

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

MA/62(CHE)/2021

In

IBA/842/2019

(filed under and Sec. 33 of the Insolvency and Bankruptcy Code, 2016)

*In the matter of **M/s. A School India Private Limited***

Mr. L V Shyam Sundar

Resolution Professional of

M/s. A School India Private Limited

No. 17, 3rd Floor, Gandhi Road,

Alwarthirunagar,

Chennai – 600 087

... Applicant

In the matter of

M/s. Master Consultancy Services

...Operational Creditor

-Vs-

M/s. A School India Private Limited

...Corporate Debtor

Order Pronounced on 25th April 2022

COROM

Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)

B. ANIL KUMAR, MEMBER (TECHNICAL)

For Applicant - Mr. Jayanth Viswanathan, PCS

COMMON ORDER

Per: B. ANIL KUMAR, MEMBER (TECHNICAL)

Under Consideration is an application filed by the Resolution Professional of M/s. A School India Private Limited seeking the following reliefs:

- a) *To initiate liquidation process against the Corporate Debtor.*
- b) *To appoint an Insolvency Professional as the Liquidator of the Corporate Debtor.*



- c) *To directing to COC to make payment of outstanding professional fees of RS. 2,45,692/- to the Resolution Professional towards CIRP Cost and Resolution Professional Fee.*
- d) *To pass such orders as are deemed fit and necessary in the nature and circumstances of this case*

2. The Applicant/Resolution Professional has filed the instant application seeking the above mentioned reliefs. The Corporate Debtor viz., M/s. A School India Private Limited was admitted into Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 Process (hereinafter referred as 'IBC, 2016') vide Order dated 08.11.2019 and Mr. S R Krishnan was appointed as the IRP. Thereafter, in accordance with the decision of the Committee of Creditors (CoC) in their 2nd CoC meeting the applicant herein Mr. L V Shyam Sundar, was appointed as the Resolution Professional vide order dated 21.01.2020.

3. The learned Counsel for the applicant had submitted that the Committee of Creditors (COC) was constituted with M/s Master Consultants Service as the Sole Operational Creditor by the Interim Resolution Professional and a report regarding the same was submitted with this Adjudicating Authority. It is further submitted that pursuant to Regulation 12 (2) of the

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 four more claims were received from Operational Creditors which were verified and admitted by the then IRP. Thereupon, the then IRP had re-constituted the COC of the Corporate Debtor as under and a report for the same was also filed.

4. The learned Counsel for the applicant had submitted that the 2nd COC meeting was convened by the erstwhile IRP on 20.01.2020 with the reconstituted COC in which the applicant herein was decided to be appointed as the Resolution Professional. It is further submitted that during the 3rd CoC meeting held on 02.03.2020 the Applicant herein had placed the draft Expression of Interest (EoI) before the COC for their approval. However the COC had deferred the Publication of Expression of Interest for two more weeks for want of understanding of the process.

5. The learned Counsel for the applicant had further submitted that during the 4th CoC meeting held on 21.05.2020. The CoC had informed that they need further time to decide either to continue the CIRP Process or to initiate Liquidation.



6. The learned Counsel for the applicant had submitted that during the 5th CoC meeting held on 31.07.2020 the draft Expression of Interest (EoI) placed before the COC was duly approved by the CoC. Thereafter, pursuant to Regulation 36A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the applicant herein had made Publication of Invitation for Expression of Interest (EoI) in Form G in two newspapers; vide 'Trinity Mirror' (English) and Makkal Kural (Tamil) on 04.08.2020. In response to the same two Prospective Applicants viz., Kundan Group and Vendanta Group had approached the applicant vide email communication.

7. The learned Counsel for the applicant had submitted that during the 6th CoC meeting held on 20.08.2020 the applicant herein had informed the CoC that the initial 180 days for completion of CIRP after exclusion of the COVID 19 Lockdown period ends on 04.09.2020 and that the Applicant would not be able to comply with all the requirements mentioned under the Code within the specified limit. The COC took note of the above and directed the Applicant herein to file an application for extension of the CIRP period in view of the fact that two Prospective Resolution Applicants have evinced

interest and also certain documents are pending clarification from bankers, auditors, erstwhile directors and related parties.

8. The learned Counsel for the applicant had submitted that during the 7th CoC meeting held on 04.09.2020 the COC was informed that the two prospective Resolution Applicants who had evinced their interest later backed out of submitting the plan as the Corporate Debtor does not have any tangible Assets. Thereupon, the COC after due deliberation, had noted the following:

- a) Due to outbreak of Covid-19 pandemic, the Corporate Debtor could not find the right Resolution Applicant therefore the COC had decided to re-initiate the process of finding the right Resolution Applicant.
- b) Material Information which is required from bankers, erstwhile directors and auditors have not been received, without receiving all that taking CIRP forward will be difficult.
- c) Further, the COC had also noted that the money deposited by the Operational Creditors belongs to Rajah Sir Annamalai Chettiar Foundation and not the company. The operational creditors are of the view that the Company had indulged in fraudulent practices and the business was conducted to defraud the Creditors.

Based on the above, the COC had unanimously decided to file an application for seeking an extension in the CIRP Period.

9. The learned Counsel for the applicant had submitted that as per Section 12 of Insolvency and Bankruptcy, code 2016, an application was filed by this Applicant on 24.09.2020 for Extension of CIRP timeline up to 03.12.2020. The same was taken up by this Adjudicating Authority on 08.01.2021 and thereupon, the matter was adjourned from time to time due to the prevailed covid19 lockdown in the state.

10. The learned Counsel for the applicant had submitted that during the 9th CoC meeting held on 01.03.2021 the Applicant had informed the COC that he is not interested in acting as the Liquidator of the Corporate Debtor and had requested the COC to identify another professional to act as the Liquidator. It is further submitted that the approval for Liquidation of the Corporate Debtor and appointment of Liquidator was one of the agenda of the meeting highlighting the fact that the maximum period of 330 days had expired on 01.02.2021. However, the COC had deferred the business by stating the same can be decided only after the final hearing of the application made before this Adjudicating Authority for Extension of the CIRP period.



11. The learned Counsel for the applicant had submitted that the application under Section 12(2) was finally heard on 07.04.2021. Where, upon the submission made by the learned counsel that the maximum period of 330 days for completion of Corporate Insolvency Resolution Process had come to its fag end on 01.02.2021 and that the application filed under section 12(2) of Insolvency and Bankruptcy code, 2016 is in-fructuous the same was dismissed as infructuous. Further, as there was no Resolution Plan for approval for the revival of the Corporate Debtor and since the 330 days CIRP is over, the instant application is being filed for Liquidation of the Corporate Debtor along with appointment of Liquidator. It is further submitted that, the operation of the Corporate Debtor is suspended for over 5 years and there is no interest shown from any potential resolution applicant to submit any resolution plan.

12. The learned Counsel for the applicant had submitted that the Applicant vide email dated 02.02.2021 had requested the members of the COC to propose a Liquidator. The Applicant had further informed the COC that in case the COC did not appoint a Liquidator, the Applicant shall submit the same before this Adjudicating Authority. It is further submitted that despite several reminders and emails the CoC had not reverted back with a reference for Liquidator.



13. In the light of the above facts and circumstances, in the event of absence of pending approval of a Resolution Plan, there appears to be no revival prospectus under section 33(1) (a) of IBC, 2016 and thus taking into consideration that the maximum CIRP period of 330 days has come to an end and that no active participation of the CoC was also rendered this Adjudicating Authority deems it fit to Order the Corporate Debtor viz., M/s. A School India Private Limited for Liquidation.

14. It is also seen from the records and the arguments made by the Applicant herein that, he is not willing to continue as the Liquidator.

15. In the said circumstances, **Mr. Bhaskar B (email-bhasj@gmail.com)** is appointed as the Liquidator of the Corporate Debtor from the IBBI panel list 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, viz., company-in-liquidation.

16. The application **MA/62(CHE)/2021** stands **Allowed** with the aforesaid directions.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

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