

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH -I**

IA No. 1870/MB/ 2020

And

IA No. 1579/MB/2021

IN

CP (IB) No. 4697/MB/ 2018

Under Section 33(1)(a) of the Insolvency and
Bankruptcy Code, 2016

In the Application of

IA No. 1870/MB/2020

CA Manish Sukhani,
Resolution Professional of **Indsur Global Limited,**
Now Known as **Casting Dynamics Limited,**
[CIN: U40100MH1994PLC080707]
Office at B-213, Orchard Road Mall, Royal Palms,
Aarey Colony, Goregaon (East), Mumbai - 400065

...Applicant/ Resolution Professional

And

In the Application of

IA No. 1579/MB/2021

Mr. Amit Lodha

(Suspended Director of Corporate Debtor)

...Applicant

In the matter of

Associated Road Carriers Limited

... Original Petitioner / Operational Creditor

Versus

Indsur Global Limited

Now Known as

Casting Dynamics Limited

... Original Respondent / Corporate Debtor

Order Delivered on :23.06.2023

Coram:

Hon'ble Member (Judicial) : Mr. H.V. Subba Rao

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Applicant : Mr. Avinash Khanolkar, Advocate.

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. This Application is filed by the Resolution Professional for Liquidation of the Corporate Debtor namely **Indusar Global Limited** Now Known as **Casting Dynamics Limited** seeking liquidation of the Corporate Debtor and appointment of Resolution Professional as the Liquidator.

Facts in the Application can be briefly stated as under:

2. Associated Road Carriers Limited had filed an Application to initiate the CIRP against the Corporate Debtor u/s.9 of the Insolvency and Bankruptcy Code, 2016, and was placed under CIRP vide Order dated 24.09.2019. Further, vide the said Order the Applicant was appointed as the Interim Resolution Professional.

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3. The Applicant had issued public notice on 15.10.2019 inviting the claims by the stakeholders of the Corporate Debtor.
4. It is further submitted that pursuant to the received claims, the Applicant had formed a Committee of Creditors of the Corporate Debtor (hereinafter referred to as the “CoC”) consisting of 6 Financial Creditors namely, Axis Bank, Bank of Baroda, SBI Global Factors Limited, Siemens Financial Services Private Limited, S. Subramanyan & Co., Fortune Bell Commodities Private Limited.
5. In the first meeting of the CoC held on 29.11.2019, the Applicant, Mr. Manish Sukhani was confirmed as the Resolution Professional.
6. Further, in the 2nd meeting of the CoC held on 30.12.2019, the Applicant published Form – G inviting the Expression of Interest (hereinafter referred as the “EoI”) for Resolution Plan of the Corporate Debtor. It is further submitted that vide the said published notice the last date for submitting the EoI was 14.01.2020, that the Applicant had received two EoIs before this cut-off date. Hence the Applicant informed to those interested Resolution Applicants that the last date for submission of Resolution Plan, as per Form-G was 28.02.2020.
7. The said interested Applicants requested for certain accommodation with the cut-off date. This Applicant placed this fact before the CoC in

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its 4th meeting. After considering the situation the CoC extended the cut-off date to 31.03.2020 for submission of Resolution Plan and to accommodate the request of an interested Resolution Applicant.

8. It is submitted that due to outbreak of COVID-19 Pandemic in the first week of March, 2020 the interested Resolution Applicants neither submitted any Resolution Plan by 31.03.2020 nor asked for any further extension for submission. Considering the developments and the outbreak of pandemic situation the CoC resolved that in the interest of the revival of the Corporate Debtor, to publish a fresh Form-G.
9. It is further submitted that based thereupon the Applicant has caused the necessary publication of fresh Form-G on 10.06.2020. Pursuant to this fresh publication, the cut-off date for submitting the EoI was 25.06.2020.
10. However, it is submitted that this time no EoI was received by the Applicant. The said fact was placed before the CoC in its 6th meeting held on 03.07.2020. Though the CIRP as against the Corporate Debtor commenced on 25.09.2019 because of certain facts and circumstances, in total, 50 days were wasted and no CIRP could run in the said period. Therefore, the applicant preferred an Application before this Tribunal to seek exclusion of the said period from the

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CIRP and this Tribunal excluded this period from the CIRP vide Order dated 17.02.2020. Pursuant thereto the 180th day of the CIRP was on 11.05.2020.

11. However, due to outbreak of COVID-19 Pandemic the Union of India declared a nationwide Lockdown w.e.f. 25.03.2020 which was in force till 07.06.2020. Consequently, for the period of 48 days i.e. from 25.03.2020 till 11.05.2020 the applicant could not carry forward the CIRP.
12. Relying on the Order of Hon'ble NCLAT dated 30.03.2020 in Suo-moto Company Appeal (AT)(Insolvency) No.01 of 2020 excluded the period of 48 days from the CIRP of the Corporate Debtor. Therefore, the statutory period of 180 days was ending on 25.07.2020.
13. Since the CoC resolved for extension of the CIRP period by further 90 days under the provisions of Sec.12(2) of the Code, the Applicant preferred an Application with this Tribunal to that effect. This Tribunal allowed the said Application and extended the CIRP period till 23.10.2020 vide an Order dated 06.08.2020. The copy of the said Order is annexed to the Interlocutory Application as Annexure – 1.
14. Based thereupon the Applicant called for 7th CoC meeting on 19.08.2020. In this meeting the CoC resolved to extend the timeline for submitting EoI till 31.08.2020. The Applicant placed on record

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that it had received an Email from Mr. Amit Lodha, Director (with suspended powers) of the Corporate Debtor merely showing Mr. Lodha's interest in submitting EoI. Beside the said e-mail Mr. Lodha has neither submitted any documents nor any EMD amount as asked in Form – G published on 10.07.2020. This fact has been brought to the knowledge of Mr. Lodha by email and the Applicant has asked Mr. Lodha to submit his proper EoI by 31.08.2020. Copies of the both the emails are annexed to the Interlocutory Application as Annexure – 2 (colly).

15. However, no valid EOI has been received by the Applicant. The CoC in its 8th meeting dated 07.09.2020 checked the possibility of submission of Resolution Plan by Mr. Lodha. At that time Mr. Lodha informed the CoC that he is keen in submitting the same and has already approached one investor who is ready and willing to invest funds for the Corporate Debtor. It also transpired in the said meeting that there are certain points which bears impact over the qualification of Mr. Lodha to become Resolution Applicant and that require judicial interpretation of this Tribunal. Hence, the Applicant and CoC advised Mr. Lodha to move an application before this Tribunal and seek its permission to submit the Resolution Plan. The copy of the minutes of 8th CoC is annexed to the Interlocutory

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Application as Annexure 3. Accordingly, Mr. Lodha moved an Application bearing IA 1567/2020 in CP(IB)-4697/MB/2019 and the same is pending Adjudication.

16. It is hereby stated and submitted that since the Application of Mr. Lodha is yet to be adjudicated till date neither the Applicant nor the CoC is in position to entertain Resolution Plan even if submitted by Mr. Lodha.
17. In these factual developments the CoC held two more meetings on 15.10.2020 and 22.10.2020 respectively to consider the way forward in the CIRP. In meeting of 15.10.2020 it was decided to wait till end of statutory period of CIRP to decide over the Liquidation in hope of the adjudication over Mr. Lodha's Application. A copy of the minutes of the said meeting is annexed as Annexure – 4.
18. Further, in the last CoC meeting held on 22.10.2020 the Applicant informed the CoC that Mr. Lodha's Application is still pending for Adjudication and consequentially as on date there is neither any effective EoI nor any Resolution Plan for the Corporate Debtor and 23.10.2020 is last date day i.e. 270th day of the CIRP. Hence, it would be in line with provisions of Sec.33(1)(a) of the Code to go for Liquidation of the Corporate Debtor.

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19. The CoC is of the view that if permissible under law or under appropriate directions by this Tribunal, pending Mr. Lodha's Application, before this Tribunal, the Committee of Creditors prefers to explore the possibility of approving a resolution plan for the Company and not passed any specific Resolution for Liquidation of the Corporate Debtor. However, the points for Estimated Liquidation Cost, Liquidation as Going Concern and Appointment of Liquidator is considered by the CoC and the same are put for e-voting.
20. It is submitted that, the statutory period of the CIRP has expired, the applicant is moving this Application under Sec.33(1)(a) of the Code seeking a Liquidation Order of the Corporate Debtor despite lack of CoC's express Resolution to that effect.
21. We have heard the submissions advanced by the Applicant and perused the records. It is evident that statutory period for completion of insolvency process has expired long ago in 23.10.2020. Section 33(1)(a) clearly stipulates that if no resolution plan received by the CoC this Adjudicating Authority shall pass an order requiring the Corporate Debtor to be Liquidated.
22. The submission advanced by the Applicant that one Mr. Lodha has expressed interest in submitting EOI vide his email dated 31.08.2020 cannot be taken into consideration. It is evident from mere perusal of

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records that Mr. Lodha has not even deposited the EMD amount nor has submitted an effective Resolution Plan.

23. IA No. 1579 of 2021 was filed by Mr. Amit Lodha seeking direction that he may be allowed to participate in the Resolution Process of the Corporate Debtor. The said IA No. 1579 of 2021 was filed on 30.09.2021. The last date for submission of EOI in terms of the fresh Form -G was 31.08.2020.
24. Mr. Amit Lodha, has chosen to file an Application before this Tribunal after lapse of more than one year, that too even without depositing the EMD amount which clearly demonstrates his lack of bona fide to go for any EOI. It is evident, from his conduct that these are nothing but a ploy to stall the resolution process of the Corporate Debtor.
25. Considering, totality of the circumstances this Bench is of the view that there is no alternative except to pass that the Corporate Debtor to be liquidated.
26. Since, the name of the company was not reflected in the MCA master data, the matter was put up for clarification on 19.05.2023. Ld. Counsel for the Liquidator has brought to our notice that the name of the Corporate Debtor has been changed to “M/s Castings Dynamics Limited” w.e.f 19.10.2019. The Liquidator has filed additional

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affidavit bringing on record the certificate of Incorporate pursuant to change of name. The Liquidator is directed to carry out the necessary amendments.

27. The RP has given his consent to act as liquidator, the same is on record. Therefore, we hereby appoint Mr. Manish Sukhani, having IBBI Registration No. IBBI/IPA-001/IP-P00668/2017-18/11137 as the Liquidator of the Corporate Debtor Indsur Global Limited.
28. This order for liquidation shall deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.
29. The fees payable to the Liquidator shall be in accordance with Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016.
30. The Liquidator shall submit progress reports as per Regulation 15 of the IBBI (Liquidation Process) Regulations, 2016.
31. The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.
32. With the aforesaid observations Application **IA No. 1870 of 2020**, **U/s. 33 (1) (a)** stands disposed of as **Allowed**. **IA No. 1579 of 2021 is**

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rendered infructuous in view of Liquidation Order passed in IA No.
1870 of 2020.

33. Order Accordingly.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

23.06.2023

Priyal

Sd/-

H.V. SUBBA RAO
Member (Judicial)