

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

IA/680/CHE/2023 in CP (IB)/146/CHE/2020

(Filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016)

In the matter of **SOUTHERN INVESTMENTS PRIVATE LIMITED**

S Kangayan,

Resolution Professional of

Southern Investments Private Limited

Regn No IBBI/IPA002/N00866/2019-2020/12770

Plot No 81, 3rd Street, Phase 1, Dollars Colony,

Tambaram East, Chennai- 600 127

... Applicant

Order Pronounced on 01st March 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : *Mr. Jerin Asher Sojan, Advocate*
Shri. T.K. Baskar, Senior Advocate

ORDER

(Heard through Hybrid Mode)

This is an application filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 seeking following Reliefs:

- a) To pass an order of liquidation of the Corporate Debtor in terms of Section 33(2) of Insolvency and Bankruptcy Code, 2016.*
- b) Appoint the Applicant as the Liquidator of the Corporate Debtor.*
- c) Pass such other order or orders as this Hon'ble Tribunal may deem fit.*

2. From the averments made in the application, it is found that Corporate Debtor was in the business of Real Estate Development.
3. It is stated that an insolvency proceedings (CIRP I) initiated against the Corporate Debtor in *CP/IB/202/CHE/2018* was closed by Hon'ble Supreme Court on 20.11.2018 (in *WP(C) 452 of 2018*) leaving open the rights of the parties to avail appropriate legal remedies.
4. It is stated that the Corporate Insolvency Resolution Process (CIRP 2) of the Corporate Debtor was initiated by the order of the tribunal on 15.03.2021 on an application under Section 9 of the Code by one Mr. Baiju Cheriyan in *IBA/IBC/ 146/CHE 2020* and Mr. Y.N. Ramachandran was appointed as the Interim Resolution Professional (IRP).
5. It is stated that subsequent to appointment as Interim Resolution Professional, a public notice dated 02.04.2021 was given Financial Express (English) and Dinakural (Tamil). It is stated that vide order dated 13.02.2023 in *IA IBC 1388 CHE 2022*, the applicant, S Kangayan was appointed as the Resolution Professional , as the earlier IRP was not keeping well. It is stated that during the period from 15.03.21 till

the New Resolution Professional took over, no CoC meetings were conducted.

6. It is stated that seven claims were received, out of which six were admitted, out of which Hedge Financial Ltd was the sole secured financial creditor and remaining five were Operational Creditors. It is stated that CoC constituted had the sole secured financial creditor viz. M/s. Hedge Financial Services Ltd, as the member.

7. It is stated that the suspended Board of Directors had abandoned the Corporate Debtor, the CD's registered office was not functional and the company did not have financial data available from 2018 onwards. It is further stated that the promoter had been imprisoned twice and there were no employees working with the Corporate Debtor.

8. It is stated that the applicant had conducted 3 CoC meetings on 06.03.2023, 25.03.2023 and 30.03.2023. It is further stated that in the 3rd CoC meeting, the sole financial creditor voted for liquidation and recommended the applicant as liquidator.

9. In the **Form H** dated 27.07.2023 submitted by the Resolution Applicant placed as **SR No 3293 dated 04.08.2023**, it is stated that there are no avoidance transactions against which applications have been filed.

10. We have considered the submissions and perused the record. The Corporate Debtor is in the business of Real Estate Development with most of the projects being in Kerela. In the 3rd CoC meeting it was deliberated that the liquidation may be initiated and a resolution to that effect was passed.

11. It is stated that in compliance of the tribunal order dated 18.09.2023, RP has filed a memo in **SR No 4312 dated 09.10.2023** submitting the details of the claim filed by sole secured financial creditor along with loan agreements, Promissory Notes, Arbitration Awards, account statements, etc.

12. It is stated that the Tribunal had asked for the status of taking over of records from the earlier Resolution Professional vide its order dated

08th December 2023. Liquidator has filed a memo about the status vide

SR no 01 dated 01.01.2024 giving following details:

- a) Three projects namely *Cheeran Haven, Dover Ridge* and *Neilmont Park* have been cancelled prior to CIRP I.
- b) Except for 2 projects '*Beacon Heights*' and '*Hest Hill Village*', all the apartments in 24 projects have been sold to Home Buyers Association and the homebuyers have taken possession of the same.
- c) In respect of the two pending projects, there are 21 allottees as mentioned in page 11 of the typeset of the memo.
- d) A keyset of flat at 240/ A2, Glendale East, Sivapuri, Bank Road, Calicut -673001 was received from erst-while RP. The address tallies with the project called Wood Briar. It is stated that efforts are being made to verify and confirm whether the flat is owned by the Corporate Debtor.

13. It is seen from the records that the Committee of Creditors in the 3rd COC meeting held on 30.03.2023 has unanimously resolved to liquidate the Corporate Debtor. In the third CoC meeting, CoC took note of the fact:

That revival of the company is not possible at all, since, the company has no clients now, company has lost its brand value in the market, the company has lost its reputation also post the promoter Mr. Ajith Thomas (promoter director) has been imprisoned twice, the Corporate Debtor has no land bank, all the projects were engaged under Joint Development Mode. The only strength for the Corporate Debtor is the property under mortgage with Hedge Finance Ltd (sole CoC member), that too also, under poor maintenance and

to revive the property also some money has to be invested by the Corporate Debtor. Other hand, as a secured financial creditor Hedge Finance Ltd is pursuing for recovery of the money they have lent which is pronging for 7 years now., hence the commercial wisdom of the committee of creditors is go for liquidation as early as possible so as to recover from whatever left over with the Corporate Debtor.

14. In such circumstances, this Adjudicating Authority concludes that this application be allowed. As a consequence thereof, we order for the Liquidation of the Corporate Debtor as per Section 33(2) of IBC, 2016.

15. Vide *IBBI Circular Liq-12011/214/2023-IBBI/840* dated 18.07.2023, in exercise of its power conferred under Section 34(4)(b) of the Code IBBI has recommended that *an IP other than the IRP/RP may be appointed as liquidator* in all the cases where liquidation order is passed henceforth.

16. However, we are of the view that Mr. Kangayan, the Resolution Professional may be appointed as Liquidator because of the peculiar conditions of this case as under:

i) Mr. Kangayan has taken possession of the documents and title deeds, etc from Ms. Chitra Srinivas, erst-while RP of CIRP I very recently during the end of December 2023, which are being sorted out.

ii) As per his report, Mr. Kangayan got a keyset of flat at 240/ A2, Glendale East, Sivapuri, Bank Road, Calicut -673001, from erst-while RP. The address tallies with the project called Wood Briar, It is stated that efforts are being made to verify and confirm whether the flat is owned by the Corporate Debtor.

iii) In IA IBC 1052 CHE 2023 , the applicant has mentioned that as per Project Takeover agreement, executed by M/s. Chitra Srinivas , erstwhile RP, 6 flats along with car parking slots having a total built-up area of 8.775 sqft in *Ferntree Heights* located at Mukkola, Thiruvananthapuram, Kerela were owned by Corporate Debtor valued about Rs. 4.35 crore.

iv) Further, many IAs have been filed by Home Buyers and Home Owners Association seeking direction regarding their housing projects.

v) At this stage appointing a new person as liquidator as per the IBBI Circular may not be effective, as the new person will take time to understand the intricacies in the projects.

17. In view of the above, we appoint ***Shri. S.Kangayan, with Reg No: IBBI/IPA-002/N00866/2019-2020/12770 (e-mail Id: kangayan.s@gmail.com)*** (***AFA is valid till 15.10.2024***) 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, 2016 as amended upto date enjoined upon her.

b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. The public announcement may be made in *leading newspapers in Kerela in addition to Tamil Nadu* as many of the projects of Corporate Debtor are Kerala based. 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 liquidator should try to identify all the assets of the Corporate Debtor including the flats mentioned in para 16(ii) and (iii).

e) 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.

f) 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.

g) 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.

18. The Registry is directed to communicate this order to the Registrar of Companies, concerned and to the Insolvency and Bankruptcy Board of India.

19. 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.

20. Copy of this order 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.

21. With the above said directions, this *IA/680/CHE/2023* filed for Liquidation of the Corporate Debtor stands **allowed**.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)