IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH, CHENNAI

IA/51/CHE/2021 in TCP/73/IB/2017

(Filed under Sec. 60(5) of Insolvency and Bankruptcy Code, 2016 read with Regulation 44 and 47A of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 read with Rule 11 of NCLT Rules, 2016)

In the matter of ***M/s. Nag Leathers Private Limited***

Chandramouli Ramasubramaniam
Liquidator of
M/s. Nag Leathers Private Limited
"RAJI", 3B1, 3rd Floor, Gaiety Palace,
No. 1L, Blackers Road,
Chennai – 600 002

.. .. .. *Applicant / Liquidator*

Present:

For Liquidator : S. Sathiyanarayanan, Advocate

CORAM :

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

Order Pronounced on 2nd June 2021

ORDER

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

1. The IA/51/CHE/2021 has been filed by the Liquidator under Regulation 44 and 47A of Insolvency and Bankruptcy of India (Liquidation Process) Regulations, 2016, seeking relief as follows;

a. An Order extending the time for completion of Liquidation by another 1 (one) year or such other period as this Hon'ble Tribunal may deem fit and appropriate;

b. Pass such further or other orders / reliefs as may be deemed fit and proper in the facts and circumstances of the case and thus render justice.

2. It is averred in the Application that in an Application filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC, 2016') by an Operational Creditor viz. M/s. Mylar Traders, this Tribunal vide its order dated 10.07.2017 in TCP/73/IB/2017 initiated the Corporate Insolvency Resolution Process (CIRP) in relation to the Corporate Debtor and appointed the Applicant herein as the "Interim Resolution Professional" (IRP), who was subsequently appointed as the "Resolution Professional" of the Corporate Debtor.

3. It is submitted that this Tribunal vide order dated 09.04.2018 in CA/72/2018 in an Application filed by the Liquidator under Section 33(2) of IBC, 2016 has ordered for the Liquidation of the Corporate Debtor and appointed the Applicant herein as the Liquidator. The Learned Counsel for the Applicant submitted that the Liquidator after verifying the records and books of the

Corporate Debtor identified certain avoidance transactions carried out by the erstwhile management of the Corporate Debtor and has filed necessary applications before this Tribunal and the same is pending adjudication.

4. The Learned Counsel for the Applicant submitted that after the commencement of the Liquidation process of the Corporate Debtor, all the available assets of the Corporate Debtor were sold through e-auction and stakeholders of the Corporate Debtor were settled out of the sale proceeds as per the order of priority prescribed under Section 53 of IBC, 2016. Further, it was submitted that the unsecured creditors of the Corporate Debtor have filed civil suits against the Corporate Debtor for recovery of the amount due to them before the II Additional District Judge, Ranipet and due to nationwide lockdown imposed by the Government of India due to Covid – 19 pandemic, there was some delay in prosecuting the said matter and only on 20.07.2020, the suits filed by the unsecured financial creditors were dismissed.

5. Further, it was submitted by the Learned Counsel for the Applicant that due to the prevailing Covid – 19 pandemic and subsequent lock-down imposed by the Government of India and the

State Governments, the Liquidator is unable to complete the Liquidation process of the Corporate Debtor within the time limit prescribed under the Code and in terms of Regulation 44 of the IBBI (Liquidation Process) Regulations, 2016 as was in force as on the date of order of liquidation i.e. 09.04.2018, the Liquidation process has to be completed within 2 (two) years from the date of such order and as such the Liquidation period of the Corporate Debtor expired on 08.04.2020. Under the circumstances, it was also contended by the Learned Counsel for the Applicant that the avoidance application filed by the Liquidator before this Tribunal under Section 66 of IBC, 2016 is pending adjudication and in such a case, the Liquidation period has to be extended taking into consideration the decision passed by this Tribunal while interpreting the provisions of IBC, 2016 viz. Section 54 read with Regulation 44 and 45(3)(a) of IBBI (Liquidation Process) Regulations, 2016 in the matter of **Radhakrishnan Dharmarajan, Liquidator of M/s. Winwind Power Energy Pvt. Ltd.** in IA/65/2021 in CP/250/IB/2018 dated 15.03.2021

6. It is to be noted here that the Regulation which was prevalent at the time of passing the Liquidation Order mandates the Liquidation process to be completed within a period of 2 years and

as such the liquidation process in relation to the Corporate Debtor is required to be completed on or before 08.04.2020. However, the Liquidator being not in a position to complete the process and under the circumstances, the Liquidator has filed the present Application under Regulation 44(2) of IBBI (Liquidation Process) Regulations, 2016 *(amended upto 15.12.2016)* for continuation of the Liquidation period of the Corporate Debtor for a further period of one year from 19.03.2020. In this context it is relevant to refer to Regulation 44 of IBBI (Liquidation Process) Regulations, 2016 *(amended upto 15.12.2016)*

> **44. Completion of liquidation.**
>
> (1) The liquidator shall liquidate the corporate debtor within a period of two years.
>
> (2) <u>If the liquidator fails to liquidate the corporate debtor within two years, he shall make an application to the Adjudicating Authority to continue such liquidation, along with a report explaining why the liquidation has not been completed and specifying the additional time that shall be required for liquidation.</u>

7. Regulation 44(2) of IBBI (Liquidation Process) Regulations, 2016, which was amended upto 15.12.2016, is taken into consideration for the facts of the present case and it contemplates that if the liquidator has failed to liquidate the Corporate Debtor within two years then he has to make an application to the

Adjudicating Authority to continue such liquidation, along with a report explaining why the liquidation has not been completed specifying the additional time that shall be required for completion of the liquidation.

8. The Applicant in the Application has averred that the avoidance applications filed by Liquidator is yet to be adjudicated by this Tribunal and till such time the avoidance application is adjudicated, the Liquidation process in relation to the Corporate Debtor cannot be completed and as such, there arises a necessity to continue with the Liquidation process of the Corporate Debtor.

9. It is also significant to note here that owing to Covid-19 pandemic and consequent lockdown imposed by the Central / State Government time to time, the Regulator viz. Insolvency and Bankruptcy Board of India (IBBI) by way of an amendment inserted Regulation 47A in IBBI (Liquidation Process) Regulations, 2016, which states as follows;

> **Exclusion of period of lockdown.**
>
> 47A. Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of computation of the time-line for any task that could not be completed due to such lockdown, in relation to any liquidation process.

10. Thus, by taking into consideration all the facts mentioned above, this Authority feels that it is just and proper to extend the Liquidation period for a further period of one year and as such the Liquidation period of the Corporate Debtor is extended for a period of one year from the date of this Order and the Liquidation process in relation to the Corporate Debtor is required to be completed on or before 01.06.2022. Further, the Liquidator shall make every endeavour to complete the liquidation process within the extended period and not to seek for any further extension. The Liquidator in view of the extension granted as above, is directed to abide by the model timelines as prescribed by IBBI in Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and thereby complete the process in all earnest and in accordance with the said Regulations including filing of reports as required, with this Tribunal.

11. Accordingly, IA/51/CHE/2021 stands **allowed**.

-Sd-
ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-
R. VARADHARAJAN
MEMBER (JUDICIAL)

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