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

IA(IBC)/514(CHE)/2022 in CP/672/IB/2017

(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 32, 32A, 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016)

In the matter of ***M/s. Arohi Infrastructure Private Limited***

S. Rajendran,
Liquidator of M/s. Arohi Infrastructure Private Limited
No.71/1, McNichols Road, Hari Krupa,
2nd Floor, Chetpet, Chennai – 600 031

......Applicant

-Vs-

1. **Tata Capital Financial Services Private Limited**
Penninsula Business Park, Tower A, 11th Floor,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai – 400 013

2. **Rabindra Kumar Samal**
S2, Sai Bhajan Apartment, Nandanar Street,
Sivaprakash Nagar, Madipakkam,
Chennai – 600 091

3. **GRK Reddy**
New No. 17, Old No.24, Srinagar Colony,
South Mada Street,
Chennai – 600 015

4. **Arul Digital Infrastructure Private Limited**
No.766, 4th Floor, Tower I, Sakthi Towers,
Anna Salai, Chennai – 600 002

......Respondents

Order pronounced on **20th June 2022**

CORAM

Justice (Retd.) S. RAMATHILAGAM, MEMBER (Judicial)
Shri. ANIL KUMAR B, MEMBER (Technical)

For Applicant : E. Om Prakash, Senior Advocate
M. Savitha Devi, Advocate

For Respondent : *Abitha Banu, Advocate*
For R1

S. Harish Kumar, Advocate
For R2 & R3

ORDER

***Per:* Justice (Retd.) S. RAMATHILAGAM, MEMBER (Judicial)**

This is an Application filed by the Liquidator of M/s. Arohi Infrastructure Private Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 32, 32A, 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 seeking relief as follows;

> a. *Allow the present application permitting the corporate debtor to exit the liquidation process;*
>
> b. *Allow the liquidator to hand over control and management of the corporate debtor to the erstwhile management;*
>
> c. *Absolve the liquidator of all claims and responsibilities connected with the corporate debtor*
>
> d. *Pass an order for transfer of shares of the corporate debtor held by the 1st respondent to the 4th respondent and*
>
> e. *Permit the 4th respondent to remove the existing directors in the corporate debtor and appoint its nominees*
>
> *And thus render justice.*

2. The Corporate Insolvency Resolution Process in respect of the Corporate Debtor was initiated by this Tribunal vide order dated 20.03.2018 pursuant to an application filed by the 1st respondent under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) and the Applicant herein was appointed as the Interim Resolution

Professional, and thereafter confirmed as the Resolution Professional in the 1st meeting of the Committee of Creditors (CoC).

3. Thereafter, it was submitted that an order of liquidation was passed on 05.12.2018 by this Tribunal since no Resolution Plan was forthcoming and the Applicant herein was appointed as the Liquidator.

4. It was submitted that the Liquidator has carried out preliminary works such as issuing public announcements, inviting and adjudicating claims, carrying out valuation of assets etc., It was submitted that the Liquidator has periodically filed in the progress reports before this Tribunal every quarter and 14 reports have been filed thus far.

5. It was submitted that Public Announcement was made by the Liquidator as per Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 on 07.12.2018 calling for claims and the 1st Respondent submitted their claim in FORM D for a sum of Rs.166,71,49,182/- and a sum of Rs. 129,42,67,603/- was admitted by the liquidator. It was submitted that the 2nd Respondent has filed his claim in FORM C for a sum of Rs.9,50,000/- and the same was admitted in its entirety.

6. It was submitted that the Indian Overseas Bank - Commercial & Institutional Credit Branch made a claim in FORM D for a sum of Rs.26,52,50,230/- and the same was rejected in entirety and no challenge against the rejection has been made till date, therefore the claim determination has attained finality. Further, it was submitted that IOB holds the security till date.

7. The Learned Counsel for the Liquidator submitted that the Edelweiss Asset Reconstruction Company Limited (EARCL) filed two claims in FORM D for a of sum of Rs.87,66,57,180/- and Rs.1737,70,63,143/- and the same was rejected in entirety for various reasons assigned by the applicant. Further it was submitted that EARCL had filed claim even during CIRP and the same was rejected by the Resolution Professional. Challenging the rejection an application was filed EARCL before the NCLT, Chennal and since the Corporate was ordered to be liquidated, a direction was given to EARCL to file fresh claim before the liquidator as on liquidation commencement date.

8. An appeal in Comp. Appeal AT Ins. 42 of 2019 was filed by EARCL before Hon'ble NCLAT and an order dated 18.03.2019 was passed directing the liquidator to proceed with liquidation in terms of the order passed in ***Y. Shivram Prasad vs S. Dhanapal and Ors***, wherein an attempt to arrive at a scheme/arrangement in

terms of Section 230 of the Companies Act, 2013 was to be explored. The Hon'ble NCLAT also directed the liquidator to not sell or transfer or alienate moveable/immovable properties of the Corporate Debtor nor create any third-party encumbrance on the same without prior approval of the NCLAT.

9. Pursuant to the NCLAT order dated 18.03.2019, the applicant approached the parties who evinced interest in the Corporate Debtor during CIRP, and suggested them to come up with a proposal/scheme for the Corporate Debtor. It was submitted that a paper publication was issued in 'Business Standard' on 27.05.2019. However, no proposal/scheme was received. The only financial creditor of the Corporate Debtor was not interested in submitting a proposal when approached by the liquidator. Since no compromise or scheme of arrangement of settlement was placed before the liquidator, an application under Regulation 32 of the 1881 (Liquidation Process) Regulations, 2016 was filed vide MA/924/18/2019 seeking leave of the Tribunal to proceed with the liquidation process without further loss of time.

10. In the meanwhile, it was submitted that the Comp. Appeal AT Ins. 42 of 2019 was disposed of on 22.05.2019 by Hon'ble NCLAT as against which, an appeal was preferred by EARCL before the Hon'ble

Supreme Court in Civil Appeal No. 5076 of 2019 which was also disposed of on 21.08.2019.

11. In the interregnum, it was submitted that the claim filed by EARCL in liquidation process was adjudicated by the liquidator and the same was rejected on several grounds. An application under Section 42 of the Code was preferred by EARCL challenging the claim rejection by liquidator vide MA/896/1B/2019 and the same also came to be dismissed by this Tribunal vide its order dated 07.09.2021

12. While things stood thus, it was submitted that a public notice was issued by the liquidator on 18.11.2019 whereby the liquidator intended to sell the equity shares held by the Corporate Debtor in Karaikal Port Private Limited (KPPL). It was submitted that the Corporate Debtor holds about 5% equity shares in KPPL. The auction was scheduled on 02.12.2019 and the Reserve price was fixed at Rs.38,36,00,000 and EMD (Earnest Money Deposit) was fixed at Rs.3,83,60,000/-

13. The Learned Counsel for the Applicant submitted that M/s. Marg Ltd. the holding company of the Corporate Debtor issued paper publication on 20.11.2019 in News Today stating that the proposed sale of shares held by the Corporate Debtor KPPL amounts to direct

breach of minimum mandatory shareholding level prescribed by the Govt. of Pondicherry and any default would result in the Govt. of Pondicherry exercising their right to terminate the Concession Agreement altogether and substitute Karaikal Port Private Limited with some other entity as the Govt. chose fit and that the sale shall be subject to the policy of KPPL in its MoA and AoA.

14. It was submitted that EARCL approached this Tribunal seeking an order of stay of the auction and since a consensus could be arrived at between the parties to keep the auction proceeds with the liquidator making distribution of the said proceeds subject to the outcome of the application, the auction process was not stayed by the Tribunal and the position was simply recorded in the Order dated 25.11.2019. Ultimately it was submitted that the auction failed for want of bidders.

15. It was submitted that notice for a second auction of the same asset was issued by the liquidator on 21.01.2020. The auction was scheduled to be held on 04.02.2020 and the Reserve Price was fixed at Rs.28,77,00,000/- (since the 1st auction failed, the reserve price was reduced by 25% as per Clause 4A of Schedule 1). The EMD was fixed at Rs.2,87,70,000/-. It was submitted that the second auction also failed as there was no bidders.

16. It was submitted that as the liquidator was preparing to explore other options, a nationwide lockdown was announced by the Central Government on 24.03.2020 in light of the situation surrounding Covid-19 pandemic, virtually bringing the liquidation process to a standstill. Since then, the liquidator has been unable to conduct any auction/private sale and same has been reflected in the progress reports filed before the Tribunal.

17. Therefore, an application in 1A/1354/2020 was filed seeking exclusion of time lost due to Covid 19 on 03.12.2020. In the interregnurn, a state-wide lockdown was imposed by the Govt. of Tamil Nadu for the period from 01.04.2021 to 30.06.2021, due to the surge in Covid-19 cases causing a 2nd wave.

18. It was submitted that due to the disruptive economic impact of Covid-19, the financial imbalances and the poor market conditions, the auction proceedings could not be conducted by the liquidator due to the nature of assets of the Corporate Debtor. In so far as the asset of the Corporate Debtor in the form of shares held in Karaikal Port Private Limited are concerned, a suitable buyer who sees value could not be located as the Corporate Debtor only holds a miniscule share of about 5%.

19. The Learned Counsel for the Applicant submitted that the Liquidator has called for a Stakeholders Consultation Committee (SCC) Meeting on 24.03.2021, wherein the stakeholders Tata Capital Financial Services Limited (Sole Financial Creditor) represented by Mr. Venkatesh Kap, the 1st respondent herein and Mr. Rabindra Kumar Samal (Sole Operational Creditor) the 2nd Respondent herein attended and that various issues and concerns regarding the liquidation process were discussed.

20. It was submitted that the Applicant put forth the provisions of Regulation 37A introduced w.e.f. 13.11.2020 i.e., Not Readily Realisable Assets (NRRA) in the 1st SCC Meeting. It was submitted that the 1st respondent, remarked that it would be advisable to wait for some more time before initiating any further auction process as it would push the value of the shares in KPPL further down. It was further stated by the 1st respondent that it would check with the management to see if the shares could be assigned or transferred to any of their nominee in partial adjustment of the 1st respondent's admitted claim. The 2ns respondent also concurred with the views of the 1st respondent.

21. The Learned Counsel for the Applicant submitted that the Liquidator called for the 3rd Stakeholders Consultation Committee (SCC) Meeting on 30.11.2021, wherein the stakeholders i.e.,

respondents 1 and 2 attended. It was submitted that the Liquidator brought to the notice of the SCC a news item dated 26.11.2021 that EARCL, who was contesting sale of shares held in KPPL, had sold its debt portfolio in KPPL to Omkara Asset Reconstruction Company Limited for Rs.1500 Crores and the fall out of this transaction on efforts of the liquidator to sell the 5% equity stake in KPPL. Thereafter, it was submitted that the 1st respondent did not discuss further on the proposal of taking over assets under Regulation 37A and 38, citing that they were awaiting the decision pending with NCLT in an application filed by EARCL seeking directions to stop disposal of the Financial Asset.

22. The Learned Counsel for the Applicant submitted that the Liquidator called for the 5th Stakeholders Consultation Committee (SCC) Meeting on 23.03.2022, wherein the stakeholders i.e., Respondents 1 and 2 attended. Further, it was submitted that Mr. GRK Reddy, personal guarantor to Corporate Debtor, the 3rd Respondent herein along with CFO, Marg Ltd attended the meeting.

23. It was submitted that the 1st respondent had sent an email dated 19.03.2022 stating that he intends to withdraw his claim in respect of the Corporate Debtor. Further, the 1st respondent elaborated during the meeting that an application under Section 95 of IBC was filed against the 3rd respondent by the 1st respondent in

IBA/475/2020 and in furtherance of the settlement that has been arrived at between the parties, the application was withdrawn vide Order dated 11.03.2022 and therefore, the 1st respondent does not have any claim against the corporate debtor as settlement was full and final.

24. Further, it was submitted that the 3rd respondent informed that the Corporate Debtor invested in the shares of KPPL as one of the group entities of Marg Limited, and that, by virtue of a concession agreement between KPPL and the Govt of Pondicherry, the promoter's stake in KPPL share capital has to be maintained at not less than 11% and for this reason, the Corporate Debtor needs to exist. In pursuance of the same, it was submitted that the 3rd Respondent had identified an investor i.e. the 4th respondent herein to settle the claim of the 1st Respondent and a settlement agreement dated 08.03.2022 was entered into between the parties. It was submitted that the settlement agreement also provides for payment to the 2nd Respondent and towards the fee of the liquidator.

25. It was submitted that the 3rd Respondent has requested that the Corporate Debtor be allowed to be continued as a going concern for the aforestated reason and all the dues would be settled. Thereafter, it was submitted that the 6th SCC meeting was held on 13.04.2022, wherein the 1st Respondent explained in detail the

prolonged CIRP and Liquidation process during which no progress took place and that pursuant to Section 95 of IBC, 2016 a settlement has been arrived at by which they have received a sum of Rs.14 Crore as full and final settlement. It was further submitted that the 1st respondent had already funded the liquidation costs such as charges towards legal expenses etc., to the Liquidation No lien Current account.

26. It was submitted that the budgeted liquidation costs, liquidator's fees, etc., were also placed as discussed during the meeting Liquidator highlighted the efforts taken by him and his team for the past 3 years in trying to protect and preserve the asset until it is sold. After elaborate discussion, it was mutually agreed between the parties that a sum of Rs. 13 lacs plus GST would be settled to the liquidator as liquidator fees which will be paid by the 3nt respondent into the Liquidation Process No Lien Current account of the corporate debtor.

27. It was further submitted that the 3rd Respondent has further agreed to settle a sum of Rs.50,000/- for the 2nd respondent towards his dues and remit the amount also into the Liquidation Process No Lien Current account of the corporate debtor towards full and final settlement and it was also agreed by the 2nd respondent vide his email dated 08.04.2022.

28. Thus, it was submitted by virtue of making all these payments by the 3rd respondent, all creditors of the Corporate Debtor would be settled. Further, it was submitted that the CIRP and the Liquidation cost would have been paid in full along with the liquidator's fees. It was submitted that the 1st respondent would transfer its holding of 10% shares in the Corporate Debtor to the investor/nominee as per the Settlement Agreement dated 08.03.2022.

29. It was submitted that a request was made by the 3rd respondent to keep the Corporate Debtor as a going concern due to the requirement of the 3rd respondent to hold minimum 11% equity capital in KPPL as per the Concession Agreement with the Govt. of Puducherry and the same would be satisfied if the 5% shareholding by the Corporate Debtor in KPPL is combined with the other associate companies of the 3rd respondent.

30. It was submitted that Stakeholders i.e., Respondents 1 and 2 were of the strong opinion that since all the claims are being settled in full, the Corporate Debtor can be allowed to continue as a going concern given the special circumstances and that they requested that all these facts be placed before the Adjudicating Authority and suitable orders be obtained by the liquidator to keep the corporate

debtor as a going concern. In so far as the pending appeal filed by EARCL before the NCLAT, Chennai is concerned, the SCC members were of the view that law will take its own course. Further, it was submitted that the Liquidator highlighted that the immovable assets of the Corporate Debtor mortgaged partly to EARCL and IOB have not been admitted as claim and EARCL has filed an appeal in this regard and the matter is pending adjudication before the NCLAT.

31. It was submitted that the efforts taken by the liquidator to find a buyer for the 5% equity shareholding in KPPL did not yield any results as even the other shareholders wanting to off-load their stakes did not get any positive response. Moreover, insolvency proceedings have been initiated against KPPL as it has been incurring substantial losses due to huge debt and therefore there was no buyer to acquire the 5% held by the corporate debtor. It was also submitted that the Liquidator's efforts to assign the asset as NRRA under Regulation 37A of the 1881 (Liquidation Process) Regulations, 2016 or distribution of unsold assets under Regulation 38 to the 1st Respondent did not go through due policy guidelines of the 1st Respondent as there were policy restrictions for acquiring such shares.

32. Thus, it was submitted that considering the above special circumstances of the case of the Corporate Debtor where the

creditors are settled in full and the liquidation cost has been fully funded, the SCC was of the unanimous view that it would be proper to place the facts before the Adjudicating Authority and seek orders for releasing the corporate debtor from the clutches of liquidation process. Thus, it was submitted that in light of the above facts and unique circumstances of the case and keeping the object of IBC in mind, and after detailed discussions and in the Stakeholders Consultation Committee Meetings about the fate of the corporate debtor, it has been decided to file the present application seeking appropriate relief from this Tribunal to permit the exit of the Corporate Debtor from the liquidation process as all creditors have been settled in full and to pass an order directing the Corporate Debtor to be kept as a going concern.

33. We have heard the submissions made by the Learned Counsel for the Liquidator. In the present case, the Corporate Debtor is under Liquidation by an order passed by this Tribunal dated 05.12.2018. Thereafter, it is seen that multiple steps have been taken by the Liquidator in order to sell the assets of the Corporate Debtor, however the same did not yield any fruitful result. At this juncture, it is significant to refer to the Judgment of the Hon'ble NCLAT in the matter of **Shwetha Vishwanath Shrike & Ors. -Vs- The Committee of Creditors & Anr.** in *Company Appeal (AT)(Ins) No. 601 of 2019* has held that the Promoters / Shareholders are entitled

to settle the matters in terms of Section 12A and in such case, it is always open to the Applicant to withdraw the Application. Further, the Hon'ble NCLAT in the matter of **V. Navaneetha Krishnan -Vs- Central Bank of India, Coimbatore & Anr** in *Company Appeal (AT)(Ins) No. 288 and 289 of 2018* has held that even during the Liquidation period, if any persons, nor barred under Section 12A of IBC, 2016 satisfy the demand of the Committee of Creditors, such person may move before the Adjudicating Authority for withdrawal of proceedings. Thus, it could be seen even during the liquidation process, the parties have arrived at a settlement, then the Application filed under Section 7, 9 and 10 can be withdrawn.

34. Under the said circumstances, the present Application stands **allowed** and the CP/672/IB/2017 stands **withdrawn.** Consequently, the CIRP and the Liquidation initiated against the Corporate Debtor also stands **withdrawn**. The Liquidator is directed to hand over the management to the Board of Directors and the Liquidator is also released from his duties. Accordingly, IA(IBC)/514(CHE)/2022 stands **allowed**

-SD-

ANIL KUMAR
MEMBER (TECHNICAL)

-SD-

Justice (Retd) S. RAMATHILAGAM
MEMBER (JUDICIAL)