

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – II, CHENNAI**

IA/(IBC)/344(CHE)/2023

In

CP/710(IB)/CB/2018

(filed under section 33(2) of the Insolvency & Bankruptcy Code, 2016)

In the matter of Gemini Arts Private Limited

MR. T V BALASUBRAMANIAN

Resolution professional of Gemini Arts Private Limited

Reg off:

No. 121, Mount Road, Chennai – 600 006

... Applicant/Corporate Guarantor

In the matter of

Smt. K. Bharathi

... Financial Creditor

-Vs-

M/s. Gemini Arts Private Limited

... Corporate Guarantor

CORAM

SHRI. SANJIV JAIN, MEMBER (JUDICIAL)

SHRI. SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances:

*For Applicant - Mr. Thriyambak J Kannan & Ms. Ovia Nila, Advocates
For Khaitan & Co.*

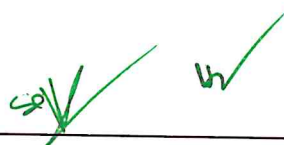
Order Pronounced on 11th August, 2023

ORDER

Per: SHRI. SAMEER KAKAR, MEMBER (TECHNICAL)

(Heard through Video Conference)

IA/(IBC)/344(CHE)/2023 in CP/710(IB)/CB/2018 is an application filed by Mr. T V Balasubramanian, Resolution Professionals of Gemini Arts Private Limited (Corporate Guarantor) seeking reliefs as follows,







- a) *Pass an order of liquidation under section 33(2) of the Insolvency & Bankruptcy Code, 2016 in the matter of the Corporate herein Gemini Arts Private Limited;*
- b) *Appoint Ms. Sripriya Kumar as the liquidator for Gemini Arts Private Limited;*
- c) *Pass such further and other orders and it may deem fit and proper under the circumstances of the case and thereby render justice.*

2. M/s. Gemini Arts Private Limited, Corporate Guarantor to M/s. Green Gardens Private Limited, the Corporate Debtor, was admitted into Corporate Insolvency Resolution Process (herein after referred to as 'CIRP') vide a Common order dated 22.06.2018 passed by this Adjudicating Authority. Mr. Nurani Subramanian Suryanarayanan was appointed as the Interim resolution professional for both the Corporate Debtor as well as the Corporate Guarantor. Thereafter, Mr. TV Balasubramanian was appointed as the Resolution Professional of the Corporate Guarantor vide order dated 13.02.2019.

3. It is stated that the Corporate Guarantor has no commercial operations. The main asset of the Corporate Debtor as well as the Corporate Guarantor is a semi constructed building on the land admeasuring about 14 grounds in the name of the Corporate Debtor and 7 grounds in the name of the Corporate Guarantor. It is stated that during the CIRP, as there was no clarity on the ownership of the land referred above, the Resolution

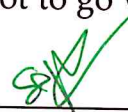

 



professional could not abide by the timeline stipulated under the code. As a result, there occurred delay in issuance of Expression of Interest.

4. It is stated that considering the relationship between the companies, in order to yield maximization of the value of the asset and since majority voting share is held by M/s. Kotak Mahindra Bank in both the Companies, it was decided to synchronize the CIRP process. Accordingly, Form G was published on 08.08.2022 for both the Companies. Thereafter, Form -G for the 2nd time was issued on 10.09.2022. On 29.10.2022, the Prospective Resolution Applicants vide email addressed to the Resolution Professional requested to extend the last date for submission of the Resolution Plan. Accordingly, CoC extended the last date for submission of Resolution Plan till 30.11.2022. On 30.11.2022, the Resolution Applicant submitted the 1st version of plan. Thereafter amended Version of Plan without enhancement of plan value was submitted. Later, plan value was enhanced from Rs. 40.60 Cr to Rs. 42.0 Cr. Lastly an offer to the tune of Rs. 48.16 Cr was made by the Resolution Applicant, however, scheme of distribution to various stakeholders was not submitted.

5. It is stated that the final resolution plan submitted that the Resolution Applicant was discussed during the CoC 26th & 27th meetings. The Committee of Creditors decided not to go with the plan and directed



the Resolution professional to file application for Liquidation of the Corporate Debtor & Corporate Guarantor.

6. The CoC of the Corporate Guarantor in its 27th CoC meeting held on 23.01.2023 resolved as follows,

“RESOLVED THAT as the Resolution Plan submitted by the Resolution Applicant is not viable and voted against the resolution plan and further directed the Resolution Professional to initiate the Liquidation Proceedings.”

7. During the course of the above meeting, the Resolution professional of the Corporate Guarantor informed the CoC about his inability to continue as the Liquidator. The CoC was also of the view to consider a single Liquidator for both the Companies. Thereafter, Ms. Sripriya Kumar, issued consent form vide Form AA dated 31.01.2023 to the Members of the CoC of the Corporate guarantor. The same is annexed along with the application.

8. The CoC in its 28th meeting dated 17.07.2023 passed a resolution confirming the appointment of Ms. Sripriya Kumar as the Liquidator of the Corporate Guarantor. The Applicant/RP submitted FORM-H as per Regulation 39 (4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016. The same is placed in the typed set of papers filed with the application. On verification on the IBBI portal, it is seen that the proposed Liquidator Ms. Sripriya Kumar has no disciplinary



proceedings pending against her and has AFA valid till 20.12.2023 vide AFA Certificate number AA1/11316/02/201223/105211.

9. From the above facts and circumstances, considering the decision taken by the CoC of the Company this Adjudicating Authority deems it fit to order Liquidation of the Corporate guarantor. Accordingly, we order liquidation of the Corporate Guarantor by appointing **MS. SRIPRIYA KUMAR** with Reg. No: [IBBI/IPA-001/IP-P00771/2017-2018/11316] (e-mail ID: sripriya@spka.in) as the Liquidator to carry out the liquidation process subject to the following terms/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 up to date enjoined upon him.*
- b) *The Liquidator shall issue the public announcement that the Corporate Guarantor is in liquidation. In relation to officers/ employees and workers of the Corporate Guarantor, 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 Guarantor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file a suitable application before this Adjudicating Authority.*
- d) *The Registry is directed to communicate this order to the Registrar of Companies, Chennai and 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 Guarantor, 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 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 Guarantor 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 individual 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 reports as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.*

Copy of this order be sent to the Financial creditors, Corporate Guarantor and the Liquidator for taking necessary steps and for extending the necessary cooperation in relation to the Liquidation process of the Corporate Guarantor.

10. With the above directions, IA(IBC)/344(CHE)/2023 in CP/710(IB)/CB/2018 stands **allowed** and disposed of.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

SANJIV JAIN
MEMBER (JUDICIAL)