

✓

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SINGLE BENCH, CHENNAI**

MA/137/2018 in TCP/385/IB/CB/2017
filed by the Resolution Professional viz.,
Mr. R. Krishnamurthy, under Section
33(1)(a) of the Insolvency and Bankruptcy
Code, 2016.

In the matter of

M/s. KITEC Industries (India) Private Limited.

... Operational Creditor

Vs.

M/s. Emmanuel Engineering Private Limited.

... Corporate Debtor

Order delivered on 4th of July, 2018

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

ORDER

Per: CH.MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. This Miscellaneous Application No.137/2018 in TCP/385/IB/CB/2017 has been filed by the Resolution Professional viz., Mr. R. Krishnamurthy, under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016, (in short 'I&B Code, 2016'). The prayers made by the Resolution Professional in the Application, *inter alia* are as follows:-

“a) To order initiation of liquidation process of corporate debtor in terms of Sec 33(1)(a) of IBC, 2016,

b) To appoint a Liquidator other than the Resolution Professional in terms of Sec 34(4) of IBC, 2016,

c)

d)”

2. Initially, TCP/385/IB/CB/2017 was filed under Section 9 of the I&B Code, 2016 by the Operational Creditor viz., M/s. KITEC Industries (India) Private Limited which was admitted by this Bench vide its Order dated 31.08.2017; the CIRP was initiated against the Corporate Debtor viz., M/s. Emmanuel Engineering Private Limited; the moratorium was declared and the Applicant Mr. R. Krishnamurthy was appointed as Interim Resolution Professional (IRP) in the matter.

During the process of CIRP, an Application CA/142/2018 was filed by the Resolution Professional, after obtaining approval from the CoCs for extension of the period of CIRP. This Authority, vide its Order dated 21.03.2018 extended the period of CIRP for 90 days with effect from 27.02.2018 to 28.05.2018,

3. It is averred by the Resolution Professional in MA/137/2018 that a public announcement was made on 02.09.2017 inviting claims from the creditors on or before 14.09.2017. The Resolution Professional received claims from the Financial Creditors on 14.09.2017 and 06.02.2018.

4. The Committee of Creditors (CoCs) was constituted, and 1st Meeting of the CoCs was conducted on 22.09.2017 wherein the CoCs unanimously resolved to continue IRP viz., Mr. R. Krishnamurthy as RP. Thereafter, on 13.01.2018, the Resolution Professional has given newspaper advertisements one in English and another in vernacular seeking "Expression of Interest" for inviting Resolution Plan in respect of Corporate Debtor. The copy of the advertisements are placed at pages 26 and 27 of the typed set filed with the Application.

5. It is further averred in MA/137/2018 that the Resolution Professional has received an e-mail communication from a Resolution Applicant requesting

for extension of time for submitting a Resolution Plan and as per the CoC's advice the Resolution Professional informed the Resolution Applicant to submit the Resolution Plan before CoCs on before 19.02.2018.


6. It is further averred that in the meeting held on 19.02.2018, the CoCs, after analysing all the aspects in relation to the Resolution Plan submitted by the Resolution Applicant, has unanimously rejected the plan as it was not found to be fit to their requirements.

7. It is averred that having not received any revised Resolution Plan from the Resolution Applicant within three days as committed before this Bench, the Resolution Professional also extended the time period for submission of revised Resolution Plan on or before 11.05.2018. It is further averred that on 23.05.2018, the Resolution Professional received a Resolution Plan through e-mail which was placed before CoCs on 26.05.2018. The CoCs has passed the following resolutions on 26.05.2018:~

“Resolved that R. Krishnamurthy, Resolution Professional be and is hereby authorised to submit requisite application before the Adjudicating Authority as warranted under the circumstances for liquidation of the corporate debtor under section 33(1) of IBC,2016”.

“Further resolved that the Resolution Professional is hereby authorised to request NCLT for appointing a liquidator to carry on the liquidation process of the corporate debtor”.

8. On 07.06.2018, the Resolution Professional has submitted that the time period of CIRP got expired on 28.05.2018 and the Resolution Plan submitted by the Resolution Applicant viz. Mr. J. Jeparaj has not been considered due to the shortage of time. Keeping the same in view, this Authority vide Order dated 07.06.2018 has extended the period of CIRP for three more weeks with effect from the date of passing of the said Order with a direction to the Resolution Applicant to make a representation before CoCs expeditiously for approval of the Resolution Plan, if any.

9. Accordingly, the Resolution Applicant has presented the Resolution Plan before the CoCs in its 

meeting held on 27.06.2018, and after deliberations, the CoCs has rejected the Resolution Plan with 70.95% of voting share. However, HDFC Limited having 29.05% voting share has dissented. In other words, the CoCs rejected the revised Resolution Plan dated 12.06.2018 and advised to the Resolution Profession to get listed the Application dated 28.05.2018 before this Authority for passing order to liquidate the Corporate Debtor.

10. The Resolution Professional has also prayed to appoint a Liquidator other than the Resolution Professional. As per his request, Mr.T. V. Subramanian is appointed as Company Liquidator, whose name appears in the Panel of Insolvency Professionals recommended by the IBBI. The Company Liquidator shall file the declaration disclosure statement in the Registry of NCLT, Chennai, within two working days from the date of the receipt of this order.

11. A perusal of the of the Minutes of the Meeting of the CoCs dated 27.06.2018 reveals that till the expiry

of the maximum period of CIRP, no Resolution Plan was approved by the CoCs under Sub-section (4) of Section 30 of the I&B Code, 2016. Under these circumstances, the case falls within the purview of Section 33(1)(a) of the I&B Code, 2016, as no Resolution Plan has been received by this Authority, till the expiry of the maximum period permitted for completion of the CIR Process under Section 12 of the I&B Code, 2016.

ORDER

12. In view of the facts and circumstances recorded by Resolution Professional in MA/137/2018 filed in TCP/385/IB/CB/2017, this Adjudicating Authority did not receive any Resolution Plan under Sub-section (6) of Section 30. Therefore, in exercise of powers conferred under Sub-Clauses (i) (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the I&B Code, 2016, I proceed to pass Order as follows:-

- i. I hereby order for liquidation of the Corporate Debtor viz., M/s. Emmanuel Engineering Private Limited, which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;
- ii. I hereby appoint Mr. T. V. Subramanian as Company Liquidator, who shall issue a public announcement stating therein that the Corporate Debtor is in liquidation;
- iii. The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of liquidation;
- iv. Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate

Debtor, with the prior approval of this Authority.

v. I make it clear that para (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

vi. This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

vii. All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the Company Liquidator viz., Mr. T. V. Subramanian. In addition to this, the Company Liquidator shall exercise the

powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- viii. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- ix. The Company Liquidator shall be entitled to charge such fee for the conduct of the liquidation proceedings in such a proportion to the value of the liquidation estate assets as may be specified by the Board. Accordingly, the fees of the conduct of the liquidation proceedings shall be paid to the Company Liquidator from the proceeds of the liquidation estate.

- x. The Registry is directed to communicate this order with immediate effect to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Company Liquidator viz., Mr. T. V. Subramanian for information and compliance. The E-mail ID and other details of the Company Liquidator are as follows: -

Mr. T. V. Subramanian

Reg. No: IBBI/IPA-001/IP-P00161/2017-18/10330

Email: tvsubramanian2002@yahoo.com

Mobile No. 94433 36390.

13. In terms of the above, MA/137/2018 in TCP/385/IB/CB/2017 filed by the Resolution Professional under Section 33(1)(a) of the I&B Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor viz., M/s. Emmanuel Engineering Private Limited, stands **disposed of**.


[CH. MOHD SHARIEF TARIQ]
MEMBER (JUDICIAL)

P. ATHISTAMANI