

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**  
**(Exercising powers of Adjudicating Authority under  
The Insolvency & Bankruptcy Code, 2016)**  
**(Through Web-based video conferencing platform)**

I.A.No.368 of 2021

in

C.P.(IB)No.41/BB/2021

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

**In the matter of**

M/s. S. V. Solar Solutions - Petitioner/Operational Creditor

**Versus**

M/s. Microsun Solar Tech Private Limited - Respondent/Corporate Debtor

**And in the matter of I.A.No.368 of 2021:**

**Mr. Madhugiri Venkatarayappa Sudarshan**

*Resolution Professional of*

*M/s. Microsun Solar Tech Private Limited*

Reg. office at. No.984/13, 8<sup>th</sup> Main,

Girinagar II Phase,

Bengaluru – 560 085

- Applicant/Resolution Professional

**Order delivered on: 1<sup>st</sup> February, 2022**

**Coram:** Hon'ble Shri Ajay Kumar Vatsavayi, Member (Judicial)

Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**Parties/Counsels Present:**

For the Applicant : Shri Hemanth Rao

**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

**ORDER**

**I.A.No.368 of 2021:**

1. This Application has been filed by Mr. Madhugiri Venkatarayappa Sudarshan, the Resolution Professional of M/s. Microsun Solar Tech Private Limited (Corporate Debtor), Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation of the Corporate Debtor M/s. Microsun Solar Tech

I.A.No.368 of 2021 in  
C.P. (IB) No.41/BB/2021  
(Admitted)

- Sd -

Private Limited; and to appoint Mr. Madhugiri Venkatarayappa Sudarshan, Insolvency Professional, to act as Liquidator in the matter of Corporate Debtor M/s. Microsun Solar Tech Private Limited.

2. C.P.(IB)No.41/BB/2021 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by "M/s. SV Solar Solutions" to initiate Corporate Insolvency Resolution Process (in short CIRP) against M/s. Microsun Solar Tech Private Limited was admitted on 6.4.2021 by this Adjudicating Authority and Shri Venkata Subbarao Kalva was appointed as Interim Resolution Professional (IRP).
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:

Sl. No.	Name of the Financial Creditor	Amount Due (Rs.)	Voting Share
1	Canara Bank, Peenya Industrial Estate Branch, Bengaluru	10,62,81,432/-	100%
Total		10,62,81,432/-	100%

4. Further, in the 1<sup>st</sup> CoC meeting held on 03.05.2021, the CoC appointed Mr. Madhugiri Venkatarayappa Sudarshan, the Applicant herein as Resolution Professional as per 22(3) of the Code.
5. It is submitted that CoC in its 10<sup>th</sup> meeting held on 28<sup>th</sup> October 2021, considered the issue of approval of liquidation of Corporate Debtor at agenda item no 8 and the same as under:

*"To consider and approve Liquidation of Corporate Debtor.*

*The Chairman brought to the notice of Committee of Creditors (CoC) that there were no resolution plans received from prospective resolution applicants for revival of the Corporate Debtor, in accordance with the Section 33 of IBC, 2016, the committee was hereby requested to approve for liquidation of the Corporate Debtor.*

*In this connection, the Chairman proposed following resolution and the CoC approved the same:*

— Sd —

*“RESOLVED THAT as there were no resolution plans received for revival of the Corporate Debtor, 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 the CoC unanimously approved with absolute majority.

6. The Hon’ble NCLAT, in Praveen Kumar Nand Kumar vs. VSL Securities Pvt. Ltd. in CA No. 01/2020 in CA 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 Section 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 u/s 12 or the fast track corporate insolvency resolution process u/s 56, as the case may be does not receive plan under sub-section (6) of Section 30; or*

*(b) rejects the resolution plan u/s 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 9 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 the Order dated 09.11.2021 in I.A.No.314/2021, this Adjudicating Authority has allowed to extent the CIRP period by 90 days till 05.01.2022. 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 consent, act as the Liquidator for the purpose of Liquidation. Shri Madhugiri Venkatarayappa Sudarshan, Resolution Professional with IBBI Registration No. IBBI/IPA-002/IP-N00561/ 2017-2018/ 11707 e-mail: [sudarshan.mv@outlook.com](mailto:sudarshan.mv@outlook.com), has filed his written consent dated 18.11.2021 attached as Annexure-B of the Application. 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 CIRP 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:

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- a) **Liquidation Cost [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016) –**

The liquidation cost shall be met as per Regulation 2A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- b) **Assessment of Sale as a going concern [Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 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) Regulations, 2016 and take necessary action.

- c) **Fees of the Liquidator (Regulation 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regulation 4 (2) of the IBBI (Liquidation Process) Regulations, 2016) –** The fees payable to the Liquidator is as per the resolution passed at Agenda Item No.8.

12. **Pending applications, if any, and its effects** – The learned Counsel for Applicant has stated that an Application bearing IA.No.323/2021 under Section 19(2) R/w. Section 60(5) (c) of the IBC, 2016 seeking assistance of Rajagopal Nagar Police Station, Peenya to provide protection for shifting of plant and machinery from Peenya to Dabaspur is pending before the Adjudicating Authority.

13. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, the Corporate Debtor **Microsun Solar Tech Pvt. Ltd.**, 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:

- a) 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;

- b) 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
- c) 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
- d) 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
- e) 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 liquidation process as they apply in relation to Liquidation process with the substitution of references to the Interim Resolution Professional for references to the Liquidator.
- f) That the Liquidator shall publish public announcement in accordance with Regulation 12 of the IBBI (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.
- g) That the announcement shall be published in accordance with Regulation 12(3) of the IBBI (Liquidation Process) Regulation 2016.

h) That in accordance with Regulation 13 of the IBBI (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.368 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.

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**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

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**(AJAY KUMAR VATSAVAYI)**  
**MEMBER (JUDICIAL)**

Shruthi