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

IA/IBC/1245/CHE/2022 in CP/IB/109/CHE/2021

(Filed under Section 33(1) (a), 33 (2) & 34 (1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016)

In the matter of **MILLENNIUM SOFT TECH (INDIA) PRIVATE LIMITED**

POOSAIDURAI S
RP for M/s Millennium Soft Tech (India) Pvt Ltd,
2nd Floor, No 185 Old No 100,
Poonamallee High Road,
Kilpauk, Chennai- 600 010.

... *Applicant*

Order Pronounced on **09th December 2022**

CORAM:

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

For Applicant : A G Sathyanarayana, *Advocate*

ORDER

***Per:* JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT**

This is an application filed under Section 33(1) (a), 33 (2) & 34 (1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 and 32 of the NCLT Rules, 2016 seeking an order of Liquidation against the Corporate Debtor viz., Millennium Soft Tech Private Limited.

2. From the averments made in the Application, it is evident that the CIRP of the Corporate Debtor was initiated on 14.12.2021 by a Section 9 Application and the Applicant herein was appointed as the Interim Resolution Professional ("IRP" for brevity) and the IRP had caused the Public Announcement on 19.12.2021.

3. From para 3 of the Application it can be seen that the Applicant RP has constituted the COC with Financial Creditor's consisting of IndusInd Bank, IDFC First Bank and Calibre Consultants along with the Operational Creditors.

4. The Ld. Counsel for the Applicant RP submitted that, in the First (1^{st}) COC meeting held on 20.01.2022 and Second (2^{nd}) COC meeting held on 02.02.2022 the IRP was confirmed as the RP etc. The detailed minutes of the 1^{st} and 2^{nd} COC is placed as Annexure 3 & 4 of the Application typeset.

5. Subsequently, from the Third (3^{rd}) COC meeting held on 19.04.2022, in which it was resolved to file an Application under Section 19 of the IBC, 2016 before this Tribunal owing to the unavailability of records. The copy of the minutes of the 3^{rd} COC meeting is placed as Annexure-5 of the Application typeset.

6. Further in the Fourth (4^{th}) COC meeting held on 11.05.2022 it was discussed that as no assets or relevant documents were available of the Corporate Debtor, it was resolved not to publish FORM-G inviting EOI of the Corporate Debtor. The minutes of the 4^{th} COC is placed as Annexure 6 of the Application typeset.

7. It was submitted that, in the Fifth (5^{th}) COC meeting held on 23.08.2022 the COC resolved to liquidate the Corporate Debtor with 95.34% voting majority, as there was no scope of resolution of the Corporate Debtor owing as there are no assets or relevant documents available to run the Corporate Debtor as a going concern. The said resolution is extracted hereunder:

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> **Discussion on the Liquidation of the Corporate Debtor:**
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> The Committee, upon elaborate discussion and deliberation of all the facts and circumstances, in its wisdom took the decision to liquidate the Corporate Debtor. The Committee instructed the Resolution Professional to intimate the COC's decision to the Adjudicating Authority.
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> The COC informed the RP that the expenses incurred by the RP and the lawyer expenses are part of CIRP expenses and will be part of the Liquidation Cost as laid down under Regulation 39B of the Insolvency Resolution Regulations, 2016 and suggested the RP to continue as Liquidator of the CD. However, the RP informed the COC about his unwillingness to continue as Liquidator.
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> The RP informed the COC that the Resolution for Liquidation of the corporate debtor has been approved since the

required percentage for approving the resolution is 66% and IndusInd Bank holding 95.34% as approved the Resolution.

"RESOLVED THAT the COC has recommended the RP to liquidate the Corporate Debtor and the Resolution Professional shall intimate the Adjudicating Authority of the decision of the Committee of Creditors to liquidate the Corporate Debtor"

8. Further from the minutes of the meeting annexed along with the application it can be seen that, the suspended director one Mr. V. Bhaskar was present during the 4th COC meeting held on 11.05.2022.

9. Heard the submissions of the Ld. Counsel for the Applicant. It can be seen from the submissions that with regard to the CIRP of the Corporate Debtor, the Committee of Creditors with a voting share of 95.34 % in the Fifth (5^{th}) COC meeting held on 23.08.2022 has resolved to liquidate the Corporate Debtor. In such circumstances, this Adjudicating Authority is left with no other option but to liquidate the Corporate Debtor and concludes that this present application deserves to be allowed.

10. At this juncture it is relevant to refer Section 33 of the IBC, 2016 which is as follows:-

Section 33 (2)

(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).

11. It is further seen that the Applicant RP has filed FORM-H dated 30.09.2022 and the same is placed as Annexure 8 of the Application typeset.

12. It is also seen from the records that the Applicant herein has not accorded the written consent to act as the Liquidator of the Corporate Debtor and has prayed for this Tribunal to appoint a Liquidator with regard to Liquidation process of the Corporate Debtor.

13. Under the abovementioned circumstances this Adjudicating Authority is left with no other choice but to liquidate the Corporate Debtor. We hereby **'allow'** the liquidation of the Corporate Debtor. Therefore **Mr. Tirumavalavan C.K** with Registration No *IBBI/IPA-*

001/IP-P-02067/2020-2021/13400 (e-mail: rvacas48@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 enjoined upon her.

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.

14. With the above directions, this IA/(IBC)/1245/CHE/2022 stands **disposed of.**

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SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Vinita Varshini. K