

NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH - I
CHENNAI

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ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, NATIONAL COMPANY LAW TRIBUNAL, HELD ON 21.09.2020 AT 10.30 AM. THROUGH VIDEO CONFERENCING:

PRESENT: SHRI R. VARADHARAJAN, MEMBER-JUDICIAL
SHRI ANIL KUMAR B, MEMBER - TECHNICAL

APPLICATION NUMBER : MA/85/2020 IN
PETITION NUMBER : CP/1398/TB/2018
NAME OF THE PETITIONER(S) : A.R.RAMASUBRAMANIA RAJA (VASAN
CONSTRUCTION COMPANY PVT LTD)
NAME OF THE RESPONDENT(S) :
UNDER SECTION : SEC 33(2) OF IBC

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
		REPRESENTATION FOR WHOM	



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

MA/85/2020 In CA/1398/IB/2018

(filed under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016)

In the matter of **M/s. Vasan Construction Company Private Limited**

A.R. Ramasubramania Raja,
Interim Resolution Professional of
Vasan Construction Company Private Limited,
No.3, Sundaram Brothers Layout,
Opposite to All India Radio,
Trichy Road, Ramanathapuram,
Coimbatore - 641 045

Order delivered on 21st September 2020

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Applicant : Rohan Rajasekaran, Advocate

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

Heard and dictated in Open Court

1. Learned Counsel for Applicant / IRP Mr. Rohan Rajasekaran, Advocate is present through video conferencing mode.
2. This is an Application filed under Section 33 (2) of the Insolvency & Bankruptcy Code, 2016 (IBC, 2016) seeking for liquidation of the Corporate Debtor as well as to appoint Interim Resolution Professional as Liquidator for administrating the liquidation process of the Corporate Debtor and to pass such other



orders this Tribunal may deem fit and proper in the interest of justice.

3. Learned Counsel for Applicant / IRP represents that Form 'H' with suitable modifications have been filed bringing to the fore the happenings during the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor. Learned Counsel for the Applicant points out that the main Petition had been filed by one of the Financial Creditors of the Corporate Debtor and this Tribunal had chosen to admit the Petition and declared a moratorium as contemplated under Section '14' of IBC, 2016. The date of appointment of the IRP commenced from 06.04.2019 and publication calling for the claims from the Creditors was effected on 09.04.2019. The CoC was constituted on 26.04.2019 and thereafter the IRP has convened six CoC meetings on the following dates viz., 03.05.2019, 11.06.2019, 20.08.2019, 20.09.2019; 04.11.2019 and 31.12.2019.

4. It is further represented by Learned Counsel for the Applicant / IRP that in all, with the approval of the CoC three publications calling for Expression of Interest (EoI) was issued in Form 'G' on 12.06.2019, 12.08.2019 and 05.11.2019. Despite causing three paper publications calling for the EoIs from prospective Resolution Applicants, none was received in relation to the Corporate Debtor.



5. In the meanwhile, on 01.10.2019, this Tribunal choose to extend the CIRP for a further period of 90 days from 03.10.2019 and to end on 04.01.2020. Despite, last of the publication calling for EoI in Form 'G' was made during the extended period, in relation to the same the response was 'nil' and in the circumstances in the 6th CoC held on 31.12.2019, the CoC resolved to liquidate the Corporate Debtor. The voting share as reflected in Form 'H' of the CoC is to the following effect:-

Canara Bank	-	91.23%
Bank of India	-	4.66%
J. Jayaseelan	-	4.11%

6. The fair value and the liquidation value of the Corporate Debtor have been computed by two Registered Valuers appointed by the IRP and is stated to be Rs.2,81,75,500/- and Rs.2,53,57,900/- respectively.

7. From Form 'H' it is also evident that no Application has been preferred by the IRP before this Tribunal bringing to the notice of this Tribunal, Preferential Transactions under Section 43; under value transactions under Section 45, Extortionate Credit Transactions under Section 50 and Fraudulent Transactions under Section 66 of IBC, 2016. It is also pointed that written consent in Form 'AA' has been filed by the IRP giving his consent to act as a Liquidator, appointed by this Tribunal.



8. In one of the prayers made in the Application as referred to Paragraph supra, Learned Counsel for Applicant also brings to the notice of the Minutes of the 6th CoC held on 31.12.2019, the Resolution passed by the members of the CoC in relation to the Liquidation of the Corporate Debtor as well as resolution passed for the appointment of Thiru A.R. Ramasubramania Raja, present Interim Resolution Professional and the Applicant herein as the Liquidator of the Corporate Debtor and in relation to the remuneration is also given in the Resolution itself that the same shall be as per IBBI (Liquidation Process) Regulations, 2016.

9. In relation to the remuneration payable to the IRP, it is seen from the Minutes as pointed out by Learned Counsel for the Applicant that the same stands ratified vide Item No.3 as reflected in the Minutes of the 6th meeting of the CoC. Further the said Resolution also provides for publication cost in relation to the Liquidation.

10. We have considered the Application as filed before this Tribunal by the IRP. At the outset, we posed a query to the Learned Counsel for the Applicant that as to why even after the expiry of the CIRP period, the Applicant has chosen to call himself as an IRP, as it is evident from the order passed by this Tribunal that at the time of admission of the Petition and initiation of the CIRP, the said order reflects the name of the Applicant as the IRP and in the circumstances taking into consideration the provisions of Section 22



of IBC, 2016, whether he was or not confirmed as an RP of the Corporate Debtor and as to whether any resolution were placed before the CoC for confirmation of the IRP as to that of RP of the Corporate Debtor or any alternative name was suggested by the CoC and voted thereon. Learned Counsel for the Applicant represents that no such compliance was made as required under Section 22 of IBC, 2016 and in the circumstances in view of no suggestions coming from the CoC about any alternative appointment as an RP as required under Section 22, IBC, 2016, he continued to act as an IRP of the Corporate Debtor without being designated as a Resolution Professional and carried on the duties, of course as a Resolution Professional.

11. The above representation made by the Learned Counsel for the Applicant on behalf of the Applicant, we find it strange and seems to be a gross procedural irregularity. Section 22 of IBC, 2016 mandates that in the 1st CoC, the CoC has to decide whether the IRP is required to be continued as an RP or some other person to be appointed as RP? However, in the present case the IRP was not being confirmed as RP by the CoC. The procedure is required to be complied perforce by the CoC and the resolution for either confirmation of the IRP to RP or an alternative appointment is required to be placed by the IRP before the CoC for its voting. However, in the present case as already pointed out this procedure has not been followed and there



exists a lacunae in relation to compliance with the procedure on the part of the CoC as well as on the part of the IRP/Applicant though it is represented that be placed the relevant resolution before the CoC for voting, however, the CoC did not choose to vote on the same. If that were so, IBBI, the regulator should have been red flagged for the future course of action to be adopted as there is no implied approval contemplated under Section 22 of the IBC, 2016.

12. In the circumstances, we are not encouraged by the attitude of the IRP in continuing as an IRP in the absence of voting by the CoC and on the part of the CoC showing utter disregard for proper compliance of the procedure as prescribed under the provisions of IBC, 2016 and in the circumstances we are not inclined to accept the Resolution passed by the CoC appointing the existing IRP to be appointed as a Liquidator of the Corporate Debtor during the liquidation process.

13. In relation to the merits of the Application, it is clearly pointed out that despite publication of invitation calling for EoI three times, no Expression of Interest has been filed from any quarters as per the representation and averment made in the Application and in the circumstances taking into consideration Section 33 of IBC, 2016, in the absence of any Resolution Plan being placed before this Tribunal

for its consideration and also in addition the CIRP period even after



the extension of 90 days had expired, the Corporate Debtor is required to be liquidated in terms of the above said Section.

14. In the circumstances, we forward this order for the purpose of IBBI proposing a name of the Liquidator. Upon the name being proposed by the IBBI for the appointment of an Insolvency Professional as a liquidator, the MA/85/2020 will be taken up for passing an order of liquidation by appointing such insolvency professional as the liquidator.

15. Post MA/85/2020 on **17.11.2020** for the further orders in this regard, awaiting the action from IBBI.

-SD-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Certified to be True Copy




DEPUTY REGISTRAR
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01/12/21