

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, CHENNAI**

**MA/1069/2019
IN
CP/1226/IB/2018**

Application filed u/s 33(2) of the IBC, 2016

In the matter of M/s. R L Logistics Private Limited

Mr. Arumugam Arumugam, RP **...Applicant**
Resolution Professional
Representing Corporate Debtor
(M/s. R L Logistics Private Limited)

Order delivered on: 21.10.2019

CORAM:

**B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)
B. ANIL KUMAR, MEMBER (TECHICAL)**

For the Applicant: *Shri. K. Moorthy, Advocate*
Mrs. P. Stella Marry, Advocate
For Mr. Arumugam Arumugam, RP

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in Open Court on: 16.10.2019

This Application has been filed for issuance of liquidation order under Section 33 (1) of I&B Code, 2016 on the ground CoC has not passed any resolution as contemplated under the Code either

for approval of the Resolution Plan or for liquidation of the Company or even for extension of the CIRP period.

2. On perusal of this Application, it appears that this Company Petition was admitted on 27.02.2019, thereafter paper publication was given inviting claims from the Creditors. In pursuance thereof, after arrival of the claims, the Resolution Professional collated the claims dividing Financial Creditors claim as ₹7,24,34,969 and Operational Creditors claim as ₹16,03,004. In addition to the Financial Creditors claim and Operational Creditors claim, this Company is indebted to pay ₹33,57,638 towards EPF dues. Based on the above collation, the Resolution Professional constituted Committee of Creditors as well.

3. Subsequent to receipt of the Liquidation value from the two valuers appointed by him, the Resolution Professional, by taking average of those two values, arrived at the liquidation value as ₹1,26,94,480.

4. Since EPF dues will not fall within the ambit of liquidation estate, the Resolution Professional, after deducting EPF dues, determined the liquidation value as ₹93,36,800. Thereafter, in the meeting held on 14.05.2019, CoC has approved Information Memorandum and caused Expression of Interest published on 14.05.2019 and 17.06.2019, but none came forward.

5. Subsequently, on another invitation of Expression of Interest given on 10.07.2019, two persons came forward giving proposals of the Resolution Plan viz., 1) M/s. Senthamizh Constructions and 2) Mr.Rajagopal i.e., the promoter of the Corporate Debtor. Out of these two, M/s. Senthamizh Constructions did not provide non-disclosure certificate.

6. Then based on the Expression of Interest given by Mr.Rajagopal, the CoC, in its 7th meeting held on 14.08.2019, suggested the Resolution Applicant to submit the Resolution Plan along with EMD of ₹10 lakh, but whereas Mr.Rajagopal did not come forward either with the Resolution Plan or with ₹10 lakhs

towards EMD. Therefore, no occasion arose to the CoC to consider the Resolution Plan of the promoter because he has not complied with the procedure as laid under Section 30 (2) of the I&B Code, 2016. Since no Resolution Plan had come before the CoC agreeable to it, the CoC could not approve any plan.

7. For no Plan being approved, the Resolution Professional proposed in 8th meeting held on 22.08.2019, to take a call by the CoCs either to extend the CIRP period or to propose for liquidation of this Company. However, the CoC has failed to take any decision with requisite approval as stated under the Code (66%), therefore, this Resolution Professional is constrained to file this Application under Section 33 (1) of the I&B Code, 2016 for the CIRP period of 180 days was ended on 25.08.2019.

8. As to the functioning of the Company, the Resolution Professional has submitted that one of the Branches of this Company situated at Hyderabad has been doing well, as to remaining 4 branches situated at viz., Visakhapatnam, Mumbai,

Tuticorin and the Head Office at Chennai, he says, they are shut down. Since the Resolution Professional himself has stated that Hyderabad Branch has been functioning well with 20 employees, it is needless to say that Branch is required to continue as a going concern until the Company is liquidated. We also suggest the liquidator to put his efforts to sell Hyderabad Branch as a going Concern as stated under IBBI Regulations.

9. The Resolution Professional has put his efforts to bring the Resolution Plan to a logical conclusion but since the CoC has not come to a consensus for approval either for extension of the CIRP period or for liquidation of this Company, we are of the view that this Applicant has rightly filed this Application for the order of liquidation as per Section 33 of I&B Code, 2016. When such being the fact, this Adjudicating Authority is also constrained to give necessary directions for liquidating the Company.

10. In view thereof, we hereby order for liquidation of the Company with directions as follows:-

- a) This Bench hereby orders the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing a public notice stating that the Corporate Debtor is in liquidation with a direction to the liquidator to send this order to ROC with which this company has been registered.
- b) The Resolution Professional viz Mr. Arumugam Arumugam is hereby appointed to act as Liquidator for the purpose of liquidation of the corporate debtor, therefore all powers of the Board of directors, Key managerial personnel and partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be hereby vested in the liquidator. The Personnel of the Corporate Debtor are directed to extend all co-operations to the liquidator as may be required in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as

specified under regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under section 53 of the Code.

- c) Since this liquidation order has been passed, no suit or other legal proceedings shall be instituted by or against the Corporate debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of section 33 of the Code.
- d) This liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of the Corporate Debtor except to extent of the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
- e) The liquidator is directed to carry the functions of the Liquidator as envisaged under the Insolvency and

Bankruptcy Code, 2016 and also Insolvency and Bankruptcy
Board of India (Liquidation Process) Regulations, 2016.

11. Accordingly, this MA/1069/2019 filed in CP/1226/IB/2018 is
hereby allowed.

-SD-
ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-
(B. S.V. PRAKASH KUMAR)
Member (Judicial)

ghk/tjs