

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

MA/376/2020 in CP/1053/IB/2018 filed
under *Sections 33 (2)* of the Insolvency and
Bankruptcy Code, 2016

In the matter of *M/s. Krishna Industrial Corporation Limited*

S. RAJENDRAN

Resolution Professional

of *M/s. Krishna Industrial Corporation Limited*

... Applicant

CORAM:

**R.VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Applicant : *R.V. Yajura Devi, Advocate*

O R D E R

Per: R.VARADHARAJAN, MEMBER (JUDICIAL)

Order pronounced on 27th of July, 2020

1. MA/376/2020 in CP/1053/IB/2018 has been filed by the Resolution Professional viz., *Mr. S. Rajendran*, under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, (in short 'I&B Code, 2016').



2. The prayers made by the Applicant in the Application are as follows:-

- a. *an order to Liquidate the Corporate Debtor, Krishna Industrial Corporation Limited (KICL) under Sections 33(1) & 33(2) of Insolvency and Bankruptcy Code, 2016 and/or*
- b. *pass such other order as this Hon'ble Tribunal may deem fit and necessary*

3. Originally CP/1053/(IB)/2018 filed under Section 7 of the I&B Code, 2016 by the Financial Creditor viz., Maximus Asset Reconstruction Company Limited against the Corporate Debtor viz., M/s. Krishna Industrial Corporation Limited was admitted by this Authority vide Order dated 16.12.2019, the CIR Process was initiated against the Corporate Debtor and the Applicant namely Mr. S. Rajendran was appointed as Interim Resolution Professional (IRP).

4. It is averred that pursuant to the Order of this Authority dated 16.12.2019, the IRP had taken over the management of the Corporate Debtor and had issued the Newspaper

Publication dated 19.12.2019 as per Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016, inviting the claims from the creditors.

5. Pursuance to the said publication dated 19.12.2019, the IRP has received claims from various Creditors and after scrutiny of the claims received, the IRP constituted the Committee of Creditors (CoC), on 08.01.2020.

6. The 1st Meeting of the CoC was held on 13.01.2020 as evident from Form H and the Applicant namely Mr. S. Rajendran was appointed as Resolution Professional by the CoC. The Resolution Professional stated that soon after his appointment as Resolution Professional by the CoC, he had appointed two Registered Valuers on 31.01.2010.

7. It is averred that the Resolution Professional had invited for 'Expression of Interest' ('EoI') in two newspapers one in Business Line (in all India edition) and another on



Vishalandhra (Telugu) on 20.01.2020 as per Section 25(2)(b) of the I&B Code, 2016 vide newspaper publication dated 20.01.2020 for submission of the Resolution Plans from the prospective Resolution Applicants by mentioning the last date for submitting the Resolution Plans as 10.02.2020. It is further averred that the last date for submission of "EoI" from the prospective Resolution Applicants was extended till 24.02.2020 vide publication dated 15.02.2020. It is also averred that the Resolution Professional, in spite of extending the last date for the submission of "EoI", no Resolution Plan as such has been received from the prospective Resolution Applicants.

8. It is evident in the averments as contained in the Application that in the 2nd Meeting of the CoC held on 05.03.2020, the CoC discussed in detail the possibility of resolving through Resolution, and considering the fact that the Company was not in operation for the last two years and that the industry as such was not attracting new investors now due to Government Policies manufacturing



and selling of agricultural fertilizers and also that no concrete information about the prospective investor was provided by the Promoter group, the CoC has come to the conclusion to liquidate the Corporate Debtor.

9. The CoC has unanimously decided to liquidate the Company namely the Corporate Debtor and appoint the present Resolution Professional as Liquidator. The operative part of the Resolution reads as follows: -

“Resolved that the company-KICL – be liquidated as per the provisions of Section 33(2) of Insolvency and Bankruptcy Code, 2016 as no EoI was received even after the extension of time and considering that the outlook for the industry was negative”

Further Resolved that a fixed fee of Rs.2 lacs per months plus GST apart from a variable fee on the amount realised and distributed as under will be payable to the liquidator.



Amount of Realisation	% of fees	Remarks
Upto Rs.10 Crore	NIL	
Above Rs.10 Crores		
Upto Rs.15 Crore	2%	Subject to minimum of Rs.10 Lacs
Above Rs.15 Crores	10%	

“MARCL with a voting sharing of 87.57% voted for the resolution while APSFC with 12.43% voted against the resolution. RP declared that the resolution was approved as the voting share required for approval under Section 33(2) was only 66%.”

Resolved that the Resolution Professional be and is hereby authorised to appoint SPR&Co., Chartered Accountant, Chennai to carry out transaction audit as required under Sections 43, 45, 50 and 66 of IBC in respect of KICL at a remuneration of Rs.1,50,000/- plus GST.”

10. Upon a query posed to the Learned Counsel for the Resolution Professional whether he is willing to act as a liquidator, if appointed by this Authority, Learned Counsel for the Resolution Professional submitted that the Resolution passed by the CoC as approving the Resolution Professional to act as Liquidator and that the written consent has also



been placed on record at Pages No.66 and 67 of the typed set filed along with the Application. Perusal of it shows that the Resolution Professional has given a written consent by the signed letter dated 19.03.2020 to act as a Liquidator of the Corporate Debtor, if appointed by this Authority. In the circumstances, Mr. S. Rajendran is appointed as the Liquidator in relation to the Liquidation proceedings ordered hereby of the Corporate Debtor which is presently under CIR Process.

11. In view of the facts and circumstances recorded by the Resolution Professional in MA/376/2020 in CP/1053/IB/2018 and since, no Resolution Plan has been received by this Authority under Sub-section (6) of Section 30 of the I&B Code, 2016, before the expiry of the maximum period of 180 days CIR Process, in exercise of powers conferred under Sub-Clauses (i) (ii) and (iii) of Clause (a) of Sub-Section (1) of Section 33 of the I&B Code, 2016, this Authority proceeds to pass the Liquidation Order as follows:-



- a) Mr. S. Rajendran [IBBI/IPA-002 / IP-N00098 / 2017-2018 /10241] (e-mail:- cs.srajendran.associates@gmail.com) is appointed as the Liquidator of the Corporate Debtor. He shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as enjoined upon him.
- b) Mr. S. Rajendran shall issue the public announcement that the Corporate Debtor is in liquidation. 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.



- d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;
- e) In terms of Section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- f) 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.
- g) 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.
- h) 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 file its response for disposal of any



pending Company Applications during the process of liquidation.

- i) The liquidator shall submit a preliminary report to this Authority within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- j) Copy of this Order be sent to the Financial Creditors, Corporate Debtor and the Liquidator for taking necessary steps.

12. The Application stands **disposed of** with the above said terms.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

P. ATHISTAMANI