

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

MA/1190/2019 in CP/952/IB/2018

(Filed under Sec.60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of ***M/s. Srinathji Glazing Private Limited***

Perumal Ulaganathan
Interim Resolution Professional of
M/s. Srinathji Glazings Private Limited
144, Alex Street, Panneer Nagar,
Mogappair, Chennai – 600 037

.. .. Applicant

-Vs-

M/s. Fuso Glass India Pvt. Ltd.
Fuso House
91, Poonamallee High Road,
Chennai – 600 084

.. .. Respondent

Present:

For Applicant : Perumal Ulaganathan, *IRP in person*

For Respondent : *None – appeared*

WITH

IA/696/2020 in CP/952/IB/2018

(Filed under Sec. 33 of the Insolvency and Bankruptcy Code, 2016)

In the matter of ***M/s. Srinathji Glazing Private Limited***

Perumal Ulaganathan
Interim Resolution Professional of
M/s. Srinathji Glazings Private Limited
144, Alex Street, Panneer Nagar,
Mogappair, Chennai – 600 037

.. .. Applicant



Present:

For Applicant : Perumal Ulaganathan, IRP in person

CORAM :

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

Order Pronounced on 29th September 2020

COMMON ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. MA/1190/2019 has been filed by the Applicant viz. Mr. Perumal Ulaganathan, the Interim Resolution Professional of M/s. Srinathji Glazing Pvt. Ltd. under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") seeking relief as follows;

"It is therefore prayed that this Hon'ble Tribunal may be pleased to pass appropriate orders withdrawing the order of commencement of Corporate Insolvency Resolution Process (CIRP) passed by this Tribunal on 16.09.2019 and fix suitable amount of professional fees payable to the IRP from the commencement date till he is relieved of his duty as IRP / RP and payment of expenses incurred by him including legal expenses for filing notification of constitution of CoC with NCLT and this present application, or pass any other order or direction or grant any other relief, in the circumstances of the case and thus render justice."



2. IA/690/2020 has been filed by the Applicant viz. Mr. Perumal Ulaganathan, the Interim Resolution Professional of M/s. Srinathji Glazing Pvt. Ltd. under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows;

- (i) *To pass an order of liquidation, under sub – section 1 and 2 of Section 33 of Insolvency and Bankruptcy Code, 2016, in respect of M/s. Srinathji Glazing Private Limited, the Corporate Debtor;*
- (ii) *To pass an order appointing Liquidator and relieve Shri Perumal Ulaganathan, as Interim Resolution Professional, in the above matter;*
- (iii) *or pass any other order or direction or grant any other relief, in the circumstances of the case and thus render justice.*

3. In an Application filed under Sec. 9 of the IBC, 2016 by an Operational Creditor, this Tribunal vide order dated 16.09.2019 in CP/952/IB/2018 initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz. M/s. Srinathji Glazing Private Limited and ordered moratorium under Section 14 of IBC, 2016 and consequently appointed the Applicant as the Interim Resolution Professional.

4. Subsequent to the same, the IRP caused public announcement both in English and Tamil Newspaper viz. Trinity



Mirror and Makkal Kural respectively on 24.09.2019 and the last date for filing of the claim was fixed as 03.10.2019.

5. After the public announcement, the IRP received the claim only from one Operational Creditor, who triggered the CIRP in relation to the Corporate Debtor for a sum of Rs.35,78,832/- on 03.10.2019 and as such the Committee of Creditors was formed with the sole Operational Creditor and the first meeting of the CoC was convened on 18.10.2019.

6. Since the sole Operational Creditor had chosen not to participate in the first CoC meeting, the Applicant was impelled to file the present MA/1190/2020 for seeking appropriate relief from this Tribunal.

7. In the meanwhile, the Indian Bank, Padi Branch, had submitted their claim before the IRP for a sum of Rs.50,41,475/- and as such the Committee of Creditors was reconstituted with the Indian Bank being the sole Financial Creditor and the 2nd meeting of the CoC was scheduled to be held on 28.11.2019. However, on 28.11.2019 the representative of the Financial Creditor who attended the meeting informed the IRP that he is



not authorized to attend the meeting and sought for adjournment on 29.11.2019 and on 29.11.2019, none of the representatives from the Financial Creditor turned up for the meeting.

8. This fact was brought to the knowledge of this Tribunal and this Tribunal on 17.03.2020 passed the following order;

"Learned RP is present and it is brought to the notice of this Tribunal that despite efforts being made by the Resolution Professional ("RP") pursuant to the directions issued by this Tribunal dated 21.11.2019, the sole Financial Creditor is not co-operating with him. The IRP, in addition, represents other than in relation to the ratification of the costs and fees of the Interim Resolution Professional ("IRP"), it is also brought to the notice of this Tribunal that the Financial Creditor is not bothered to confirm the appointment of IRP made by this Tribunal at the time of admission of the petition appointing IRP, within a period of one month. The IRP however, is required to comply with the provisions of IBC, 2016 and in the circumstances, the IRP represents that he is under great financial stress as well as not is in a position to carry any further in relation to the appointment made by this Tribunal.

Counsel for the Indian Bank who is the sole Financial Creditor is present. In addition, the Operational Creditor who initiated the proceedings before this Tribunal based on which the admission order was passed by this Tribunal

appointing the IRP is present. The Learned IRP also is present in person.

As it is represented by the IRP that CIRP period is coming to close on 18.03.2020, we direct the IRP to convene a meeting of the CoC within a period of five days from today. Let the Indian Bank attend the CoC meeting without fail and let the costs and fees of the IRP be placed before the CoC for ratification or for rejection as the case may be. We also direct the Operational Creditor to be also present in the said meeting. However, he will not be entitled to vote in the said meeting. Upon convening of the meeting of the CoC, let the IRP file a report before this Tribunal as to what transpired in the said meeting, based on which, further direction will be issued by this Tribunal. Post the matter on 23.03.2020."

9. Subsequent thereto, in compliance of the said order, the IRP filed a memo before this Tribunal wherein it has been stated that the meeting was convened on 19.03.2020 and that the following decisions were taken and voted;

- (i) That the present IRP would continue without being replaced by a regular RP and proceed to file liquidation petition before the Adjudicating Authority;
- (ii) That the IRP / RP shall take control of the bank accounts of Corporate Debtor in HDFC Bank and

Indian Bank and utilize the same towards the cost of resolution and distribution, if any;

(iii) That the RP/Liquidator shall be paid only a sum of Rs.10,000/- (Rupees Ten Thousand Only) per month towards his fees including the expenses. The IRP expressed his disinclination to accept the fee so fixed. Further, he expressed his displeasure at the Committee not approving the legal expenses and the expenses for filing of reports with NCLT.

(iv) That the IRP was required to file Liquidation Petition before the Adjudicating Authority. However, the IRP has expressed his unwillingness to continue as Liquidator.

10. As per the decision taken in the CoC meeting dated 19.03.2020, the Applicant has filed IA/696/2020 for liquidation of the Corporate Debtor, however has expressed his unwillingness to act as a Liquidator of the Corporate Debtor.

11. Heard the arguments made by the Learned IRP. From the Compliance Certificate in Form – H filed by the Liquidator, it is evident that a total of 5 CoC meeting has been convened, however the IRP was never confirmed as RP as required to be



done in the first CoC meeting itself. Further, it may be seen that after the public announcement being made, the IRP has not appointed any Registered Valuer; not prepared the Information Memorandum; not issued the Invitation for Expression of Interest and as such the IRP has not carried out his duty as mandated under the provisions of IBC, 2016. In spite of failing in his duties to carry on the works as contemplated under the provisions of IBC, 2016, the IRP continues to harp on the issue that his fees has not been paid. This statement of the IRP, we find it quite strange and as such we feel that the IRP is not entitled for any further fee in relation the same. Furthermore, the attitude of the sole CoC member, who is the Financial Creditor, is also to be taken note of in this regard. As it can be seen, the sole Financial Creditor has been adopting a lackadaisical approach towards participation in the CoC meeting and we find it quite strange that for the Financial Creditor to participate in the CoC meeting, this Tribunal is constrained to pass a judicial order. This type of practice adopted by the CoC member is required to be eschewed and the CoC members are required to co-operate with the IRP, in order to complete the CIRP by strictly adhering to the timeline as



stipulated under IBC, 2016, taking into consideration the statement of objects and reasons for enacting IBC, 2016.

12. Be that as it may, coming to the factual matrix of the present case, the CoC in its meeting held on 19.03.2020 has decided to liquidate the Corporate Debtor and passed a Resolution to the said effect. Further, the 180 days of the CIRP has come to an end on 18.03.2019 and the Applicant has also not filed any Application for the extension of CIRP period. However, it may be seen, due to obvious reasons, the IRP has expressed his unwillingness to continue as the Liquidator in relation to the Corporate Debtor and hence not given written consent to act as a Liquidator. Unfortunately while passing the Resolution for Liquidation the CoC has also failed to act in relation to Liquidation in terms of Regulation 39D r/w Regulation 39B of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

13. In the said piquant circumstances, this Tribunal as per Section 34(5) of the IBC, 2016 hereby directs the Insolvency and Bankruptcy Board of India (IBBI) to propose the name of another



Insolvency Professional to be appointed as a liquidator. As per Section 34(6) of the IBC, 2016, the IBBI, is directed to propose the name of another Insolvency Professional along with written consent from the Insolvency Professional in the specified form within 10 days from the date of receipt of this order.

14. In view of IRP refusing to act as liquidator, the matter is being referred to IBBI and upon the name being proposed by the IBBI for the appointment of an Insolvency Professional as a liquidator, the IA/696/2020 will be taken up for passing an order of liquidation by appointing such insolvency professional as the liquidator.

15. However, in relation to MA/1190/2019, since we are inclined to pass an order of Liquidation in IA/696/2020, the reliefs as sought for in MA/1190/2019 becomes redundant and in relation to the fees and expenses we find that in view of the absence of carrying out several actions as are required to be carried out by an IRP as specified in IBC, 2016 read with attendant Regulations, the fees and expenses as has been ratified by the CoC on 19.03.2020 is adequate and the same shall be accordingly remitted, if not



already paid and accordingly **MA/1190/2019** stands **disposed**
of.

16. Post **IA/696/2020** on **21.10.2020** for the further orders in
this regard, awaiting the action from IBBI.

-SD-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond