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

IA(IBC)/1045(CHE)2022 IN MA/1251/2019 IN CP/1022/IB/2018

(filed under Section 60(5) of Insolvency & Bankruptcy Code, 2016 r/w Regulation 47A and Regulation 44(2) IBBI (Liquidation Process) Regulations, 2016

In the matter of ***M/s. AQUA DESIGNS INDIA PRIVATE LIMITED***

Mr. C. Ramasubramaniam,
Liquidator of
M/s. Aqua Designs India Private Limited,
'Raji' 3B1, 3rd Floor,
Gaiety Palace, No. 11,
Blackers Road,
Mount Road, Chennai-600 002

... Applicant

Order Pronounced on ***30th March, 2023***

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : Mr. R. Sankaranarayanan, Sr. Advocate/ASG
Mr. C. Ramasubramaniam, Liquidator

ORDER

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This order shall dispose of the application filed under Section 60(5) IBC, 2016 (in short **"IBC"**) read with Regulation 47(A) and 44(2) IBBI (Liquidation Process) Regulations, 2016 by the Liquidator of the Corporate Debtor i.e. **M/s. Aqua Designs India Private Limited** for excluding the period of lockdown i.e. from 23.03.2020 to 23.12.2020 (274 days) from the period of liquidation under Regulation 47A of the IBBI (Liquidation Process) Regulations, another 365 days from 01.10.2021 under Regulation 44(2) of the IBBI (Liquidation Process) Regulations, 2016 and for extending the period of liquidation after excluding the above periods.

2. Briefly the facts are that the Corporate Debtor has been undergoing liquidation process by the order of this Tribunal dated 23rd December 2019. On 20.03.2020, the Liquidator received a composite Scheme of Compromise/Arrangement from a Shareholder of the Corporate Debtor along with strategic investor between the company and the Secured Creditors, Unsecured Creditors, Statutory Authorities and employees on the 88th day from the date of commencement of the liquidation. The Liquidator accordingly filed an application under Section 230(1) of the Companies Act, 2013 r/w Section 60(5) of IBC which was disposed off by the Tribunal on 28.07.2021. During the process, the Liquidator found that some preferential transactions had been made by the Corporate Debtor. He e-filed an application under Section 43 of IBC on 21.12.2020 which is pending before the Tribunal. He also found certain fraudulent transactions causing loss to the Corporate Debtor and filed another application under Section 66 of IBC on 21.12.2020 which is also pending before the Tribunal. He filed another application under Section 45 read with

Section 46 of IBC on 21.12.2020 seeking directions to the Respondents to roll back/reverse the wrongly appropriated amount to the Liquidator which is also pending adjudication.

3. It is stated that as per Regulation 44 of the IBBI (Liquidation Process) Regulations, 2016, liquidation is to be completed within a period of one year which expired on 22.12.2020 but it could not be completed due to COVID-19 coupled with the lockdown imposed by the Central/State Governments. Reference is made of Regulation 47A of the IBBI (Liquidation Process) Regulations, 2016 giving the details in tabulated form at para-19 of the application. Reference is also made of the order of the Hon'ble Supreme Court in Suo Moto Writ Petition (Civil) No.3 of 2020 extending the period of limitation on account of COVID-19 pandemic.

4. We have heard Ld. Senior Counsel Mr. R. Sankaranarayanan for the Liquidator and also the Liquidator in person and perused the brief synopsis of arguments submitted with the application and the affidavit.

5. In the instant matter, the liquidation commenced on 23.12.2019. As per the Regulation 44 of the IBBI (Liquidation Process) Regulations, 2016, the liquidation was to be completed in a period of one year i.e. upto 22.12.2020. The lockdown started on 24.03.2020. The Hon'ble Supreme Court in Suo Moto Writ Petition (Civil) No. 3 of 2020 extended the period of limitation with

effect from 15.03.2020 till 28.02.2022 on account of the restrictions/situations arisen of COVID-19 pandemic. The Liquidator has sought exclusion of 274 days from 23.03.2020 to 22.12.2020 as per Reg. 47A and extension of period of limitation for another 365 days starting from 01.10.2021.

6. Having gone through the judgment/directions of the Hon'ble Supreme Court in Suo Moto Writ Petition *supra*, and the fact that the COVID-19 pandemic started during the period of liquidation of the Corporate Debtor i.e. 23.03.2020 to 22.12.2020, we find it a fit case to exclude this period for calculating the period of liquidation as provided under Regulation 47A of the IBBI (Liquidation Process) Regulations, 2016. After this exclusion, the date of completion of the liquidation came to 01.10.2022.

7. Three applications under Section 43, 66 and 45 IBC are also pending consideration before this Tribunal as detailed in para-8,9 & 10 of the application. Section 44(2) of the IBBI (Liquidation Process) Regulations, 2016 provides that *"if the Liquidator fails to liquidate the Corporate Debtor within one year, he shall make an application to the Adjudicating Authority to continue such liquidation, along with a report explaining why the liquidation has not been completed specifying the additional time shall be required for liquidation."*

8. In this case, the Liquidator has given the reasons in a form of report explaining why the liquidation could not be completed within the time specified as stated above. The assets of the Corporate Debtor have been sold. The retention money in respect of two projects with CMWSSB, has not been received which is expected to be received soon.

9. Taking into circumstances in totality, we find it a fit case to extend the period of liquidation. The liquidation period of the Corporate Debtor is hereby extended till 30.09.2023.

10. Accordingly, IA(IBC)/1045(CHE)2022 stands **allowed and disposed off.**

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

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