NATIONAL COMPANY LAW TRIBUNAL
SPEICAL BENCH – II, CHENNAI

IA/(IBC)/1688 &1687(CHE)/2023
In
CP/52(IB)/CB/2022

(filed under section 33(2) of the Insolvency & Bankruptcy Code, 2016)

In the matter of ***Devas Engineering Systems Private Limited***

MR. K. SIVALINGAM
Resolution professional of Devas Engineering Systems Private Limited
Reg. off:
Flat No. 1603, Tulive Horizon Residences,
Arunachalam Road, Saligramam,
Chennai

… Applicant/Resolution Professional

In the matter of

Union Bank of India …Financial Creditor

-Vs-

M/s. Devas Engineering Systems Private Limited … Corporate Guarantor

CORAM

SHRI. SANJIV JAIN, MEMBER (J)
SHRI. RAVICHANDRAN RAMASAMY, MEMBER (T)

Appearances:
For Applicant - *Mr. Anant Merathia, Ms. Priyanka Varma & Ranghasayee, Advocates*

Order Pronounced on ***17th November, 2023***

ORDER

(Hearing Conducted through Video Conferencing)

1. IA/(IBC)/1688(CHE)/2023 in CP(IB) /52(CHE)/2022 is an application filed by Mr. K. Sivalingam, Resolution Professional of Devas Engineering Systems Private Limited seeking reliefs as follows,

a) Condone the delay of 39 days in filing the application under sec 33 of the Insolvency and Bankruptcy Code, 2013 having e-filing *number – 3305118/021186/2023 filed on 22.07.2023 for Liquidation of Corporate Debtor;*

b) *To pass such other orders or directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of the case.*

2. It is stated that CIRP in respect of the Corporate Debtor was initiated on 09.09.2022 and the Applicant herein was appointed as the IRP. Thereafter, the Applicant had filed IA(IBC)858(CHE)/2023 seeking extension of CIRP period for 90 days from 13.03.2023. It is stated that the order for extending CIRP period of the Corporate Debtor was only passed on 26.06.2023, which was after the expiry of 270 days of CIRP. It is submitted that the Applicant was not in a position to file an application for Liquidation of the Corporate Debtor within the expiry of CIRP Period and has sought to condone the period subsumed in above proceedings.

3. As submitted and perusal of the records, we see that the order extending CIRP of the Corporate Debtor was passed on 26.06.2023, where the 270th days of CIRP expired on 11.06.2023. Since, the delay quoted by the applicant is found to be genuine and considering the status of the Corporate Debtor we deem it fit to condone the delay of 39 days in filling the main liquidation application. Accordingly, ***IA/(IBC)/1688(CHE)/2023*** is ***allowed*** and disposed of.

4. IA/(IBC)/1687(CHE)/2023 in CP(IB) /52(CHE)/2022 is an application filed by Mr. K. Sivalingam, Resolution Professional of Devas Engineering Systems Private Limited seeking reliefs as follows,

c) *That the Bench may pass orders to liquidate the Corporate Debtor as per Section 33 of the Insolvency and Bankruptcy Code, 2013 read with Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;*

d) *That the Bench may appoint SPP Insolvency Professionals LLP having Reg. No. IBBI/IPE-0143/IPA-1/2022-2023/50033 as the Liquidator of the Corporate Debtor as recommended by the CoC; and*

e) *To pass such other orders or directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of the case.*

5. M/s. Devas Engineering Systems Private Limited, Corporate Debtor, was admitted into Corporate Insolvency Resolution Process (herein after referred to as 'CIRP') vide an order dated 09.09.2022 passed by this Adjudicating Authority. Mr. K. Sivalingam, the applicant herein was appointed as the Interim resolution professional for the Corporate Debtor.

6. The dates and events subsequent to initiation of CIRP of the Corporate Debtor are as follows,

Sl. No.	*Date*	*Events*
1.	16.09.2022	Public Announcement in Form –A, calling for claims was made in Financial Express (All India – English) & Dhinasuryan (Chennai & Hosur - Tamil). Communication to IBBI was also sent.
2.	28.09.2022	Last date for submission of claims.
3.	07.10.2022	Constitution of Committee of Creditors (CoC)
4.	14.10.2022	*1st CoC Meeting*– The IRP Mr. Mr. K. Sivalingam was confirmed to act as the Resolution Professional of the Corporate Debtor.
5.	09.11.2022	*2nd CoC Meeting* – Decision regarding eligibility for resolution applicants, appointment of valuers were considered and approved.
6.	12.11.2022	*Issuance of Form –G* with last date for EoI as 27.11.2022
7.	09.12.2022	*3rd CoC Meeting* – Discussion regarding non receipt of EoI's till 27.11.2022.

8.	25.01.2023	*4th CoC Meeting* – Deliberations were made as to whether to issue Form-G for the 2nd time or to proceed with Liquidation of the Corporate Debtor. Resolution was passed to issue Form-G for the 2nd time.
9.	26.01.2023	*Issuance of Form –G* for the 2nd time with last date for EoI as 10.02.2023.
10.	20.02.2023	*5th CoC Meeting* – Discussion regarding one eligible prospective applicant was made. Resolution as to extend the CIRP period of the Corporate Debtor was passed with 100 % voting.
11.	13.03.2023	*180th day of CIRP*
12.	29.03.2023	*6th CoC Meeting* – The Resolution Professional informed the CoC that no Resolution Plan is received.
13.	28.04.2023	*7th CoC Meeting* – Discussion regarding the Valuation Report and transaction audit were made. Discussion as to liquidate the Corporate Debtor was also made.
14.	26.06.2023	Order in IA(IBC)858(CHE)/2023 extending CIRP period of the Corporate Debtor from 13.03.2023 for a period of 90 days.
15.	28.06.2023	*8th CoC Meeting* – Discussion regarding Transaction Audit Report was made.
16.	03.07.2023	*9th CoC Meeting* – Resolution for Liquidation of Corporate Debtor was passed by the CoC.

7. It is stated that the while deciding on liquidation of the Corporate Debtor, the CoC made following recommendations under various provisions of the CIRP Regulations:

- *In compliance of Regulation 39B of the CIRP Regulations, the Applicant placed an estimate of liquidation costs for consideration of the CoC, however, the CoC opined that liquidation cost can be assessed by the liquidator pursuant to the initiation of liquidation proceedings and same shall be funded by the stakeholders on need basis and hence no contribution for liquidation cost was approved.*

- *In compliance of Regulation 39C of the CIRP Regulations, the Applicant sought recommendation of the CoC on going concern sale of the Corporate Debtor. The CoC recommended that the sale of the*

Corporate Debtor shall not be done as a going concern in the liquidation process.

- *In compliance of Regulation 39D of the CIRP Regulations, the Applicant sought views of the CoC on the fee of the liquidator, however, the CoC opined that the fee payable to liquidator shall be considered and fixed in the first meeting of Stakeholders' Consultation Committee during the liquidation process.*

8. It is stated that, since the existing Resolution Professional is not eligible to act as a Liquidator due to expiry of Authorization of Assignment, the CoC proposed SPP Insolvency Professionals LLP having Reg No. IBBI/IPE-0143/IPA-1/2022-2023/50033 to be appointed as the Liquidator of the Corporate Debtor.

9. The CoC in its 9th CoC meeting held on 03.07.2023 resolved as follows,

> *"RESOLVED THAT owing to non-receipt of Resolution Plan during the Corporate Insolvency Resolution Process, the members of the Committee of Creditors of Corporate Debtor be and hereby decide to liquidate the Corporate Debtor in accordance with Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read with Rules and Regulations notified thereunder and approve the appointment of SPP Insolvency Professionals LLP having IBBI Registration No. IBBI/IPE-0143/IPA-1/2022-23/50033 as liquidator of the Corporate Debtor.*
>
> *FURTHER RESOLVED that Mr. K. Sivalingam, RP, be and is hereby authorized to file suitable application and intimate the Adjudicating Authority regarding decision of the Committee of Creditors for initiation of liquidation process against the Corporate Debtor and appointment of new liquidator.*
>
> *FURTHER RESOLVED that Mr. K. Sivalingam, RP, be and is hereby authorized to do all such acts and deeds as may be required for giving effect to the above said resolution."*

10. From the above facts and circumstances, considering the decision taken by the CoC of the Corporate Debtor this Adjudicating Authority deems it fit to order Liquidation of the Corporate Debtor. Accordingly, we order liquidation of the Corporate Guarantor by appointing **Ms. SPP Insolvency Professionals LLP** with Reg. No: **[*IBBI/IPE-0143/IPA-1/2022-23/50033*]** (e-mail ID: msureshkumar[at]icai[dot]org) as the Liquidator to carry out the liquidation process subject to the following terms/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 up to date enjoined upon him.

b) The Liquidator shall issue the public announcement that the Corporate Guarantor is in liquidation. In relation to officers/ employees and workers of the Corporate Guarantor, 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 Guarantor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file a suitable application before this Adjudicating Authority.

d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and 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 Guarantor, 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 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 Guarantor 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 individual 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 reports as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.*

Copy of this order be sent to the Financial creditors, Corporate Guarantor and the Liquidator for taking necessary steps and for extending the necessary cooperation in relation to the Liquidation process of the Corporate Guarantor.

11. With the above directions, *IA(IBC)/1687(CHE)/2023* in CP(IB)/52(CHE)/2022 stands **allowed** and disposed of.

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)