(9)

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

CP/2/2021 in CP/1053/IB/2018

(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016 read with Rule 11 of NCLT Rules, 2016)

A. PITCHAI
S/o. Adhilingam
Aged about 71 years, residing at A7, Shantiniketan,
No.93, Bazulla Road, T. Nagar, Chennai – 600 017

...Applicant / Shareholder

-vs-

KRISHNA INDUSTRIAL CORPORATION LIMITED
Represented by its Liquidator, S. Rajendran
"Ramakrishna Buildings",
No.293, Anna Salai,
Chennai – 600 002

S. RAJENDRAN,
Liquidator of Krishna Industrial Corporation Limited
IBBI Reg. No. IBBI/IPA-002/IP-N00098/2017-18/10241
2nd Floor, Hari Krupa, 71/1, Mc Nicholas Road,
(off Poonamalle High Road), Chetpet, Chennai – 600 031

...Respondents

Order pronounced on 8th March, 2022

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicants : *P.H. Arvind Pandian, Senior Advocate*
K. Sathish Kumar, Advocate

For Respondents : *Yajura Devi, Advocate*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

CP/2/2021 is an Application filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 applications filed by the Applicants seeking thereof relief as follows;

a. *Set-aside the email dated 31.12.2020 of the 2nd Respondent rejecting the Scheme of Arrangement / Compromise dated 31.12.2020 presented by the Applicant.*

b. *Consequently, direct the 2nd Respondent herein to receive the Scheme of Arrangement / Compromise dated 31.12.2020 as presented by the Applicant.*

c. *Direct the 2nd Respondent to file the proposed Scheme of Arrangement / Compromise dated 31.12.2020 presented by the Applicant before this Hon'ble Tribunal and seek necessary directions as required under law.*

d. *Set – aside the auction notice issued by the 2nd Respondent in Business standard newspaper on 30.12.2020 edition, for sale of the assets of the 1st Respondent.*

e. *To pass any other relief as may deem fit and proper by the Hon'ble Tribunal*

2. During the Course of hearing, Learned Senior Counsel for the Applicant submitted that they are giving up the all-other prayers except prayer 'a' and 'b'.

3. It was submitted by the Learned Senior Counsel that the Applicant is a stakeholder of the Corporate Debtor viz. Krishna Industrial Corporation Limited holding 20,000 shares and having interest in the revival of the Corporate Debtor. It was submitted that after the Corporate Debtor was ordered for liquidation by this Tribunal on 27.07.2020, the Applicant intended to take over the Corporate Debtor by proposing a Scheme of Arrangement / Compromise under Section 230 of the Companies Act, 2013 and in pursuance of the same, the Applicant along with one another person submitted a Scheme of Arrangement to the Liquidator on 31.12.2020. In response to the same, it was submitted that the Liquidator has refused to accept the Scheme of Arrangement / Compromise without even considering the modalities of the Scheme, on the ground that 90 days period from the date of liquidation is already over and therefore the Scheme of Arrangement / Compromise cannot be entertained.

4. It was submitted by the Learned Senior Counsel for the Applicant that only very recently in the month of November 2020, the Applicant came to know of the fact that the Liquidation

proceedings has been initiated against the Corporate Debtor on 27.07.2020 and therefore the Applicant was unable to present the Scheme within a period of 90 days thereof. Further, it was submitted that due to the prevailing pandemic situation, the Applicant was not in a position to known the status of resolution of the Corporate Debtor.

5. The Learned Senior Counsel for the Applicant further contended that the Liquidator has informed the Applicant that the assets of the Corporate Debtor are proposed to be sold by way of auction proceedings to be conducted on 03.02.2021 and in the said auction proceedings, the Corporate Debtor is not being sold as a going concern and assets of the Corporate Debtor are sold separately. It was submitted that the said act of auctioning the assets of the Corporate Debtor will completely negate the object of IBC, 2016 to revive the Corporate Debtor. Hence, aggrieved by the action of the Liquidator in not placing the Scheme of the Arrangement / Compromise before the stakeholders, the Applicant has moved the present Application.

6. The Respondent has filed counter. The Learned Counsel for the 2nd Respondent submitted that the Stakeholders Consultation Committee was held on 17.11.2020 wherein the Applicant also participated. It was submitted that in the said Stakeholders

Consultation Committee, when another prospective Scheme proponent Mr. Venkata Ramachandran had sought permission to submit a scheme much after the expiry of 90 days, the stakeholders opined that the Liquidator may proceed with the sale of Assets and need not wait for further time, since it would delay the completion of the Liquidation Process. Further, it was submitted that the Applicant herein has also not mentioned in the said SCC meeting that he was interested in submitting a Scheme. Thus, it was submitted by the Learned Counsel for the Liquidator that the present Application is required to be dismissed.

7. Heard the submissions made by the Learned counsel for both the parties. The Learned Counsel for the Liquidator has placed on record a letter from one of the major stakeholders in respect of the Corporate Debtor viz. Maximus ARC Limited dated 31.01.2021, wherein the said stakeholder has ascribed reasons in para 2 to 7 for rejecting the Scheme and the same is captured hereunder;

> "2. *The Plant & Machinery lying at the unit are in scrap condition due to non-operation for long time. Revival of the unit requires huge capital outlay and working capital arrangements. The proposed scheme does not provide for the same.*
>
> *3. The proposed Scheme does not provide for payment of workmen dues and statutory liabilities which are required to be cleared before running the unit.*

4. The revenues and profit projected in this proposal are on very high side and not realistic. Thus, the proposal for payment of instalment amounts out of the revenue generated through operations of the company is not acceptable.

5. With regard to the proposal to sell the non-core assets, mortgaged by the directors and guarantors, to meet the instalments amounts, we inform you that there are no assets other than factory property mortgaged by the directors / guarantors. Thus, this option is not feasible and acceptable.

6. The proposal to pay the instalment amount out of revenue generated through operations of the company or alternatively by selling the non-core assets indicate that the investors do not have the required financial resources to revive the unit. Supporting documents evidencing financial strength of the 'investors' are not available.

7. Investors do not have any experience in the field of manufacture of fertilizers and chemicals.

In view of all the factors, we are of the opinion that this is totally a non-serious proposal submitted to NCLT with an intention to delay the sale of the assets of the Corporate Debtor by the liquidator.

The proposed "Scheme" is not at all acceptable to us as the same, if approved, will be detrimental to our interest.

We therefore request you to record our objection to the "Scheme" and take necessary steps for rejection of the same."

8. Thus, it is seen that the Scheme submitted by the Applicant in the present case was already considered by one of the major stakeholders in respect of the Corporate Debtor viz. Maximus ARC

Limited and the same was rejected. Further, in any case in the stakeholders Consultation Committee held on 17.11.2020, the Stakeholders have decided to go for e-auction of the sale of the assets of the Corporate Debtor and has categorically stated that Liquidator need not wait for any Schemes since it would delay the completion of the Liquidation Process.

9. Hence for the aforestated reasons, we find that Liquidator was right in rejecting the Scheme of Compromise propounded by the Applicant. Accordingly, CP/2/2021 stands **dismissed**. No costs.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

Raymond