

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

**MA(IBC)/104(CHE)/2021  
in  
CP(IB)/606 (CHE)/2017**

*(Filed under Section 33 of the Insolvency and Bankruptcy Code, 2016)*

*In the matter of **Frontline Printers Private Limited***

**Edelweiss Asset Reconstruction Company Limited,**  
Acting in capacity as  
Trustee of Edelweiss ARF-I Trust Scheme.

*... Applicant/ Petitioner*

*Vs.*

**Frontline Printers Private Limited**

*... Respondent/ Corporate  
Debtor*

*Order Pronounced on 25<sup>th</sup> April 2022*

CORAM:

**JUSTICE (RETD) S.RAMATHILAGAM, MEMBER (JUDICIAL)**

**ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Applicant : Mr.M.D.Srinivasan, Advocate  
Mr.Vinod Kumar, Advocate*

*For Respondent : Mr.P.H.Arvinth Pandian, Sr. Advocate  
Mr.Roshan Atiq, Advocate*

ORDER

**Per: JUSTICE (RETD) S.RAMATHILAGAM, MEMBER (JUDICIAL)**

This Application MA(IBC)/104(CHE)/2021, is filed under Section 33 of IBC, 2016 by the Financial Creditor of the Corporate Debtor herein Viz., Frontline Printers Private Limited seeking the following reliefs:-

- a) *Pass an order requiring the Respondent / Corporate Debtor to be liquidated in the manner provided under the IBC, 2016.*
- b) *Appoint Mr.T.V.Balasubramanian as the liquidator to proceed with the liquidation process in terms of the IBC, 2016.*
- c) *Direct the Corporate Debtor to handover the possession of all the assets and properties of the Corporate Debtor mentioned in Annexure E to this application, to the Liquidator with immediate effect.*
- d) *Direct the Liquidator to issue a public announcement stating that the Respondent/Corporate Debtor is in liquidation in compliance with the IBC, 2016.*
- e) *Direct the order of liquidation to be sent to the Registrar of Companies.*

2. It was averred in the application that CIRP in respect of Corporate Debtor was initiated on 02.11.2017 and Mr.T.V.Balasubramanian was appointed as Interim Resolution Professional (IRP).

3. Pursuant to that the Committee of Creditors (CoC) has been constituted with the Applicant having a 100% voting share in the CoC in the 1st meeting of the CoC held on 07.12.2017.

4. It was submitted by the Learned Counsel for the Applicant that in the 6th meeting of the CoC held on 28.06.2018 a plan proposed by Prospective Resolution Applicant Kalisp Realty Private



Limited was approved by the CoC. Thereafter, this Adjudicating Authority approved the plan vide order dated 30.07.2018.

5. It was further submitted that as per the Resolution Plan the Resolution Applicant agreed to settle the total amount of Rs.19,55,00,000/- in the following manner

a) Rs.1,00,00,000/- was required to be paid within one day from the date of approving the resolution plan.

b) Balance Rs.18,55,00,000/- was required to be paid within a period of 4 months from the approval of the resolution plan by this Tribunal.

6. It was further submitted that the applicant for the purpose of implementation of the Resolution Plan, the Resolution Professional had handed over the assets of the Corporate Debtor including bank accounts and cash to the Resolution Applicant in terms of the agreement dated 21.08.2018, executed between the Resolution Professional and the Resolution Applicant.

7. It was further submitted that the Resolution Applicant had paid the upfront amount of Rs.1,00,00,000/- on the date of approval of the plan by CoC. However, the Resolution Applicant had defaulted in paying the balance due of Rs.18,55,00,000/-. Consequently, the Applicant filed MA/10/2019 and sought liquidation of the Corporate Debtor.



8. It was further submitted that during the proceedings of the above application, the parties had entered into an MoU, wherein the Resolution Applicant agreed to pay the settlement to the Applicant by selling the properties of the Corporate Debtor subject to a withdrawal of the MA/10/2019. Agreeing on the same, the Applicant approached this Tribunal to withdraw the MA/10/2019. On 22.08.2019, this Tribunal permitted the Applicant to withdraw the MA/10/2019 with the liberty to file a fresh application in the event of any breach in the compliance of the MoU.

9. It was further submitted that Resolution Applicant had defaulted in complying with the MoU, after several follow-ups it had paid only Rs.6,50,00,000/- on April 2019 and had not paid the remaining Rs.10,55,00,000/- till date, which should have been paid on before 15.04.2019 as per the MoU. In such circumstances, the applicant filed this application and sought an order of liquidation of the Corporate Debtor.

10. The Learned Counsel for the Respondent submitted the Resolution Applicant was unable to sell the property of the Corporate Debtor during the COVID restrictions and non-cooperation of the Applicant when the Resolution Applicant found a potential seller as a result Resolution Applicant is unable to make settlement dues.

11. It was further submitted that lack of communication with the Applicant created such hindrance in the effective implementation of the Resolution Plan and in such circumstances this Respondent sought direction to appoint an Advocate Commissioner for the sale of the property of the Corporate Debtor in order to pay the remaining amount agreed to pay in the MoU.

12. Having heard the learned counsel for the parties and perusal of the documents placed on record we see that the resolution plan submitted by the Resolution Applicant was approved by this Tribunal on 30.07.2018.

13. On seeing para 15 of the Resolution Plan (extracted hereunder)

*"15. Financial Creditors*

*The Resolution Applicant shall pay Rs.1955 Lacs (the Liquidated value) to the Financial Creditor as full and final settlement of its dues; Necessary funds will be brought in by the Resolution Applicant upon the approval of the Resolution Plan by NCLT  
Repayment Schedule:*

*A demand draft Rs.100 lakhs (Rupees One Lakh only) shall be handed over to the RP on the day the Resolution Plan is approved by the Adjudicating Authority through CoC.*

*Rs.500 Lakh (Rupees Five-Hundred Lakh only) shall be paid upfront to Edelweiss within 30 days of approval of the Resolution Plan by the Adjudicating Authority.*

*The Balance amount Rs.1355 lakh (Rupees One Thousand Three Hundred and Fifty Five Lakh only) shall be paid within 50 days from approval of the Resolution Plan by the Adjudicating Authority."*

We observe that the entire payment was agreed to be made within 50 days from the approval of the Resolution Plan by this Adjudicating Authority.

14. It is also noted that in the Resolution Plan approval order dated 30.07.2018 in MA/10/2019, this Adjudicating Authority observed as follows

*"Further, the Resolution Applicant has stated that for reasons beyond their control if they are unable to full fill the obligations, the Resolution Applicant restricts their liability to the extent of forfeiting the payment of Rs.1 crore made and shall not oppose any action taken under section 33(3) of IBC, 2016."*

15. Further, it can be seen from paras 5 & 6 of habendum of the MoU dated 25.02.2019 entered between the Resolution Applicant and the Applicant it was depicted as follows

*"5) The Balance Amount shall be settled / paid to the Financial Creditor on or before 15 April 2019 (**Closing Date**).*

*6) The Parties agree and confirm that time is of the essence for the performance of the terms of this MoU. In case of default or breach by the Resolution Applicant of the terms of MoU, the Financial Creditor shall be entitled to revive the Liquidation Application or file a fresh application for Corporate Debtor's Liquidation without any notice or intimation to the Corporate Debtor / Resolution Applicant"*

16. During the hearing on 28.10.2021, on request of the Learned Counsel appeared on behalf of the Respondent an opportunity was

afforded to the Resolution Applicant for reporting settlement. Further, on 25.11.2021 hearing, further 45 days have been given for reporting settlement as another chance, but till date, the Resolution Applicant has not found any viable solution for the effective implementation of the Plan even after 3 years since the approval of the Resolution Plan.

17. On a conjoint reading of the aforesaid observations makes clear that the Resolution Applicant repeatedly failed to honour their own commitments to the Financial Creditor as per the Resolution Plan. More than adequate opportunity was given to the Resolution Applicant by this Adjudicating Authority to implement the Resolution Plan but the Resolution Applicant miserably failed to makeover the same; it manifests the incapacity of the Resolution Applicant's potential in implementation of the plan.

18. It is pertinent to refer here to the relevant provision of IBC, 2016

***"Section 33 Initiation of liquidation:***

*(3) Where the resolution plan approved by the Adjudicating Authority 3[under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)"*

It is also relevant to refer Hon'ble NCLAT decision in **Yavar Dhala**

***Vs. JM Financial Asset Reconstruction Company***



*"3. In the situation where a Resolution Applicant succeeds as Corporate Debtor but if fails to comply its assurance in terms of the resolution plan, what step is to be taken has been already been laid down in Sub-section (3) of Section 33 of the I&B Code, which reads as follows:—*

*"33. (3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)."*

*4. In view of the specific provision made under the I&B Code, we are of the view that the Adjudicating Authority had no option but to pass order of liquidation and could not have resorted to revival of the Corporate Debtor by taking fresh resolution plans."*

19. Since, the time and value of the Asset are the essence of the code viz., IBC, 2016, we feel that to preserve the better value of the assets and to protect the assets from further depreciation, liquidation in time would be better than the uncertain resolution process.

20. As a continuation of the above discussions and in view of the non-implementation of the approved Resolution Plan by the Resolution Applicant even after 3 years of approval is apparently against the object of the code, in such case Liquidation in terms of Section 33(3) of IBC, 2016 could be the solution.

21) In such circumstances this Adjudicating Authority is of the considered opinion that it is appropriate to order liquidation of the Corporate Debtor and **Mr.T.V.Balasubramanian, Reg.No.**

**[IBBI/IPA-001/IP-P00 198/2017-2018/10388], (e-mail: tvbalu@pkfindia.in)** is appointed as the Liquidator of the Corporate Debtor 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 him.
- 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 to 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.

22) The application MA(IBC)/104(CHE)/2021 stands **allowed** with the aforesaid directions.

-Sd-  
**B. ANIL KUMAR**  
MEMBER (TECHNICAL)

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

*Gopishankar D*