

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

IA/IBC/572/CHE/2022 in IBA/773/2020

*(Filed under Section 33(2) read with Section 60(5) of the Insolvency and
Bankruptcy Code, 2016*

In the matter of **SM Ramcoal Importers Private Limited**

CA Kathiresan Nachimuthu

RP of SM Ramcoal Importers Private Limited
"Raji" 3B1, 3rd Floor, Gaiety Palace,
No.1L-Blackers Road, Mount Road,
Chennai- 600 002

... Applicant

Along with

IA/IBC/124/CHE/2022 in IBA/773/2020

*(Filed under Section 19 (2) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 of the NCLT Rules, 2016)*

CA Kathiresan Nachimuthu

RP of SM Ramcoal Importers Private Limited
"Raji" 3B1, 3rd Floor, Gaiety Palace,
No.1L-Blackers Road, Mount Road,
Chennai- 600 002

... Applicant

-Vs-

1. Mr.Senthurpandi Ramar

1/142, Meelavittan,
Thoothukudi – 628 002

2. Mr.Sivagami Ramar,

1/142, Meelavittan,
Thoothukudi – 628 002

3. Mr.Madasamy Senthoorpandi

No.1A/316, Main Road,
Meelavittan Post,
Thoothukudi – 628 002

... Respondents

Order Pronounced on **2nd November 2022**

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant : *S Sathyanarayana, Advocate*

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

I. IA/IBC/124/CHE/2022

This is an Application filed by the RP of the Corporate Debtor under Section 19(2) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking relief as follows;

- (a) Direct the Respondents to assist and co-operate with the Applicant in managing the affairs of the Corporate Debtor.
- (b) Direct the Respondents to provide the Applicant with statutory records, books of accounts and other details of the Corporate Debtor as listed in above; and
- (c) Pass such further or orders/ reliefs as may be deemed fit and proper in the facts and circumstances of the case and thus render justice.

II. IA/IBC/572/CHE/2022

This is an application filed under Section 33(2) read Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows:



- (i) Pass an order of Liquidation of the Corporate Debtor viz., M/s SM Ramcoal Importers Private Limited and;
- (ii) Appoint any other Insolvency Professional as Liquidator of the Corporate Debtor;
- (iii) Pass such further or orders/ reliefs as may be deemed fit and proper in the facts and circumstances of the case and thus render justice.

2. From the averments made by the Applicant, it is evident that the CIRP of the Corporate Debtor was initiated on 13.10.2021 and the Applicant herein was appointed as the IRP by the order of this Tribunal.

3. Pursuant to the order of CIRP, the IRP had caused Public Announcement in Form A on 21.10.2021. It is averred in para 3 of the application that prior to the last date of submission of claims, the applicant received claims from the following creditors:

S.No	NAME OF FINANCIAL CREDITOR	AMOUNT CLAIMED AND ADMITTED IN RS.
1.	TamilNadu Mercantile Bank	15,33,64,624.19
2.	Green Gold Global Resources Private Limited	2,65,45,998.00
3.	ESIC	92,999.00
4.	GST (The Assistant Commissioner of CGST & Central Excise, Thoothukudi)	13,39,98,434



4. Further, it is submitted that as the claim was received from one Financial Creditor, the Committee of Creditors (CoC) was constituted with the Sole Financial Creditor.

5. It was further averred in the application that the Applicant visited the registered office of the Corporate Debtor. Upon enquiry with Chief Manager of Tamil Nadu Mercantile Bank Limited (Sole Financial Creditor), the Applicant was informed that the property at the registered office was offered to the financial creditor as collateral against various credit facilities offered to the corporate debtor. Further it is also mentioned that the property was not in the name of the corporate debtor and that the said property was sold by Tamil Nadu Mercantile Bank Limited prior to the insolvency commencement date i.e., 13.10.2021.

6. To summarise the relevant facts in brevity, it is seen from the facts of the case that Additional information with respect to details of all security and guarantee offered to the financial creditor was requested from the sole Financial Creditor vide email dated 30.10.2021 and IRP is yet to receive all the information requested with respect to the number of assets that were provided as collateral

security against various loans already sold prior to the Insolvency commencement date.

7. Further, it can be seen that on 03.11.2021, the Applicant sent a letter seeking certain documents of the Corporate Debtor to the suspended director but the Applicant did not receive any reply to the said request and even after various efforts taken by the RP to contact and negotiate with the erstwhile directors. The same is averred in Para 7 of the application by the Applicant.

8. Based on the above said averment, the RP preferred an application under section 19 of the IBC, 2016 bearing IA/124(CHE)/2022 seeking co-operation from the suspended directors to hand over various documents with respect to books of accounts and other relevant documents of the Corporate Debtor.

9. It is averred in para 14 of the Application that in the 4th COC meeting held on 06.04.2022, the COC after discussions and deliberations resolved to liquidate the Corporate Debtor unanimously. The minutes of the 4th COC meeting is annexed as page 22 of the Application typeset.

"RESOLVED that subsequent to the decision taken by the Committee of Creditors at this Fourth meeting of

Committee of Creditors, the Corporate Debtor "S.M.Ramcoal Importers P Ltd" be liquidated and the Resolution Professional is authorized to apply with the Honorable National Company Law Tribunal, Chennai Bench for the liquidation of the Corporate Debtor under Section 33(2) of the IBC"

10. In relation to IA/IBC/124/2022 it is seen that the RP in para 11 of the Application has requested for certain documents to be furnished by the Respondent / suspended Director. It can be seen that various steps has been taken by the Applicant RP to communicate and seek cooperation from the Respondents/Suspended directors. The Applicant has placed the list of documents and information from the Respondents as stated in the para 11 of the application and the same is extracted hereunder:

- a. Trial balance as on balance sheet along with Tally backup, working sheets and supporting documents;
- b. Fixed asset register and depreciation working statement;
- c. Addresses of the Thoothukudi Principal office along with contact numbers of persons in charge;
- d. Contact details of the Statutory auditor and Company secretary of the Corporate Debtor along with the address, email Id and phone numbers,
- e Last 3 year Income tax returns and the relevant details;
- f. Last 3 year GST returns and relevant details,
- g. ESI, EPF, GST, Income Tax Details and returns filed;

h. Online access user ID's and password for submitting returns and records to regulatory authorities like Income Tax, GST, ICS, IEC, ESI, EPF and other applicable authorities;

i. Details of banking arrangements and loan & credit facilities availed, along with copies of loan sanction letters and other security documents;

j. Details of employees of the Corporate Debtor along with contact details and last two months salary sheet;

k. Fixed asset details and insurance coverage;

l. Details of Bank Guarantee given:

m. Information relating to assets, finances and operations of your Corporate Debtor for determining the financial position of the Corporate Debtor, including information relating to

i. Business operations for the previous two years,

ii. Financial and operational payments for the previous two years;

iii. List of assets and liabilities as on 01.11.2021;

n. Loan statements as on the CIRP initiation dated;

o. List of trade receivables/ creditors with contact person details and bill wise outstanding analysis;

p. Income Tax Computation Statement and copy of the acknowledgment of filing the return for the last two years;

q. Bank statements of the Corporate Debtor as on 01.11.2021;

r. Cash flow statement for the last two years;

s. Details of key personnel along with contact number

t. List of assets owned by the Corporate debtor

u. List of statutory Registrations & Compliances which the company is subject to.

v. Minute books of Board of directors and Committee of the Board maintained as per Companies Act;

w. Minute books of the General Meeting and creditor meeting;

x. Registers and records as required to be maintained under the Companies Act.

11. Under the circumstances, we direct the Respondents to provide the copy of the documents as stated in para 11 of the Application to the Applicant / proposed Liquidator within a period of 15 days from the date of this order. Since we are inclined to order for liquidation of the Corporate Debtor, the proposed liquidator appointed, if necessary can file an application seeking cooperation of the board in the liquidation process under Regulation 9 of the IBBI (Liquidation Process) Regulations, 2016. With the above said directions, IA/IBC/124/2022 stands **disposed of**.

12. In so far as IA/572/CHE/2022 is concerned, it can be seen from the averments made in the Application and the submissions made by the Learned Counsel for the Applicant that the Committee of Creditors in the 4th COC meeting held on 06.04.2022 has resolved to liquidate

the Corporate Debtor. Further the RP has submitted FORM-H as per Regulation 39 (4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 and the same is placed at Page Nos. 31 to 37 of the additional typeset filed before this Tribunal. In such circumstances, this Adjudicating Authority concludes that this present application IA/572/CHE/2022 deserves to be **allowed**.

13. Further, It can be seen that the CoC has unanimously resolved to liquidate the Corporate Debtor under Section 33 (2) of the IBC, 2016 in the 4th CoC meeting dated 06.04.2022. The said section is extracted for reference:-

Section 33 (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 approved by not less than sixty-six percent 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)."

14. It is seen from the records and the documents placed before us that the Applicant/RP has not accorded his consent to act as a Liquidator of the Corporate Debtor. Thus as a consequence thereof, **Mr. S. Hari Karthik, [Reg No: IBBI/IPA-002/IP-N01201/2021-2022/14009] (Email sId: harikarthikscma@gmail.com)** 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.
- 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.

15. With the above directions, this IA/IBC/572/CHE/2022 stands **allowed.**

— Sd —

SAMEER KAKAR
MEMBER (TECHNICAL)

— Sd —

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Varshini