IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

IA No.496/2023 & I.A.378/2023
In
C.P. (IB) No.89/BB/2021
Under Section 33(1) (a) of the
Insolvency and Bankruptcy Code, 2016

In the matter of

State Bank of India
Stressed assets management Branch
LHO Office Complex, Second Floor,
No.65, St. Marks Road,
Bangalore -560001 ...Financial Creditor

Versus

Supreme Overseas Exports India Private Limited
No. 44/1, 16th Cross, K.R. Road,
Jayanagar, 7th Block,
Bangalore -5600082 ...Corporate Debtor

And in the matter of IA No.496/2023:-

Mr. Raghu Babu Gunturu
Resolution Professional,
Supreme Overseas Exports India Private Limited ...Applicant

And in the matter of IA No.378/2023:-
Mr. Raghu Babu Gunturu
Resolution Professional,
Supreme Overseas Exports India Private Limited ...Applicant

Order delivered on: 24.04.2024

Coram: 1. Hon'ble Shri. K. Biswal, Member (Judicial)
2. Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Ms. Hemavathi a/w Ms. Bhavna

For the Resolution Professional: Shri Vineeth Reddy Vakiti

O R D E R

I.A. No. 496/2023

Per: K. Biswal (Member Judicial)

1. This Application has been filed on 26.04.2023 by Mr. Raghu Babu Gunturu, Resolution Professional ("RP") of M/s Supreme Overseas Exports India Private Limited ("Corporate Debtor/CD") under Section 33(1) (a) of the Insolvency and Bankruptcy Code, 2016 ("Code") seeking an order of Liquidation in the matter of M/s Supreme Overseas Exports India Private Limited and appoint the Liquidator for initiation of Liquidation process of the Corporate Debtor etc.

2. CP (IB) 89/BB/2021 filed under Section 7 of the Code, 2016 by the Financial Creditor viz., State Bank of India ("Financial Creditor/FC") against the CD to initiate Corporate Insolvency Resolution Process ("CIRP") was admitted on 10.06.2022 and vide the same order this Tribunal has appointed the Applicant viz., Mr. Raghu Babu Gunturu as an Interim Resolution Professional ("IRP") of the CD.

3. Pursuant to the order for initiation of CIRP, the IRP on 13.06.2022 has made Public Announcement for inviting claims of Creditors as per *Form-A* prescribed under the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. On the basis of claims received and admitted from creditors, the IRP submitted list of creditors in terms of Regulation 13(2) of the CIRP Regulations along with report certifying Constitution of CoC on 30.06.2022 which was revised on 2.08.2022.

4. The first meeting of the CoC was held on 01.07.2022 whereby the IRP proposed himself to be appointed as the Resolution Professional of the CD which was approved by the CoC. The appointment of IRP as RP was communicated to this Tribunal on 22.08.2022. The applicant has also prepared Information Memorandum dt.15.07.2022 and 17.09.2022 with regard to the CD as per Section 29(1) of the Code.

5. In the second CoC meeting dt.12.08.2022 the RP informed the CoC regarding appointment of two registered valuers for each class on 15.07.2022. Additionally, the CoC approved the Invitation of Expression of Interest including the Eligibility criteria for submission of Resolution Plan as per Section 25 (2)(h) of the Code read with Regulation 36A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which

was published in Form-G on 24.08.2022. The last date for submitting Expression of Interest was 8.09.2022 and submission of Resolution Plan was 23.10.2022.

6. Pursuant to the issuance of Form-G, the RP issued a final list of Prospective Resolution Applicants on 3.10.2022. In the third CoC meeting held on 23.08.2022 the CoC approved the criteria for submission of Resolution plan by Prospective Resolution Applicants. Thereafter, a resolution plan was received from one Shri Siva Chaitanya Saikam on 23.10.2022 which is the last day for submission of the Resolution Plan.

7. In the 6th CoC meeting conducted on 21.11.2022 the timelines submitted presented in the Resolution Plan submitted by the resolution applicant were not clear and the amount proposed was significantly low. Therefore, the resolution applicant was asked to revise the plan before 25.11.2022.

8. However, in the 9th CoC meeting held on 4.03.2023 the CoC members rejected the Resolution Plan and recommended liquidation of the CD. No liquidator was recommended by the CoC due to which the CoC informed the applicant that they require more time for recommending the Liquidator. Pursuant to the above, a resolution was passed by the CoC that since the resolution plan is rejected, the CD will apply for liquidation as per Section 33(1) of the Code and the same is produced hereunder:

   "*Resolved that pursuant to the provisions of Section 33(2) of Insolvency and Bankruptcy Code, 2016, CoC recommended liquidation of M/s Supreme Overseas Exports India Private Limited, subject to the approval of Hon'ble National Company Law Tribunal, Bengaluru Bench*"
   Resolved Further that Mr. Raghu Babu Gunturu, I.P. No. IBBI/IPA-002/IP-N00025/2016-17/10053 Resolution Professional shall intimate the decision of Committee of Creditors to liquidate the Corporate Debtor, M/s Supreme Overseas Exports India Private Limited, to Hon'ble National Company Law Tribunal, Bengaluru Bench."

9. We have carefully considered the submissions made in the application by the Interim Resolution Professional and have also perused the materials on record.

10. The relevant provisions of Section 33 sub-section (1) and sub-section (2) of the Code are perused hereunder:

   "*33 Initiation of liquidation-*

   (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 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. **Prescribed period for filing application**- In the present case, the Petition under 7 of the Code was admitted on 10.06.2022. As per the submission of the CoC members, the resolution plan was submitted by one Shri Siva Chaitanya Saikam on 23.10.2022 which was the last date for submission of the resolution plan but the CoC members in their 9th CoC meeting held on 4.03.2023 rejected the Resolution Plan and decided that the CD should undergo liquidation as per the provisions of Section 33(2) of the Code. However, the application was filed under Section 33(1) (a) of the Code. Additionally, the CIRP period has been extended for 60 days from 6.02.2023 till 7.04.2023 by the order of this Tribunal dt.6.03.2023 which marks the end of 300 days of the CIRP. The application for liquidation of the CD was filed on 26.04.2023 on the ground of rejection of the Resolution Plan by the CoC. It is clear from the above discussion that the Resolution Plan was received before the expiry of the CIRP period and was rejected for non-compliance of the requirements specified by the CoC, then in that case the provisions of Section 33(2) will be attracted and the application should have been filed as per Section 33(2) of the Code. Therefore, the application will now be considered under Section 33(2) of the Code.

12. **Appointment of Liquidator-** it is submitted that the CoC members did not take a decision to appoint liquidator in the 9th CoC meeting as at that time they were in the proves of finalising the Liquidator to be appointed and required time for recommending the name of the Liquidator as per Section 34 of the Code. Subsequently,

the applicant has filed another application bearing I.A. No. 378 of 2023 for appointment of Liquidator as per the provisions of the Code which recommends Smt. Ramnathan Bhuvaneshwari to be appointed as the Liquidator of the CD. The same has been approved by the CoC in its 10th CoC meeting held on 2.05.2023. In light of the above factual matrix, and in compliance with Section 34 of the Code, Smt. Ramnathan Bhuvaneshwari with Registration no. IBBI/IPA-002/IP-N00306/2017-18/10864 is appointed as the Liquidator of the CD.

13. Regulations 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No. IBBI/201920/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder.

a. **Liquidation Cost [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016] –** The liquidation cost as per the resolution passed 9th CoC meeting dt.28.03.2023 at Page @294 Agenda C. As per the Regulation 39B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the estimated Liquidation costs excluding the Liquidators fee for the CD is Rs. 86,91,198 Lakhs.
b. **Assessment of Sale as a going concern [Regulation 39C of the Insolvency Resolution Process for Corporate Persons) Regulations, 2016] –** The members of the CoC did not approve the sale of the Corporate Debtor as a going concern as per Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. Therefore, the liquidator is thereby directed to refer to Regulation 32A of IBBI (Liquidation Process) Regulation, 2016 and take necessary action.
c. **Fees of the Liquidator [Regulations 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016] -** The fee payable to the Liquidator is as per the resolution passed in reference to the Regulation 4(2) of the IBBI (Liquidation Process) Regulations, 2016.

14. **Pending applications, if any, and its effects-** In the 2nd CoC meeting held on 12.08.2022, the CoC was informed about the Ongoing Litigation/court cases and the same was taken note by the Committee. The following litigation are pending i.e.,
(i) Drip Capital Inc. USA v. Supreme Overseas Exports India Private Limited Arbitration Petition 02/2021 - Before Hon'ble Supreme Court of India;
(ii)Cases with EPF Department and Employee State Insurance Karnataka State;

(iii) V K Overseas; Freight Bridge Logistics; DRT – SA 49/2021 and SA 74/2021 filed by Supreme Overseas Exports India Private Limited against SBI;
(iv) W.P 12653/2021 filed before Karnataka High Court by Supreme Overseas Exports India Private Limited against State Bank of India – it is pending before Hon'ble Supreme Court of India;
(v) Vaishanavi Label- Com OS 657/2021; OSA 211/2019 – Supreme Overseas Exports India Private Limited v. Expo Freight – filed before Hon'ble Madras High Court.

15. In view of the conditions provided under Section 33 (1) of the Code, the Corporate Debtor **M/s. Supreme Overseas Exports India Private Limited is directed to be liquidated** in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:

i. That as per Section 33 (5) of the Code and subject to Section 52 of the code, no suit or other legal proceedings shall be instituted against the Corporate Debtor;
Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;
ii. That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and
iii. That this order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator; and
iv. That all the powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Liquidator; and
v. That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provision of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.
vi. That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation

commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

vii. That the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016.

viii. That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 thereafter.

ix. The Liquidator shall file his written consent within one week from today.

16. Thus **I.A No. 496 of 2023** stands disposed of.

17. Copy of this order to be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Bengaluru forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

I.A. 378/2023

1 The incumbent application has been filed by the applicant/Resolution Professional of the CD i.e., Supreme Overseas Exports India Private Limited ("CD") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking the appointment of the CoC proposed Liquidator i.e., Smt. Ramnathan Bhuvaneshwari as the Liquidator of the CD.

2 The applicant submits that in the 9th CoC meeting held on 4.03.2023 when the Resolution plan submitted by Mr. Siva Chaitanya Saikam was rejected and the CoC recommended liquidation of the CD as per the provisions of this Code.

3 Since the recommendation of the Liquidator did not take place in the 9th CoC Meeting, another CoC meeting was conducted on 2.05.2023 wherein the CoC approved the appointment of Smt. Ramnathan Bhuvaneshwari as the Liquidator of the CD with 100 percent voting share.

4 Heard the counsel for the applicant and perused the records pertinent to the facts and circumstances of the instant application.

5 In light of the instant application and the application bearing I.A. No. 496 of 2023 for seeking direction of Liquidation, we are of the considered opinion that the instant application is hereby allowed and Smt. Ramnathan Bhuvaneshwari with Registration no. IBBI/IPA-002/IP-N00306/2017-18/10864 is appointed as the Liquidator of the CD.

6 Accordingly, I.A. No. 378/2023 stands **disposed of.**

-Sd/-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd/-

(K.BISWAL)
MEMBER (JUDICIAL)