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

IA/(IBC)/984/CHE/2022 in IBA/990/2019

*(Filed under Section 33(1) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11& 32 of the NCLT Rules, 2016)*

In the matter of **Pondicherry Extraction Industries Private Limited**

Mr.RajalakshmiVardarajan

Resolution Professional of
Pondicherry Extraction Industries Private Limited
351/18, Second Floor, Ishwarya Flats,
36th Street, I Block,
Anna Nagar, Chennai – 600 040

... Applicant /Resolution Professional

*Order Pronounced on **09thNovember, 2022***

CORAM:

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

For Applicant : *B.Dhanaraj, Advocate*

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This is an application filed under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 & 32 of the NCLT Rules, 2016) seeking relief as follows:

- (i) To pass an order of Liquidation of the Corporate Debtor
Viz, Pondicherry Extraction Industries Private Limited

- (ii) To appoint the Resolution Professional as the Liquidator of the Corporate Applicant.
- (iii) To pass such further or other orders as deemed fit and necessary by the Hon'ble Adjudicating Authority of this case and thus render justice.

2. From the averments made by the Applicant, it is evident that the CIRP of the Corporate Applicant was initiated under section 10 of the IBC, 2016 and one Mr.J.Manivannan was appointed as IRP on 23.04.2021. IRP caused public announcement calling for the claimants from the Creditors of the Corporate Debtor by virtue of publication dated 12.05.2021.

3. Pursuant to that, the 1st meeting of the CoC was held on 06.08.2021. Thereafter, in view of the Civil Appeal No.2230 of 2021 filed by the Sole CoC Member before the Hon'ble Supreme Court as against the NCLAT Order remanding the Sec. 10 IBC, consequent to which the present CIRP was in progress, the Statement of Claims and Status of Corporate Debtor's Business Operations alone were discussed and all other Agenda Items were deferred to the next CoC Meeting.

4. It is averred in the application that in the 2nd CoC Meeting held on 26.10.2021, as the CIRP period ended on 17.10.2021, a



Resolution was passed by the Sole CoC Member to seek extension of CIRP period by 90 days including the appointment of Resolution Professional, were deferred to the next CoC Meeting.

5. It is further averred in the Application that the COC in its 3rd meeting held on 24.12.2021, necessary Resolutions were proposed for appointment of the Applicant herein as the Resolution Professional (RP) by replacing the IRP Mr.J.Manivannan and for approving the Request for Resolution Plan containing the Eligibility Criteria for prospective Resolution Applicants, Invitation of Expression of Interest in Form G, Confidential Undertaking and Format of Declaration to be obtained from prospective Resolution Applicants, Performance Guarantee and Evaluation Matrix etc.

6. It is further averred in the Application that the Applicant/RP namely Ms.RajalakshmiVardarajan was appointed as the Resolution Professional (RP) by the order of this Tribunal dated 15.02.2022 in IA/88(CHE)/2022.

7. It is seen from the application that the initial invitation for Expression of interest (EOI) dated 05.01.2022 was published on 10.01.2022, fixing the last date for receipt of Eoi on 25.01.2022 However, the CoC extended the date for submission of Expression of



Interest and as such the Revised Form G Invitation for EoI came to be issued on 05.03 2022. Accordingly, the last date for receipt of EoI on 15.03.2022, the date of issue of Information Memorandum / Evaluation Matrix / Request for Resolution Plans to prospective Resolution Applicants on 18.03.2022 and the last date for submission of Resolution Plans by 25.03.2022 and the copy of Revised Form-G is placed at Annexure II (7) to the application typeset.

8. Thereafter 4th and 5th CoC meeting was held on 18.03.2022 and 19.04.2022 respectively. In the 5th CoC meeting the CoC resolved to exclude the Covid-19 Period from 23.04.2021 till 28.02.2022 and to extend the CIRP Period from 01.03.2022 till 19.04.2022 and the copy of the said 4th and 5th CoC meeting is placed at Annexure II (8 &9) of the application typeset.

9. It is further averred in the application that IA/599/CHE/2022 was filed by the Applicant/ RP seeking exclusion of Covid-19 period from 23.04.2021 till 28.02.2022 and extension of the CIRP period from 01.03.2022 till 28.08.2022 as the 180th day of CIRP of the Corporate Applicant and the same was allowed by this Tribunal dated 29.06.2022 and the copy of the said order is placed at Annexure II (11) of the application typeset.



10. In the 7th CoC Meeting held on 05.07.2022, the Applicant sought for approval for publication of the Revised Form G, and the Revised Form G was issued on 09.07.2022 by fixing the last date for EOI receipt was 29.07.2022; the date of issue of Information Memorandum / Evaluation Matrix / Request for Resolution Plans to prospective Resolution Applicants was 05.08.2022 and the last date for submission of Resolution Plans was 23.08.2022 and the copy of both the Minutes of the 7th CoC Meeting and Revised Form G are placed at Annexures II (12) & (13) of the application typeset.

11. It is averred in para 14 of the Application that in the 8th CoC meeting held on 02.08.2022, the Sole CoC member after discussions and deliberations with 100% voting share resolved to liquidate the Corporate Debtor. The minutes of the 8th CoC meeting is annexed as page 72 of the Application typeset and the extract of Resolution is reproduced hereunder:

"Resolved to recommend the liquidation of the corporate debtor "Pondicherry Extraction Industries Private Limited" and to authorize the Resolution Professional Ms. RajalakshmiVardarajan to apply for liquidation with the Adjudicating Authority"

The above resolution was approved by 100% voting share.



12. Heard the submissions of the Ld. Counsel for the Applicant. It can be seen from the submissions that the CIRP of the Corporate Debtor ended on 28.08.2022 and the Committee of Creditors in the 8th COC meeting held on 02.08.2022 has unanimously resolved to place the Corporate Debtor for liquidation. 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.

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

Section 33

(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 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).

(3) Where the resolution plan approved by the Adjudicating Authority 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).

14. The proposed Liquidator, Ms.RajalakshmiVardarajan has also filed her written consent to act as the Liquidator of the Corporate Applicant and also on verification from the IBBI Website, it is seen that the Authorization for Assignment (AFA) for the RP is valid up to 03.12.2022.

15. It was further averred in the Application that the Applicant/RP has filed Form-H as on 28.08.2022 and the same is placed at Annexure II (16) of the application typeset.

16. Thus, as a consequence thereof, the Corporate Debtor is required to be ordered for liquidation as per Section 33(1)(a) of IBC, 2016. As per the latest list provided by the IBBI for the period from July 2022 to December 2022, we hereby appoint

Ms.RajalakshmiVardarajan, with (Reg. No:IBBI/IPA-003/IP-N00145/2017-2018/11597 and **e-mail Id: cma.rajalakshmi@gmail.com**) as 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 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.

17. Accordingly, IA/984/CHE/2022 filed for Liquidation of the Corporate Debtor stands **allowed**.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Sriram Ananth .V