjudicating Authority will be constrained to Order for Liquidation of the Corporate Debtor.

The main application in **IBA/1048/2019** is to be posted on **03.05.2022.**

-Sd-  
**B. ANIL KUMAR**  
MEMBER (TECHNICAL)

-Sd-  
**Justice (Retd.) S. RAMATHILAGAM**  
MEMBER (JUDICIAL)

*Mohanapriya*