

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

**IA(IBC)/1357/(CHE)/2023**

**In**

**CP/114/IB/2018**

*(filed under Section 60 (5)(c) of the Insolvency & Bankruptcy Code, 2016 read with  
Rule 11 of the NCLT Rules, 2016)*

**Ms. VIJAYALAKSHMI SUBBHURAJ**

Office at 1F, 7<sup>th</sup> Cross Street,

Woodcreek Country, Nandambakkam,

Chennai – 600 016

... Applicant

-Versus-

**1. MR. M. MURUGESAN**

Liquidator of the CD M/s. Velohar Infra Private Limited

Block C, 3D, Aishwaryam Apts, No. 102/103, Barakka Road, Secretariat

Colony, Kilpauk,

Chennai – 600 010

**2. Ms. CHITRA**

25, Kamala Nagar,

Madurai – 625 002

... Respondents

Order Pronounced on **12<sup>th</sup> July 2024**

**CORAM**

**SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)**

**SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)**

**Appearances:**

*For Applicant* : Ms. Harshini Jothiraman &

*Mr. Arjun Suresh, Advocates*

*For Respondent/Liquidator* : Mr. S. Sathyanarayanan, Advocate

*For Wise & Worth Advocates*

**ORDER**

1. Under Consideration is an application filed by Ms. Vijalakshmi

Subburaj, the Suspended Director of M/s. Velohar Infra Private

Limited, the Corporate Debtor against the liquidator of the Corporate Debtor seeking relief as follows,

- a) *Permit the Applicant herein to purchase the Corporate Debtor on a going concern basis, sans liability through a private sale for a sale price of Rs. 2.5 Cr; and*
- b) *Restrain the Respondent herein from confirming any sale in liquidation, during the pendency of this application; and*
- c) *Pass such other or orders as this Hon'ble Tribunal may deem fit.*

2. It is submitted by the Learned Counsel for the Applicant that the Corporate Debtor was admitted into CIRP based on an application moved under Section 9 of the Insolvency & Bankruptcy Code, 2016 (herein after referred to as 'the code') wherein, the Respondent herein was appointed as the Interim Resolution Professional. Thereafter, he was confirmed as the Resolution Professional and the corporate debtor was admitted into liquidation vide order dated 12.06.2019 in MA/524A/2019 and the Respondent herein was appointed as the Liquidator.

3. It is submitted by the Learned Counsel for the Applicant that having aggrieved by the order of liquidation, the applicant herein had preferred an appeal before the Hon'ble NCLAT, New Delhi vide Company Appeal (AT) (Insolvency) No. 792 of 2019, wherein, the Hon'ble NCLAT, vide its order dated 05.08.2019 referring to few landmark Judgments had disposed of the Appeal with the directions to the Liquidator to act in accordance to the decisions of NCLAT and Hon'ble Supreme Court. In short, the Judgments referred in the Hon'ble NCLAT's order says that the Liquidator shall take steps to keep the Corporate Debtor as a going concern, shall prefer a scheme

under Section 230 of Companies Act, 2013 and further, suggested that the liquidator shall first proceed on a going concern basis, to achieve revival, failing which alone, the liquidation of the corporate debtor proceed on a standalone asset basis shall be carried.

4. It is submitted by the Learned Counsel for the Applicant that, the Applicant herein during the CIRP Period had attempted to revive the Corporate Debtor by giving multiple Resolution Plans, but the same could not be achieved for one or the other reasons.
5. It is submitted by the Learned Counsel for the Applicant that, since the business of the Corporate Debtor is Turnkey EPC Construction, and in order to make sure the Corporate Debtor is kept as going concern during the CIRP/Liquidation Period, the Applicant herein in collaboration with an investor, had participated in the bid for the execution of Supply, Installation and Commission of 1.2mwp Solar Power Plant at Water Treatment plant Near Vallanadu in Tuticorin Smart City Limited [File No. E1/3209/2015(G-Solar)] on behalf of the corporate debtor and the same was also accepted on September 2019.
6. It is submitted by the Learned Counsel for the Applicant that during the 1<sup>st</sup> Stakeholders Consultation Committee Meeting (herein after referred to as the 'SCC Meeting') held on 17.08.2019, the applicant herein had submitted a letter dated 17.08.2019 proposing a settlement plan of 65% dues of Financial Creditors and 40% dues of the Operational Creditors. However, the same was rejected by the SCC. Further, the Applicant herein submits that she provided a no objection letter dated 17.08.2019 allowing the sale proceeds from

Sholinganallur and Nandambakkam properties to be utilised as settlement dues of the creditors.

7. It is submitted by the Learned Counsel for the Applicant that in connection to the discussion that took place during the 1<sup>st</sup> CoC, the Applicant herein had secured the Project. Hence the business Development Expense to the tune of Rs. 50,00,000 (Rupees fifty lakh only) and further earnest money deposit of Rs. 5,78,000 (Rupees five lakh seventy eight thousand only) was paid by the investor on behalf of the Corporate Debtor.
8. It is further submitted by the Learned Counsel for the Applicant that during the 2<sup>nd</sup> SCC Meeting held on 10.09.2019, the Letter of Approval (LOA) from Tuticorin Project was submitted with the proof of fund from the investor. Thus, as a result of this LOA, the Corporate Debtor was kept as a going concern, which upon acceptance and performance of the project, would have revived the very business of the CD. In order to give effect to the LOA, a condition subsequent, i.e. the issuance of a Bank Guarantee was required to be submitted within 10 Days. It is further submitted by the Applicant that, the same was informed to the SCC during its 2<sup>nd</sup> SCC Meeting. Since, no bankers came forward to issue guarantee, the Applicant convinced the investor to issue a Demand Draft. It is further submitted that even after the above, the applicant was not in a position to convince the SCC for approval of scheme of compromise under section 230 of the Companies Act, 2013.

9. It is submitted by the Learned Counsel for the Applicant that when the matter stood as such, it is brought to the knowledge of the Applicant that the sale of assets on standalone basis via auction mode is conducted in relation to the property situated at No. 1F, Seventh Cross Street, Wood Creek County, Nandambakkam, Chennai. It is submitted that it is reliably known to the Applicant that the said property has secured a successful bidder for a sum of Rs. 2.37 Cr. It is further submitted that the property is undervalued and also submits that if the same is sold in stand-alone basis then the Corporate Debtor will be left with no other property which will eventually have a negative impact on the value of the Corporate Debtor. It is further submitted that the Applicant herein is a personal guarantor to the Corporate Debtor and thus has liability to repay the dues and therefore, is ready to offer a onetime settlement of Rs. 2.5 Cr towards the said assets and other intangibles.

10. It is submitted by the Learned Counsel for the Applicant that the dues owed to Bank of India is proposed to be settled by one of the guarantor namely Ms. Nirmala Raj, of which, a DD to the tune of Rs 1 Cr. has been paid and the remaining sum of Rs. 2.2 Cr. Shall be paid in accordance with the terms of settlement with Bank of India. Other than the above the Corporate Debtor is liable to pay Aditya Birla Finance and the operational creditors. For which, the Applicant herein is proposing to make an offer of Rs. 2.50 Cr.

11. The Learned Counsel for the Respondent/Liquidator by way of reply has submitted Para wise reply. It is by and large submitted that the Applicant herein attempts to drag and scuttle the liquidation process

and that the applicant has a history of such activities since commencement of CIRP.

12. The Learned Counsel for the Respondent/Liquidator submitted that the Applicant herein is one of the Suspended Directors of the Corporate Debtor who has been non-co-operative from the commencement of the CIRP. It is also submitted that an application under Section 66 is also pending against the Applicant herein.

13. The Learned Counsel for the Respondent/Liquidator submitted that, with respect to the contents in Para 2 to 10 of the Application, the Applicant failed to convince the CoC or Stakeholders Consulting Committee (SCC) despite bringing multiple resolution plans for the revival of the Corporate Debtor, The plans brought by the Suspended Directors were not reliable and feasible to get the approval of the SCC. In addition to the proposal for revival of the Corporate Debtor, the Applicant moved an application against the Respondent before this Hon'ble Adjudicating Authority which was also dismissed. The Respondent Liquidator and the Stakeholders have given multiple opportunities to the Applicant to put up a feasible, reliable, and a practical plan. However, the Applicant was not in apposition to convince the CoC/ SCC for approval.

14. The Learned Counsel for the Respondent/Liquidator submitted that, with respect to the contents in Para 11 of the Application, the said e-auction dated 21.06.2023 for the sale of Nandambakkam Property was conducted as per the directions of this Adjudicating Authority in IA/1295/2020 vide order dated 25.04.2023. It is submitted that the

sale was conducted in accordance with the code and attended regulations. It is further submitted that the Applicant was not even a participant to the said auction to quote that the price quoted is undervalued. It is also submitted that the Applicant was not a participant in any of the 3 e-auctions conducted previously for the sale of the above referred property.

15. The Learned Counsel for the Respondent/Liquidator submitted that, with respect to Para 12 of the Application, the Applicant has misrepresented before this Adjudicating Authority. The Personal Guarantor Ms. Nirmala Raj in order to protect her personal property from being taken over by the bank has entered into settlement talks to save her personal asset.

16. The Learned Counsel for the Respondent/Liquidator submitted that, with respect to Para 13 to 15 of the Application, the total sale consideration of Rs.2.37 Cr. has been received in the liquidation account of the Corporate Debtor on 24.07.2023, sale certificate has been issued, and the possession of the property has also been delivered to the successful bidder Smt. M. Chitra on 29.07.2023. Thus, the contention of the Applicant that the sale is not complete in the eyes of law is false.

17. It is submitted that the Respondent Liquidator in respect of the Nandambakkam Property had filed a report for the Sale of the Asset before this Hon'ble Tribunal in IA/1560/2023 and the same was taken on record by this Hon'ble Tribunal on 28.08.2023

18. It is submitted that the Applicant herein being the Suspended Director is not intended in maximization of the value of the assets of the Corporate Debtor but to frustrate the sale of assets and the liquidation process. Therefore, in view of the above-stated facts and circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the present Application and pass such further or other orders as it may deem fit and proper in the facts and circumstances of the case and thus render justice.

19. However, Earnest Money Deposit (EMD) was received only from the Ms. Chitra who was also selected as the successful bidder. The Applicants intention is only to disrupt the sale process and not to maximize the value of the assets of the Corporate Debtor. Thus, seeks dismissal.

20. It is seen that Ms. Chitra, the successful auction purchaser was impleaded as 2<sup>nd</sup> Respondent vide order dated 24.01.2024 in IA/(IBC)/1675(CHE)/2023. Despite service no representation was made and finally her right to reply was closed on 13.03.2024.

21. Heard the parties. Perused the documents on record.

22. From the submissions made by the parties it is manifest that despite several opportunities given, the applicant has failed to present a credible and feasible resolution plan or scheme that could be accepted by the CoC and the SCC. Going in line with the SCC and the commercial wisdom vested with them the decision of rejecting the plan and the scheme proposed by the applicant cannot be overseen by this Adjudicating Authority.



23. Moreover, the sale disputed in the present application is complete in the eyes of law as the sale certificate has been issued, consideration is received by the Respondent/Liquidator in the liquidation account of the Corporate Debtor on 24.07.2023, and the possession of the property has also been delivered to the successful bidder Smt. M. Chitra on 29.07.2023. Further, IA/1560/2023, praying to take on record the sale of the subject property was also taken on record by this Adjudicating Authority on 28.08.2023.

24. From the conduct of the Applicant/Suspended Director it is found that he is only obstructing the Liquidation Process rather than facilitating it. Considering the series of dates and events and the submissions made by the parties we find no grounds to interfere in the liquidator's decision in relation to the subject sale and there seems no necessity for stay of liquidation process during the pendency of the instant application.

25. Accordingly, **IA(IBC)/1357(CHE)/2023** stands dismissed. No orders as to cost.

26. The Liquidator is directed to proceed and expedite the Liquidation process in accordance with the provisions of the code and attended regulations.

-Sd/-

**RAVICHANDRAN RAMASAMY**  
MEMBER (TECHNICAL)

-Sd/-

**JYOTI KUMAR TRIPATHI**  
MEMBER (JUDICIAL)

*Mohanapriya*