



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **28.11.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : Fatech and Finance Pvt Ltd

MAIN PETITION NUMBER : CP(IB)/153(CHE)/2023

(IA/MA) APPLICATION NUMBERS

IA/1330/(CHE)/2024; IA(Liq)/27(CHE)2024

ORDER

IA/1330/(CHE)/2024;IA(Liq)/27(CHE)2024

Present: None for the Applicant / IRP.

None for the Respondent.

Vide common order pronounced in Open Court, IA/1330/(CHE)/2024 is dismissed. IA(Liq)/27(CHE)2024 is allowed. The company M/s. Fatech and Finance Pvt Ltd is liquidated. Shri. Venkatesh Nataraja is appointed as Liquidator.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)



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

IA(IBC)(LIQ)/27/CHE/2024 in CP(IB)/153/CHE/2023

*(Filed under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 read with
Rule 11 of NCLT Rules, 2016)*

In the matter of *Fateh Leasing and Finance Private Limited*

Mr. S. Kangayan,

Insolvency Resolution Professional of
Fateh Leasing and Finance Private Limited
Plot No. 81, 3rd Street, Dollars Colony,
Vengambakkam, Tambaram East, Chennai - 600 126.

... Applicant

Along with

IA(IBC)/1330/CHE/2024

In

CP(IB)/153(CHE)/2023

*(filed under section 19(2) read with section 60(5) of Insolvency and Bankruptcy
Code, 2016)*

S. Kangayan

Insolvency Resolution Professional of
Fateh Leasing and Finance Private Limited
Plot No. 81 , 3rd Street, Phase I, Dollars Colony,
Vengambakkam, Tambaram East,
Chennai - 600 126.

...Applicant

Versus



1. **The Assistant General Manager**

Bank of Baroda Stressed Assets Management Branch
4th Floor, JBAS Building, Moore Street,
Chennai 600 001

...1st Respondent

2. **The Assistant General Manager**

Stressed Asset Management Branch Union Bank of India
No.38&39, Whites Road, Chennai 600014

...2nd Respondent

Order Pronounced on 28th November, 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant/ Resolution Professional : *Sarath Babu, Advocate*
For Financial Creditor : *Ramasubramaniam Raja, Advocate*
For Corporate Applicant/Corporate Debtor : *Rohan Rajasekaran, Advocate*

ORDER

(Heard Through Hybrid Mode)

This is an application filed under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 seeking reliefs as follows:

- (1) *The Applicant, therefore respectfully prayed that, to order to initiate liquidation of the corporate debtor of M/s. Fateh*



Leasing and Finance Private Limited under section 33(1) of IBC, 2016.

- (2) To appoint any Liquidator from the panel of professional maintained by this Hon'ble Tribunal to the corporate debtor of M/s Fateh Leasing and Finance Limited*
- (3) To order for release of Professional fee prescribed by IBBI under CIRP Regulations, 2016, and*
- (4) Pass such further orders or orders may deem fit in the facts, nature and circumstances if the case, and thus render justice.*

2. It is stated that the Corporate Applicant was admitted to CIRP vide order of this Tribunal dated 08.01.2024 in CP(IB) 153/CHE/2023. As per Form H filed as Annexure VI of the Application, the public announcement regarding initiation of the CIRP was published by the IRP on 13.01.2024. The IRP constituted the Committee of Creditors ("CoC") and the report was filed before this Tribunal.

3. The 1st CoC meeting was held on 17.02.2024. However, due to technical difficulties, the agenda was proposed to be discussed in the 2nd CoC meeting.



4. The 2nd CoC meeting was held on 13.03.2024. It is stated that the Corporate Applicant is the Guarantor and the Associate Company of M/s. SBQ Steels Limited. As M/s. SBQ Steels Limited was dissolved, all the Associate Companies/Guarantors have filed applications for initiation of CIRP. The CoC expressed that initiation of CIRP by the all the Associate Companies/Guarantors has increased the cost burden of the CoC as they are bound to meet the consequential CIRP costs. It was stated by the promoters that they have borne the CIRP costs in the matter of M/s Lokesh Secfin Private Limited, another corporate guarantor of M/s. SBQ Steels Limited. However, this proposal was rejected on the grounds that the same is not permissible under IBC, 2016. It is stated that no resolution was passed in the 2nd CoC meeting.

5. The 3rd CoC meeting was held on 10.04.2024 wherein a resolution was passed in favour of reduction of the time of notice period for calling a CoC meeting and for meeting the expenses of paper publication in FORM-A for invitation of claims. However, the resolution pertaining to bearing CIRP cost was not passed by the CoC. Hence, the Applicant filed an interim application under



Section 19(2) read with 60(5) of IBC, 2016 in **IA 1330/(CHE)/2024**

and the following reliefs were sought:

- (1) *Direct the committee of creditors to co-operate with the Resolution professional by funding the CIRP cost and reimburse the actual expense incurred for the corporate debtor of M/s. Fateh Leasing and Finance Private Limited*
- (2) *Pass any other orders as this Hon'ble Tribunal may deem fit under the circumstances of the case and thereby render justice*

6. In the 4th CoC meeting held on 14.06.2024, it was proposed by the Applicant to vote on resolution for initiation of liquidation.

However, CoC sought two weeks' time for voting on the resolution.

The draft resolution for initiation of liquidation was circulated and time was granted up to 29.06.2024 for voting on such resolution.

7. It is stated that the CIRP period of 180 days as per Section 12 of IBC expired on 05.06.2024. The instant application has been filed on 19.07.2024. It is stated as on the date of filing the instant application, no resolution has been passed by the CoC for extension of resolution period or the liquidation of the Corporate Applicant.



8. During the hearing dated 05.09.2024, it was submitted by the Corporate Applicant that it has paid the initial fee of Rs. 2 lakhs. It was stated that the Corporate Applicant has no assets and the Company has to be liquidated. It was submitted by the Financial Creditor that it will be burdened with unnecessary costs if a liquidation order is passed as it would be liable to pay the liquidation expenses in proportion and that the Corporate Applicant ought to fund the liquidation.

9. The 1st Respondent in IA 1330/(CHE)/2024, Bank of Baroda, filed its counter statement on 18.07.2024 vide S.R. No. 3622. It was stated that Bank of Baroda and Union Bank of India have made a claim of Rs. 756,09,48,751/- and Rs. 350,74,54,309/- respectively. The voting share of the Respondent is 68.91%. This Tribunal had directed the Corporate Applicant to pay Rs. 2,00,000/- to the IRP to meet out the CIRP expenses vide order dated 08.01.2024 in CP(IB) 153/CHE/2023, however the Applicant despite receiving the same from the Corporate Applicant, has been demanding the same from the CoC. Further, agendas proposed in CoC meeting such as reimbursement of expenses for paper publication, IRP fee of Rs. 3,00,000 plus GST



and thereafter, a fee of Rs. 3,00,000 plus GST per month, approval for raising interim finance of Rs. 2,00,000 and Rs. 2,00,000 for conducting Forensic/Transaction Audit would increase the financial burden of the Financial Creditors. Hence, the CoC rejected all these agendas.

10. It is stated that the sole asset of the Corporate Applicant was investment in M/s. SBQ Steels Ltd which was dissolved by this Tribunal vide order dated 11.02.2022 in MA/5/2021 in CP 665/IB/2017. Since there are no assets in the Corporate Applicant and no amount is realizable, CIRP would result in unnecessary costs to the CoC. It is stated that Bank of Baroda is a public sector bank and cannot bear the expenses for funding the Corporate Debtor's agenda for wiping away its tax liability and statutory liability. If the financial creditors bear the CIRP expenses without realization of assets, it will cause grave prejudice to the financial creditors and the public at large and will be against the objective and spirit of IBC.



11. The Corporate Applicant filed a memo on 04.09.2024 vide S.R.No. 4447, wherein it is stated that this Tribunal, vide order dated 13.08.2024 in IA (Liq)/4 (CHE)/2024 in CP(IB)/31 (CHE)/2023 in the matter of M/s. Lokesh Secfin Private Limited, had directed the Resolution Professional of the company herein to file an early dissolution application under Regulation 14 and complete the entire process within 2 months. The RP's fee was fixed as Rs.1,00,000/- to be borne equally by the Financial Creditors and the Suspended Directors of the company. It was stated that the order is relevant in the instant case as M/s. Lokesh Secfin Private Limited and the Corporate Applicant are corporate guarantors of M/s. SBQ Steels Ltd.

12. We have heard the submissions and perused the record.

13. The Applicant has annexed Form-H and the same is placed at Page Nos. 37-43 of the Application typeset. As per the Form H filed, no publication of Form-G inviting Expressions of Interest (EOIs) for the resolution of the Corporate Applicant was made as the same was not approved by the CoC. Further, it is seen from Form-H that there is no determination as to whether the Corporate Applicant



has been subjected to any PUFÉ transactions as CIRP costs were not met by the CoC.

14. It is seen that the Corporate Applicant was admitted to CIRP vide order of this Tribunal dated 08.01.2024 in CP(IB) 155/CHE/2023. As per Section 12 of IBC, 2016, the corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of the application to initiate CIRP. The Resolution Professional in accordance with resolution passed by CoC may file an application under before this Tribunal for extension of CIRP period. Section 12 is reproduced as under:

“ 12. Time-limit for completion of insolvency resolution process.

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 1[sixty-six] per cent. of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:



Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

[Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.]”

15. Section 33 is reproduced as under:

33. Initiation of liquidation.

(1) Where the Adjudicating Authority,-

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast-track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall--

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.



(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors 1[approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[Explanation.-- For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

(3) Where the resolution plan approved by the Adjudicating Authority 3[under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) shall 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.

(7) The order for liquidation under this section shall be 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.

16. As per Section 33(1)(a) of IBC, 2016, liquidation proceedings may be initiated against the Corporate Debtor, when no resolution plan is received before the expiry of the insolvency resolution process period or before the maximum period permitted for completion of the corporate insolvency resolution process under Section 12 of IBC, 2016. In the present case, no resolution plan has been received before the expiry of the CIRP period on 06.07.2024. Admittedly, no resolution has been passed by the CoC members for the liquidation of the Corporate Debtor. Since no resolution plan has been received and an application for extension of CIRP has not been filed, liquidation process is to be initiated against the Corporate Applicant in terms Section 33(1)(a) of IBC, 2016. We therefore order for initiation of liquidation proceedings against the Corporate Debtor, M/s Fateh Leasing and Finance Private Limited.



17. During the hearing held on 08.11.2024 in relation to IA 1330/(CHE)/2024, it was submitted as under:

Ld. Counsel appearing for Bank of Baroda submits that the Bank has fully cooperated with the RP. The initial payment was made by the Corporate Debtor. He submits that since there are no assets with the Corporate Debtor, the Bank has no objection if the Corporate Debtor be liquidated and dissolved.

In pursuant to the Order dated 05.09.2024, Ld. Counsel for the suspended directors submits that suspended Directors are willing to pay Rs.1,00,000/- as full and final payment to the RP/Liquidator to complete the process of liquidation and winding up of the Corporate Debtor.

Ld. Counsel for RP on instructions submits that RP accepts the offer.

18. Considering the submissions as above, we appoint Shri. **S.Kangayan with Reg No: IBBI/IPA-002/N00866/2019-2020/12770 (e-mail Id: kangayan.s@gmail.com) (AFA is valid till 31.12.2025)** RP as the Liquidator. His fee is fixed as Rs.1,00,000/- (Rupees One Lakh only)



which shall be borne by the Suspended directors of the Corporate Debtor.

19. The Liquidator of the Corporate Applicant, 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 her.
- b) The Liquidator shall issue the public announcement that the Corporate Applicant is in liquidation. In relation to officers/ employees and workers of the Corporate Applicant, 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 Applicant 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 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.



- e) The Liquidator is directed to investigate the financial affairs of the Corporate Applicant 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.

- f) 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.

20. The Registry is directed to communicate this order to the Registrar of Companies, concerned and to the Insolvency and Bankruptcy Board of India;

21. 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.



22. Copy of this order be sent to the financial creditors, Corporate Applicant and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Applicant.

23. With the above said directions, this **IA(IBC)(LIQ)/27/CHE/2024** filed for Liquidation of the Corporate Applicant stands **allowed**.
IA(IBC)/1330/2024 is also **disposed of**.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Hresha S