

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

**MA/968/2019** in CP/382/IB/2018  
filed under Sections 33 (2) of the  
Insolvency and Bankruptcy Code, 2016

In the matter of *M/s. Sun Brushware Private Limited*

**Mr. V.Duraisamy,**  
*Applicant/Resolution Professional*

CORAM:

**R.VARADHARAJAN, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Applicant* : *Mr. R.Senthil Kumar, Counsel*

**ORDER**

***Per:* R.VARADHARAJAN, MEMBER (JUDICIAL)**

*Order delivered on 25<sup>th</sup> of November, 2019*

1. MA/968/2019 in CP/382/IB/2018 has been filed by the Resolution Professional viz., *Mr. V. Duraisamy*, under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, (in short 'I&B Code, 2016').

2. The prayers made by the Applicant in the Application are as follows:-

- a. *That this Hon'ble Adjudicating Authority may be pleased to pass necessary orders that the Corporate Debtor M/s. Sun Brushware Private Limited be liquidated in the manner as laid-down under the Code as per Section 30(2) of the Code in view of the recommendation of COC for liquidation of Corporate Debtor.*
- b. *That this Hon'ble Adjudicating Authority may please to pass an order that the existing Resolution Professional Mr. V.Duraisamy having Registration No: IBBI/IPA-002/IP-N00609/2018-19/11862) may be appointed as Liquidator ; or*
- c. *For such other orders and further reliefs as the nature and circumstances of the case may require.*

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3. Originally CP/382/(IB)/2019 filed under Section 7 of the I&B Code, 2016 by the Financial Creditor viz., Mr. S. Premsiva, against the Corporate Debtor viz., M/s. Sun Brushware Private Limited, was admitted by this Authority vide Order dated 26.02.2019, the CIR Process was initiated against the Corporate Debtor and one, Mr. Mahalingam Suresh Kumar was appointed as Interim Resolution Professional (IRP).

4. It is averred that pursuant to the Order of this Authority dated 26.02.2019, the IRP had taken over the management of the Corporate Debtor and had issued the Newspaper Publication dated 28.02.2019 in Tamil Daily "Dinamani" as per Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016, inviting the claims from the creditors.

5. Pursuance to the said publication dated 28.02.2019, the IRP has received claims from various Creditors and after scrutiny of the claims received, the

IRP constituted the Committee of Creditors (CoC), on 21.03.2019.

6. The 1<sup>st</sup> Meeting of the CoC was held on 27.03.2019 as evident from Form H and the Applicant namely Mr. V. Duraisamy was appointed as Resolution Professional by the CoC by replacing the IRP namely Mr. Mahalingam Suresh Kumar, which was subsequently confirmed by this Authority vide its Order dated 29.04.2019 in MA/383/2019.

7. It is stated that the Resolution Professional, soon after taking the charge of the affairs of the Corporate Debtor, had received the documents from IRP and appointed two Registered Valuers on 19.04.2019 and the Valuation Report for Plant and Machinery was also received by the Resolution Professional on 08.05.2019 from the said Valuers.

8. It is also stated that the Resolution Professional had invited for 'Expression of Interest' ('EoI') as per Section 25(2)(b) of the I&B Code, 2016 vide newspaper



publication dated 30.05.2019 for submission of the Resolution Plans from the prospective Resolution Applicants by mentioning the last date for submitting the Resolution Plan as 29.07.2019. It is further stated in the additional Affidavit filed on 18.10.2019 that the Resolution Professional, as such has not received any Resolution Plan from the prospective Resolution Applicants.

9. It is evident in the averments as contained in the Application that in the 5th Meeting of the CoC held on 20.08.2019, the CoC discussed in detail the possibility of resolving through Resolution, and considering the fact that the Company is not a 'going concern' and also taking into account the present situation of industry which is facing severe crisis due to stiff price competition, which would cause the Corporate Debtor unviable for Resolution. Further, taking into consideration the average liquidation value of the lease hold land, building and machinery of Rs.70.52 Lakhs as against the total amount due to



the Creditors of Rs.12.57 Crores, in which the liabilities of the Corporate Debtor exceed more than 17 times of the available assets, the CoC has unanimously decided to liquidate the Company namely the Corporate Debtor and appoint the present Resolution Professional as Liquidator. The operative part of the Resolution reads as follows: -

***“It is resolved** that as there was no EoI received for resolution of CD and CIRP period expires on 26.08.2019 the CoC approved the filing of Section 33 IBC application before AA for initiation of liquidation of the CD by the RP.*

***Further it is resolved** that RP to continue as a liquidator and to file written consent to act as liquidator along with necessary application before the Hon’ble Adjudicating Authority.”*

10. Upon a query posed to the Learned Counsel for the Resolution Professional whether he is willing to act as a liquidator, if appointed by this Authority, Learned Counsel for the Resolution Professional submitted that the Resolution passed by the CoC as approving the Resolution Professional to act as Liquidator and that

the written consent has also been placed on record at Page No.21 of the typed set filed along with the Application. Perusal of it shows that the Resolution Professional has given a written consent by the signed letter dated 19.08.2019 to act as a Liquidator of the Corporate Debtor, if appointed by this Authority. In the circumstances, Mr. V. Duraisamy is appointed as the Liquidator in relation to the Liquidation proceedings ordered hereby of the Corporate Debtor which is presently under CIR Process.

11. In view of the facts and circumstances recorded by the Resolution Professional in MA/968/2019 in CP/382/IB/2018 and since, no Resolution Plan has been received by this Authority under Sub-section (6) of Section 30 of the I&B Code, 2016, before the expiry of the maximum period of 180 days CIR Process, in exercise of powers conferred under Sub-Clauses (i) (ii) and (iii) of Clause (a) of Sub-Section (1) of Section 33 of the I&B Code, 2016, this Authority proceeds to pass the Liquidation Order as follows:-

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- a) Mr. V.Duraisamy [IBBI/IPA-002/IP-N000609/2018-2019/11862, e-mail [karurdurai.samy@gmail.com](mailto:karurdurai.samy@gmail.com)] is appointed as the Liquidator of the Corporate Debtor. He 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 enjoined upon him.
- b) Mr. V.Duraisamy 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

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relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences.

- 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 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 Authority within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- j) Copy of this Order be sent to the Financial Creditors, Corporate Debtor and the Liquidator for taking necessary steps.



12. The Application stands *disposed of* with the above said terms.

-SD-  
**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-SD-  
**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)

Mrs. P. ATHISTAMANI