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

IA(IBC)/800(CHE)/2021In CP/1353/IB/2018

*(Filed under Regulation 14 of Insolvency and Bankruptcy Board of India
(Liquidation Process) Regulations, 2016 read with Section 54 of
Insolvency and Bankruptcy Code, 2016)*

In the matter of **Sri Venkatesa Paper & Boards Limited**

S. Muthuraj

IRP of Sri Venkatesa Paper & Boards Limited
No.3, Sundaram Brothers Layout,
Opposite to All India Radio,
Trichy Road, Ramanthapuram,
Coimbatore – 641 045

...Applicant

-Versus-

Bank of India

(Formerly Dena Bank)
Rep. by its Chief Manager, SAMB
Mr. K. Baskaran
52, Montieth Road, Egmore,
Chennai – 600 006

...Respondent

Present:

For Applicant: Rohan Rajasekaran, Advocate

CORAM:

**Justice (Retd.) RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

Order Pronounced on 13th February 2023

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This is an Application filed by the Resolution Professional in
respect of the Corporate Debtor viz. Sri Venkatesa Paper & Boards

Limited under Regulation 14 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 read with Section 54 of Insolvency and Bankruptcy Code, 2016 seeking relief as follows:

- a. Dissolving the Corporate Debtor M/s. Sri Venkatesa Paper & Boards Limited in accordance with Law; and*
- b. To pass such further or other orders as may deem fit and proper in the facts and circumstances of the case and thus render justice.*

2. The Learned Counsel for the Applicant submitted that in an Application filed by the Respondent under Section 7 of IBC, 2016, this Tribunal vide its order dated 11.12.2019 had initiated the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor and appointed the Applicant herein as the Interim Resolution Professional (IRP).

3. It was submitted that the Applicant had issued a public announcement under Section 15 of IBC, 2016 on 20.12.2019 in "The New Indian Express" (English) and "Dinamani" (Tamil). Based upon the same, the Applicant received claim from the Respondent for a sum of Rs.148,36,23,069/- (Rupees One Hundred and Forty Eight Crores Thirty Six Lakhs Twenty Three Thousand and Sixty Nine Only) and the same was admitted by the Applicant. Further, it was also submitted that a claim was also received from one M/s.



Finquest Financial Solutions Private Limited on 28.02.2020 for a sum of Rs.3572,12,56,587/- (Rupees Three Thousand Five Hundred and Seventy-Two Crores Twelve Lakhs Fifty-Six Thousand and Five Hundred and Eighty-Seven Only) claiming that M/s. Assets Care & Reconstruction Enterprises Limited had assigned the said debt to it vide assignment agreement dated 31.10.2018. It was submitted that the Applicant upon collating the claim has found that the personal guarantee to the loan of the Corporate Debtor was assigned to Finquest by M/s. Assets Care & Reconstruction Enterprises Limited and none of the assets of the Corporate Debtor were part of the said assignment and hence the Applicant on 13.03.2020 has rejected the claim of M/s. Finquest Financial Solutions Private Limited. It was submitted that to the best of the knowledge of the Applicant, there is no challenge to the said rejection.

4. The Learned Counsel for the Applicant submitted that he had constituted the CoC comprising of only the Respondent and convened the 1st CoC meeting on 20.01.2020 and the 2nd CoC meeting on 06.03.2020, wherein the CoC with 100% voting had deferred the appointment of the Resolution Professional of the Corporate Debtor.

5. It was submitted that the Applicant started performing his duties as the Resolution Professional in accordance with Section 25 of the IBC, 2016. However, it was submitted that the Applicant could not appoint any of the IBBI Registered Valuers or issue Form – G since there was no asset available with the Company. Further, it was submitted that while the Applicant was gathering information pertaining to the Corporate Debtor from MCA, it was noticed that a charge had been created on the assets of the Corporate Debtor on its movable and immovable properties in favour of M/s. Assets Care and Reconstruction Enterprises Limited and the same was subsisting. It was also submitted that the Applicant has received an email dated 29.10.2020 from the Respondent Bank requesting the Applicant to file an Application for avoidance / undervalued transaction in respect of the sale of land, building, and machinery by M/s. Assets Care and Reconstruction Enterprises Limited. It was submitted that the Respondent Bank had questioned the very assignment of the entire assets of the Corporate to M/s.Assets Care & Reconstruction Enterprise Ltd.

6. It was submitted that after perusing all the available records, verifying the books of accounts and data available with the ROC, the Applicant has *prima facie* formed an opinion that the assignment by the lenders in favour of the Respondent Bank and subsequent sales by the 1st Respondentis fraudulent in nature as

per Section 66 of IBC, 2016. Hence, an Application under Section 66 of IBC, 2016 in IA/1243/2020 was preferred by the Applicant. However, it is seen from the record of proceedings that a memo was filed vide SR No. 2913 on 23.07.2021 seeking withdrawal of the said Application based upon a resolution passed in the 5th CoC meeting held on 27.05.2021. The said memo was taken on record and the IA/1243/2020 came to be dismissed as withdrawn on 17.10.2022.

7. In the meantime, it was submitted that Covid-19 lockdown was imposed from 25.03.2021 and also because of merger of banks there was a delay in the decision of appointment of RP. However, the CoC in its 3rd CoC meeting held on 11.02.2021 has confirmed the Applicant to continue as the RP with 100% voting rights. In addition, the Applicant has placed the agenda for liquidation of the CD and the same was deferred by the COC and the same agenda was approved in the 4th CoC meeting held on 12.03.2021.

8. However, it was submitted that at the 5thCoC meeting held on 27.05.2021, the CoC had reconsidered its decision for liquidation and had resolved to directly dissolve the Corporate Debtor under Section 54 of IBC, 2016 since there were no assets

available. The discussion on Item No. 3 and the Resolution Passed is extracted hereunder:

Item No. 3

To Discuss and Consider the Dissolution of the company in accordance with section 54 of IBC 2016

Since there is no assets available with the Company, it is felt that the concern is not suitable for the preparation and adoption of any resolution plan as envisaged under the provisions of IBC 2016. Hence the committee of creditors resolved to initiate the process of Dissolution of the company as per the provisions of Section 54 of the Insolvency and Bankruptcy Code 2016 and the Resolution Professional be and hereby authorized to file an application with the adjudicating authority in this connection.

In this connection the following resolution are passed

Resolved that

The Corporate Debtor is to be Dissolved as per the provisions of section 53 of IBC 2016 and the Resolution Professional shall intimate the Adjudicating Authority about the Decision of the Committee of Creditors and file an application praying for the dissolution of the Corporate Debtor

9. In view of the above facts and circumstances, the Applicant has filed the Present Application seeking dissolution of the Corporate Debtor under Section 54 of IBC, 2016.

10. Heard the submissions made by the Learned Counsel for the Applicant and also perused the records. It is to be noted here that the Corporate Debtor is currently undergoing CIRP and the present Application has been filed by the RP of the Corporate Debtor under Section 54 of IBC, 2016, which read as follows;

54. Dissolution of Corporate Debtor. –

(1) Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

(2) The Adjudicating Authority shall **on application filed by the liquidator** under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.

11. Section 54 of IBC, 2016 clearly stipulates that the Adjudicating Authority can order for dissolution of the Corporate Debtor under sub-section (1) of Section 54 of IBC, 2016 **only on an Application filed by the Liquidator**. Admittedly in the present case, the Corporate Debtor is under CIRP and the present Application has been filed by the 'Resolution Professional' of the Corporate Debtor and not by the 'Liquidator'. Further, Regulation 14 which was referred to by the Applicant in the present Application pertains to the Liquidation Process and not the Corporate Insolvency Resolution Process which the Corporate Debtor is undergoing as of now.

12. It is now trite that the Insolvency and Bankruptcy Code, 2016 treats CIRP and Liquidation as two different process and that when the provisions of IBC, 2016 stipulates that only on an



Application filed by the 'Liquidator'this Adjudicating Authority can order for dissolution of the Corporate Debtor under Section 54(1) of IBC, 2016, then it has to be done only in that manner and not in any other manner.

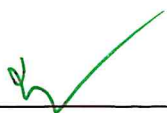
13. Further, it could be seen that the CoC in its 3rd meeting held on 13.02.2021, in accordance with law, has resolved to liquidate the Corporate Debtor, however, for the reasons best known to them, by totally ignoring the position of law and also *de hors* the earlier resolution, in its 5th CoC meeting held on 27.05.2021 has resolved to directly dissolve the Corporate Debtor. Based upon such a Resolution passed by the CoC in its 5th CoC meeting, the Applicant has moved the present Application.

14. Hence, for the reasons aforesaid, the present Application seeking dissolution of the Corporate Debtor cannot be ordered by this Adjudicating Authority since the Corporate Debtor is presently under CIRP and not under Liquidation. However, in the best interest of justice and to uphold the correct position of law, based upon the Resolution passed CoC in its 3rd CoC meeting resolving to Liquidate the Corporate Debtor, we hereby order for Liquidation of the Corporate Debtor. The Applicant has filed Form – H, however, it could be seen that there was no valuation was conducted by the

Applicant on the ground that there were no assets of the Corporate Debtor.

15. 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 January 2023 to June 2023, we hereby appoint **Mr.Vasudevan Gopu** (email: vasudevanacs@gmail.com) with Registration No: IBBI/IPA-002/IP-N00291/2017-18/10849 whose AFA is valid till 07.12.2023 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.

16. Accordingly, IA(IBC)/800(CHE)/2022 stands **ordered**.



SAMEER KAKAR
MEMBER (TECHNICAL)



Justice RAMALINGAM SUDHAKAR
PRESIDENT

Raymond