IN THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGAIRI

IA(IBC)(LIQ.)/1/2024
In
CP (IB)/51/9/AMR/2021

[Application filed under Section 33 of Insolvency and Bankruptcy Code, 2016 read with Section 60(5) of the IB Code, 2016]

and

M/s VANTAGE MACHINE TOOLS PRIVATE LIMITED

Mr. Immaneni Eswara Rao,
Resolution Professional of M/s. Vantage Machine Tools Private Limited,
40-26-22, Mohiddin Street, Opp. BSNL Exchange, Labbipet,
M G Road, Vijayawada, NTR District,
Andhra Pradesh – 520010.

...Applicant/Resolution Professional

Date of Order: 20 .12.2024

CORAM:

SHRI RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)

SHRI SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

Parties/Counsels Appearance:

For Applicant/RP : Mr. T. Phani Uma Shankar, Advocate

[ORDER]
[PER: BENCH]

1. This is an Application filed by Mr. Immaneni Eswara Rao, Resolution Professional ('RP' or 'Applicant') of M/s. Vantage Machine Tools Private Limited ('Corporate Debtor' or 'CD') under Section 33 of Insolvency and Bankruptcy Code, 2016 read with Section 60(5) of the IB Code, 2016, seeking the following reliefs:

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a. To initiate Liquidation Proceedings against the Corporate Debtor u/Sec 33 of the Code and

b. To appoint another Insolvency Professional as Liquidator of the Corporate Debtor other than the Resolution Professional/Applicant herein.

Brief facts of the Application are as follows:

2. The CD was admitted into Corporate Insolvency Resolution Process ('CIRP') by this Tribunal vide order dated 28.11.2022 and the applicant herein was appointed as the Interim Resolution Professional ('IRP'). The applicant issued a public announcement in Form-A in Financial Express (English) & Andhra Prabha (Vernacular – Telugu) on 09.12.2022 inviting claims from creditors of the CD with the last date as 23.12.2022.

3. Subsequent to the Public Announcement, the applicant had received the claims from the creditors of the CD and the applicant constituted Committee of Creditors ('CoC') and in the CoC passed a resolution to continue the applicant herein as Resolution Professional ('RP') in 1st CoC meeting held on 10.10.2023.

4. In the 2nd CoC meeting held on 27.01.2023, the RP discussed with the CoC to issue Form-G inviting expression of interest from the Prospective Resolution Applicants ('PRA's) and issued Form-G on 28.01.2023 with the last date for submission of Expression of Interest ('EoI') as 12.02.2023, with the following norms as eligibility criteria for PRAs.

   a) Net worth – Rs. 20 Crores
   b) Turnover – Rs. 50 Crores and
   c) Refundable Process Participation Deposit – Rs. 10 Lakhs.

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5. In response no PRA had submitted the EoI and the applicant in the 3rd CoC meeting held on 17.03.2023 brought the same before the CoC and discussed about the re-issue of Form –G. Accordingly, the applicant after discussing the same with the CoC in the 4th CoC meeting, issued Form-G for the second time by reducing the threshold limits of eligibility criteria for PRA's which are as follows;

   a) Net Worth – Rs. 15 Crores
   b) Turnover – Rs. 30 Crores and
   c) Refundable Process Participation Deposit – Rs. 10 Lakhs.

6. In response the RP received only one EoI from the suspended management of the CD. RP issued the provisional list of PRA's on 20.05.2023 as per Regulation 36A (10) & (11) of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') and the RP had not received any objections to the list of PRA's within the timelines as per Reg. 36A of CIRP Regulations.

7. The RP issued final list of PRA's on 05.06.2023 as per Regulation 36A (12) of CIRP Regulations to the Committee of Creditors. The RP issued the Request for Resolution Plan ('RFRP'), Evaluation Matrix ('EM') and Information Memorandum ('IM') to the PRA on 15.06.2023 for submission of Plan by the PRA by stating the binding plan submission due date as on or before 15.07.2023.

8. The PRA requested the RP to extend the last date for submission of Resolution Plan vide email dated 14.07.2023 for 15 days, which was placed before the CoC in the 6th meeting held on 17.07.2023 and the CoC granted time till 24.07.2023, with 100% voting. Further, on 24.07.2023, the PRA

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again requested the RP to grant extension till 15.08.2023 for submission of the plan, which is also placed before the CoC in the 7th Meeting held on 02.08.2023 and accordingly CoC granted time till 15.08.2023 with 94.65% voting.

9. On 05.08.2023, the PRA submitted the sealed envelope cover containing the Resolution Plan and the same was opened before the CoC in the 8th meeting held on 08.08.2023. However, it is observed that, Binding Submission of Bank Guarantee ('BSBG') of Rs. 15 Lakhs as per RFRP was not submitted by the PRA along with the submitted Resolution Plan. The RP apprised the CoC that the CIRP period would end by 25.08.2023 and an application seeking extension of time needs to be filed for the following reasons:

a. Non-Receipt of valuation report from the L&B and S&FA valuers and the Resolution Professional is required to open the sealed valuation reports received from the valuers in the presence of the CoC and electronically share the valuation figures with the CoC. The said valuation reports might be received within a day or two as per the oral confirmation provided by the valuers. The valuers expressed their concern that they were not provided with adequate information in order to provide their valuation report.
b. Submission of Resolution Plan by RP to the CoC, after his evaluation of the Resolution Plan, whether the plan is in compliance with the provisions of IBC 2016 and regulations made thereunder.
c. Evaluation, recording of deliberations of the CoC on feasibility and viability of the Resolution Plan, and voting on the Resolution Plan by CoC.
d. Filing of CoC approved Resolution Plan before the Hon'ble NCLT, Amaravati Bench for its approval at least 15 days before the completion of the CIRP period.

10. Accordingly, the RP after discussing with the CoC in the 8th meeting, filed IA(IBC)/337/2023 seeking extension of time for a further period of 90 days from 25.08.2023 and this Tribunal vide its order dated 27.09.2023 granted extension as sought by the applicant. Further, in the 9th CoC meeting held on 18.08.2023, the RP apprised the CoC about the non-receipt of BSBG

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from PRA and accordingly CoC granted time till 23.08.2023 for submission of the same.

11. In the 10th CoC meeting held on 28.08.2023, the RP discussed with the CoC about non-receipt of BSBG amount from PRA and the CoC after prolonged deliberations with the meeting participants and PRA, decided to liquidate the CD, as they have provided sufficient time for submission of BSBG to the PRA.

12. The RP conducted the 11th CoC meeting on 31.10.2023 for obtaining necessary resolutions for liquidating the CD and in the said meeting the members of the CoC with 100% voting resolved to liquidate the CD as per the provisions of the IB Code, 2016.

13. Canara Bank, a CoC member, provided voting with anomalies and self-contradictions. The RP sent reminders to Canara Bank to provide proper voting on the resolutions for the 11th CoC meeting. Canara Bank finally provided their voting on 02.02.2024.

14. Further, the RP conducted the 12th CoC meeting on 15.12.2023 to discuss the anomalies in the voting provided by the bank and the CoC members provided their voting on 02.02.2024. To discuss about the enormous delay in voting by the CoC members, the RP conducted the 12th CoC meeting on 31.10.2024, seeking extension of time for a further period of 90 days. Accordingly, RP filed an application and this Tribunal vide its order dated 12.02.2024 granted time for a further period of 90 days from 23.11.2023 to 21.02.2024 as prayed.

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15. The RP conducted the 14th CoC meeting on 21.02.2024, to discuss the following issues:

a. Forensic Audit Report received from Forensic Auditor M/s. Komandoor & Co, Charted Accountants.
b. Enormous delay in providing voting by the CoC members and consequential derailment of CIRP process.
c. Filing of Interlocutory Application seeking extension of time for a further period of 60 days.
d. Ratification of appointment of advocate for representing the Resolution Professional in IA's to be filed for seeking relief on avoidable transactions.

16. The CoC members directed the RP to discuss with the Forensic Audit to include the opportunities given to the suspended management for providing the data/information in the forensic audit report and the RP communicated the same to the Forensic Audit to include all the opportunities they had given to suspended management. The Forensic Auditors submitted their final report on 11.04.2024.

17. The RP filed IA (IBC)/104/2024 before this Tribunal seeking extension of time for a further period of 60 days from 21.02.2024 and the same was allowed by this Tribunal vide its order dated 25.04.2024 and granted an extension as sought from 21.02.2024 to 21.04.2024. Further, RP filed an application seeking relief on avoidable transactions before this Tribunal on 21.04.204 and the same was pending for adjudication.

18. Therefore, for the reasons stated above, the RP sought for approval of this Adjudicating Authority for Liquidation of the CD under Section 33 of the Code, since the only resolution plan submitted by the suspended

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management was declared as non-responsive resolution plan by the CoC members and the CoC members resolved to liquidate the CD.

19. We have heard Mr. T. Phani Umashankar, Ld. Counsel for the Resolution Professional and perused the record.

20. In the present case, after issuing the Form –G by the Resolution Professional for receiving Expression of Interest, only one Expression of Interest was received from the Prospective Resolution Applicant and the PRA failed to submit the Binding Submission of Bank Guarantee amounting to Rs. 15 Lakhs, as per the terms of the RFRP, even after seeking multiple extensions from the Committee of Creditors. As a result in the 11th CoC meeting held on the members of the Committee of Creditors with 100% voting declared the Resolution Plan submitted by the Prospective Resolution Applicant/Suspended Directors as the Non-responsive resolution plan as per clause 1.8.2 of the RFRP.

21. Clause 1.8.2 of the RFRP issued by the Resolution Professional reads as follows:

> *"It is hereby clarified that non-submission of the BSBG by the Resolution Applicants, along with the submissions of the Resolution Plan, shall lead to rendering of that particular resolution plan as non-responsive, and accordingly the CoC shall have the right to reject such resolution plan."*

Since the PRA failed to fulfill the above terms inspite of seeking multiple extensions, failed to submit the BSBG within the stipulated time and as a result the Members of the Committee of Creditors declared the plan

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submitted by the PRA as the non-responsive Resolution plan and opted for liquidation of the Corporate Debtor.

22. In the 11th meeting held on 31.10.2023, the CoC passed the following resolution:

> **Item No. B4:** To discuss and approve the initiation of liquidation proceedings against the Corporate Debtor u/s 33 of I & B Code, 2016:
>
> *"RESOLVED THAT the decision of the Committee of Creditors to liquidate the Corporate Debtor for reason as duly considered be intimated to the Adjudicating Authority in accordance with section 33(2) of the IBC 2016 and the Resolution Professional is hereby directed to prefer an application to seek the orders of the Adjudicating Authority for liquidation of the Corporate Debtor as per the applicable provisions of Insolvency and Bankruptcy Code 2016 and such approval is in accordance with the I&B Code 2016 and regulations made thereunder."*
>
> *"RESOLVED FURTHER THAT Sri Immaneni Eswara Rao, the Resolution Professional, be and hereby is authorized to do all such acts and deeds as is required to give effect to the above resolution."*

Further in the 12th CoC meeting held on 15.12.2023 with 94.65% voting resolved that:

> *'RESOLVED THAT the CoC not recommended name of any Registered Insolvency Resolution Professional to be appointed as Liquidator and not fixed liquidator's fee as per Regulation 39D of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016."*

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23. Taking into consideration the facts and circumstances of the present case and further that the prospective resolution applicant who submitted the plan have failed to submit the Binding submission Bank Guarantee as per the terms of RFRP issued, despite of taking ample opportunities given, this Adjudicating Authority left with no option, but to order the liquidation of the Corporate Debtor, as prayed for in the application.

24. The Hon'ble Supreme Court in the matter of ***K. Sashidhar Versus Indian Overseas Bank & Ors in Civil Appeal No. 10673 of 2018*** has held that the commercial decision of CoC is non-justiciable. In this case also, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.

25. Hence, we deem it proper to allow this Application. Accordingly, in exercise of powers conferred under Sub-Clause (i), (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the IBC 2016, we proceed to pass the Order as follows:

ORDER

a) The Adjudicating Authority hereby order for Liquidation of **M/S VANTAGE MACHINE TOOLS PRIVATE LIMITED,** which shall be conducted in the manner as laid down in Chapter III of Part II of the IBC, 2016.

b) In view of the order passed by this Tribunal vide order dated 20.12.2024 in IA (IBC)/419/2024 , we hereby appointing **Mr. Kalvakolanu Murali Krishna having Reg. No: IBBI/IPA-001/IP-P00967/2017-2018/11588**, Address: 8-27, Mythripuram Colony,

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Jileelguda, Karmaghat Vyshalinagar Post, Hyderabad – 500079email ID: kmk123ip@gmail.com, to act as Liquidator of the Corporate Debtor M/s. Vantage Machine Tools Private Limited, as resolved by the CoC.

c) The Liquidator shall issue public announcement stating that Corporate Debtor is in Liquidation.

d) The Moratorium declared under Section 14 of the IBC, 2016 shall cease to operate here from.

e) Subject to section 52 of the IBC 2016 no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

f) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.

g) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.

h) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.

i) The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.

j) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the

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business of the Corporate Debtor is continued Liquidation process by the Liquidator.

k) Copy of the Order shall be furnished to the IBBI, to the Regional Director (South Eastern Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Andhra Pradesh, the Registered Office of the Corporate Debtor; and the Liquidator.

26. With the above directions, IA(IBC)(LIQ)/1/2024 in CP(IB)/51/9/AMR/2021 is disposed of.

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SANJAY PURI
MEMBER (TECHNICAL)

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RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

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