

15

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

IA/745/IB/2020 in IBA/765-A/2019

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

In the matter of **M/s. Yashica Electronics Private Limited**

S. Kamaraj

Resolution Professional of
M/s. Yashica Electronics Private Limited
Old No.22, New No.28, Menod Street,
Purasawalkam, Chennai – 600 007

... Applicant /Resolution Professional

Order Pronounced on 2nd September 2021

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant : *Ramakrishnan Sadasivam,*
Authorized Representative

For Corporate Debtor : *A. Rengarajan, Advocate*

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

This is an application filed under Section 33(2) of the Insolvency and Bankruptcy Code 2016 (in short 'IBC, 2016') seeking relief as follows:

a. That the Hon'ble Adjudicating Authority may be pleased to pass appropriate orders that the Corporate Debtor i.e. Yashica Electronics Private Limited be liquidated in the manner as laid down under the Code.

b. In terms of Section 33/34(1) of the Code to pass an order that existing Resolution Professional shall act as the

Liquidator of the Corporate Debtor for the purpose of liquidation of the Corporate Debtor.

c. Pass such other order / orders as it may deem fit and proper in the facts and circumstances of the case.


2. In Section 9 application filed by the Operational Creditor against the Corporate Debtor viz., M/s. Yashica Electronics Private Limited, this Tribunal vide order dated 20.01.2020 passed in IBA/765-A/2019 initiated the Corporate Insolvency Resolution Process (CIRP) in relation to the Corporate Debtor and appointed the Applicant herein as Interim Resolution Professional (IRP).

3. It is averred in the application that pursuant to the Applicant being appointed as IRP, he caused Public Announcement under Section 15 of IBC, 2016 in Form-A on 22.01.2020 in English and in Tamil and invited claims to be filed in accordance with the provisions of IBC, 2016. In pursuance of the same, it is seen that the Applicant has received claim from one Financial Creditor to the tune of Rs.1,82,75,595/- and three Operational Creditors to the tune of Rs.2,53,22,489/-. Accordingly, the CoC was constituted with the sole Financial Creditor with 100% voting share. The 1st CoC meeting was held on 19.02.2020, wherein the CoC has unanimously approved that the Applicant be appointed as the Resolution Professional in respect of the Corporate Debtor.



4. Thereafter, it is seen that the Applicant has appointed two registered valuers on 20.02.2020 for valuing the assets of the Corporate Debtor to determine the fair value and the liquidation value in respect of the Corporate Debtor in accordance with Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Applicant based upon the details available with the Corporate Debtor has prepared the Information Memorandum in accordance with the provisions of Section 29 of IBC, 2016 and the same was shared with the CoC members. Further, as resolved in the 3rd CoC meeting, the Applicant has issued Expression of Interest in Form – G and that the same was published in English Daily, Financial Express and Tamil daily, Maalai Sudar on 16.03.2020 and since no offer for EoI was received by the RP, the CoC approved for the second invitation for EoI, which was issued on 11.06.2020.

5. In response to the EoI issued by the Applicant on 11.06.2020, it is seen that one Mr. K. Shanmugam, the suspended Director of the Corporate Debtor submitted an Expression of Interest on 24.06.2020 on the ground that the Corporate Debtor is a Micro Small and Medium Enterprises holding certificate number UAM No. TN27B0004227 dated 24.12.2016. Further, based on the EoI received the Applicant has issued the provisional list of the prospective Resolution Applicants on 06.07.2020 and the last date



for submission of the Resolution Plan was fixed as 10.08.2020, which was subsequently extended till 25.08.2020. Pursuant to the same, the Corporate Debtor has submitted the Resolution Plan on 25.08.2020 and the same was submitted before the CoC for its consideration in its 6th meeting held on 26.08.2020.

6. It is seen from the records that the said Resolution Plan submitted by the Corporate Debtor was put to discussion and the same was deliberated in the 7th CoC meeting held on 31.08.2020. However, the CoC has found that the Resolution Plan given by the Corporate Debtor is not feasible and viable and hence voted for the Liquidation of the Corporate Debtor. Also, it is averred in the Application that there is no application for avoidance transaction or fraudulent transaction is filed by the Applicant in this regard.

7. Further, the CoC as per Regulation 39B of the IBBI (Liquidation Process) Regulations, 2016 has arrived at a fee to be paid to the Liquidator in case of liquidation ordered by this Tribunal. The Applicant has also given his consent to act as a Liquidator in respect of the Corporate Debtor and also from verification from the IBBI it is seen that the Applicant is holding Authorization for Assignment (AFA) till 24.11.2021. Under such circumstances, the Learned Authorized Representative for the

Applicant prayed that an order of liquidation be passed in the present Application.

8. The present Application is objected by the promoter of the Corporate Debtor who submitted the Resolution Plan and whose plan also was rejected by the CoC in its 7th meeting. However it is the grievance of the promoter of the Corporate Debtor that there was no opportunity given to the Applicant to make any changes to the Resolution Plan.

9. We have heard the submissions made by the Learned Counsel for both the parties. The main objection raised by the objector is that no opportunity was given to the promoter of the Corporate Debtor before rejecting the same by the CoC. However at this juncture, the operative portion of the minutes of the 7th CoC, wherein the discussion with respect to the rejection of the Resolution Plan, which is recorded, is extracted hereunder;

1. Resolution Plan for the Corporate Debtor received is only for an amount of Rs.1,15,00,000 which is less than liquidation value.
2. Out of which Financial Creditor is able to get Rs.98,00,000 only out of the claim admitted of Rs.1,82,75,595 that works out to 53.62%. Hence Financial Creditor has to go with hair cut of Rs.84,75,595/- that works out to 46.38%.



3. Major amount of Rs.65,00,000 repayment scheduled in the Resolution Plan after 12 months, which is based on the source of sale of property, already given to the bank as security.
4. In the current scenario sale of the above property will lead to uncertainty in realisation and its consequences is evinced as a great threat for the implementation of the Resolution Plan.
5. The above property is already under MODT with Financial Creditor, there is no additional security offered by Resolution Applicant.
6. Post Covid-19 scenario will further bring down the value of the property.
7. Resolution Plan is not focusing on reviving of the Business collection of debtors.

Conclusion – Resolution Plan not viable and Not feasible.

Considering all the above facts that the CoC member had in their best wisdom though fit that the Resolution Plan is not viable and not feasible for implementation and CoC decided to reject the Resolution Plan under Section 30(4) of the Code and to file application before the Adjudicating Authority to liquidate the Corporate Debtor, as per the recourse open to the Adjudicating Authority as envisaged under Section 33(1)(a) of the Code, it shall pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in the chapter of liquidation of process.

Taking into account, the above mentioned factors, the CoC members proposed and passing the following resolutions.

“Resolved That the Resolution Plan received from Yashica Electronics Private Limited (in the capacity as Resolution Applicant) is hereby REJECTED under Section 30(4) of IBC Code 2016”.

10. Thus, it is clear from the minutes extracted above that the CoC has in length discussed about the feasibility and viability of the Resolution Plan which was submitted by the Corporate Debtor and in its "commercial wisdom" has decided to liquidate the Corporate Debtor.

11. In the circumstances, **Mr. S. Kamaraj** (IBBI/IPA-001/IP-P00116/2017-2018/10251) is appointed 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 him.

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, viz., company-in-liquidation.

12. The application IA/745/IB/2020 stands **allowed** with the aforesaid terms.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

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(R. SUCHARITHA)
MEMBER (JUDICIAL)

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