

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU

(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

IA No.369/2021

In

C.P. (IB) No.39/BB/2021
(Admitted Matter)

Under Section 33(2) of the
Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

M/S. MICROSUN SOLARTECH PRIVATE LIMITED

...Applicant/Financial Creditor

VERSUS

M/S. MAHARAJA TECHNO CHROMES PRIVATE LIMITED

...Respondent/Corporate Debtor

AND IN THE MATTER OF IA NO.369/2021:-

Mr.M.V.SUDARSHAN

Resolution Professional of

Maharaja Techno Chromes Private Limited

...Applicant/

Resolution Professional

Order delivered on: 1st February, 2022

Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)

Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

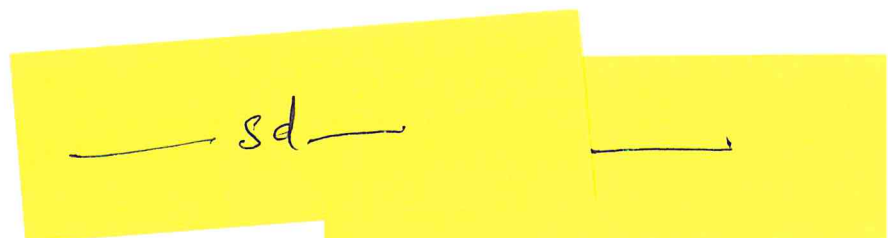
For the Applicant/
Resolution Professional

: Mr. Hemanth Rao, Advocate

ORDER

I.A No.369/2021:

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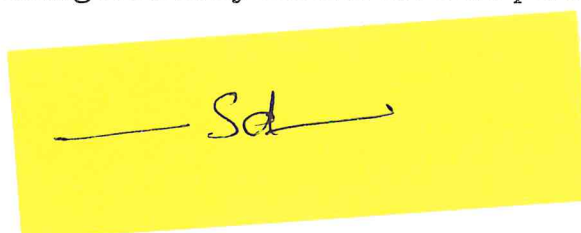
Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. This Application has been filed by Mr. Madhugiri Venkatarayappa Sudarshan, the Resolution Professional of M/s. Maharaja Techno Chromes Private Limited (Corporate Debtor) under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation in the matter of Maharaja Techno Chromes Private Limited (Corporate Debtor) and to appoint the Liquidator for initiation of Liquidation process of the Corporate Debtor etc.
2. C.P.(IB)No.39/BB/2021 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by "M/s. Microsun Solar Tech Private Limited" to initiate Corporate Insolvency Resolution Process (**in short 'CIRP'**) against M/s. Maharaja Techno Chromes Private Limited was admitted on 06.04.2021 and Mr. Venkata Subbarao Kalva was appointed as Interim Resolution Professional (IRP). Subsequently vide order 09.11.2021 in IA.NO.208/2021 IRP was replaced and Mr. Madhugiri Venkatarayappa Sudarshan (Applicant) was appointed as RP.
3. The facts of the case, briefly stated are that subsequent to his appointment, the IRP constituted a Committee of Creditors (CoC) Consisting of following members:

SI NO	Name of the Financial creditor	Amount Due (Rs)	Voting Share
1	Canara Bank, Peenya Industrial Estate Branch, Bengaluru	99,34,276/-	100%
		99,34,276/-	100%

4. In IA.NO.313/2021 filed by the IRP of the Corporate Debtor seeking to extended the CIPR period by 90 days till 02.01.2022 vide its order dated 09.11.2021, this Adjudicating Authority extend the said period.

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5. It is submitted that CoC in its 10th meeting held on 28th October 2021, considered the issue of approval of liquidation of Corporate Debtor at agenda Item No. 6 and the same is as under:

*“To consider and approve Liquidation of Corporate Debtor.
The Chairman brought to the notice of Committee of Creditors (CoC) that no resolution plans were approved for revival of the Corporate Debtor, in accordance with the Section 33 for Insolvency and Bankruptcy Code, 2016, the committee was hereby requested to approve for liquidation of the Corporate Debtor.*

In this connection, the Chairman proposed the following resolution to be approved by the Committee through ballot paper. The Committee decided to update the approval/rejection of the liquidation through ballot paper.

“RESOLVED THAT as the resolution plan received for revival of the Corporate Debtor was not approved, the consent of Committee of Creditors be and is hereby accorded for initiation of liquidation of the Corporate Debtor under Section 33 of Insolvency and Bankruptcy Code, 2016(“the Code”)

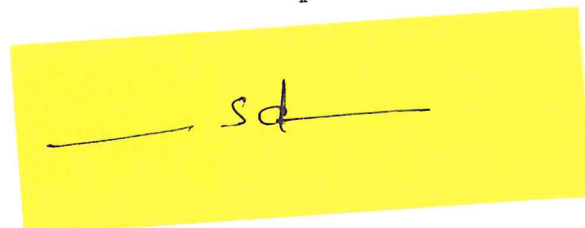
RESOLVED FURTHER THAT Interim Resolution Professional/ Resolution Professional be and are hereby authorized to file necessary application before the Hon’ble National Company Law Tribunal, Bengaluru Bench to give effect to this resolution.”

It is also submitted that the aforesaid resolution was unanimously approved by the CoC with absolute majority.

6. The Hon’ble NCLAT, in Praveen Kumar Nand Kumar v. VSL Securities Pvt Ltd. in CA No.1/2020 in C.A.No.308/2000, dated 09.06.2020, observed as under:-

“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review”.

7. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.



8. The relevant provisions of Sections 33(1) and 33(2) of the Code are as follows:-

“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).”

9. **Prescribed period for filing application-** In the present case, the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted on 06.04.2021 and the period of 180 days were completed on 03.10.2021. As per Order dated 9.11.2021 in IA NO.313/2021 this Adjudicating Authority has allowed to extend the CIRP period by 90 days till 02.01.2022 .The present application is filed on 07.12.2021 i.e., within the prescribed period.

10. **Appointment of Liquidator** - Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the CIRP shall, subject to submission of written

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consent, act as the Liquidator for the purpose of Liquidation. Shri Madhugiri Venkatarayappa Sudarshan, Resolution Professional with Registration No.IBBI/IPA-002/IP-N00561/2017-2018/11707 has filed the written consent dated 18.11.2021. The Law Researcher of this Tribunal has checked the credentials of proposed Liquidator and nothing adverse has been found on record. Therefore, Shri Madhugiri Venkatarayappa Sudarshan is appointed as the Liquidator.

11. Regulation 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/2019-20/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 is as per the resolution passed at agenda Item No.8

b) **Assessment of Sale as a going concern [Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016] -**

The CoC has not made any recommendation regarding sale of the Corporate Debtor as a going concern. Therefore the Liquidator is directed to refer Regulation 32A of the 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 at agenda Item.No.7

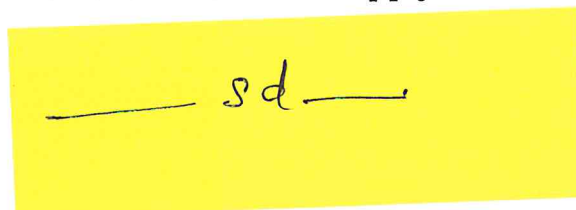
12. **Pending applications, if any, and its effects** – The Learned Counsel for the Applicant has stated that there is no pending application

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before any Tribunal of law or any other authority or any other Tribunal.

13. In view of the satisfaction of the conditions provided under Section 33 (2) of the Code, the Corporate Debtor **M/S MAHARAJA TECHNO CHROMES 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



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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 every fortnightly thereafter.

14. **Thus I.A No.369 of 2021** stands disposed of.

15. Copy of this order 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.



(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)



(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

Bhanu Priya (LRA)

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