

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

CA/(CAA)/58(CHE)/2022

In

IBA/785/(CHE)/2019

*(Filed under Sections 230 to 232 of the Companies Act, 2013 r/w the Companies
(Compromises, Arrangements and Amalgamations) Rules, 2016 and Rule 11 of NCLT
Rules, 2016)*

In the matter of CAPE ENGINEERS PRIVATE LIMITED

MR. S. RAJENDRAN

Liquidator of Cape Engineers Private Limited,
2nd Floor, Hari Krupa, 71/1, Mc Nicholas Road,
Chetpet, Chennai – 600 031

... Applicant / Liquidator

In the matter of

Cape Engineers Private Limited

... Applicant/Corporate Debtor

Order Pronounced on 18th April, 2024

CORAM

SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Appearances:

*For Applicant : Ms. R.V. Yajura Devi, Mr. Gautham Ram Vittal &
Ms. M.S. Elamathi, Advocates*

Liquidator : Mr. Mr. S. Rajendran

ORDER

1. Under consideration is a Company Application filed by the Liquidator of Cape Engineers Private Limited (for brevity “Corporate Debtor”) under sections 230 – 232 of the Companies Act, 2013, read with the applicable provisions of Insolvency and Bankruptcy Code, 2016, the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

and Rule 11 of NCLT Rules, 2016 in relation to the Scheme of Arrangement (hereinafter referred to as the "SCHEME") proposed by the Mr. N. Azhagappan, along with Rajalakshmi Wind Energy Limited (RWEL) and (2) Mr. S. Ramanathan along with Mr. M. Karunanithi, (hereinafter referred to as the "Scheme Proponents"). An Affidavit in support of the present Application is sworn by the Applicant/Liquidator. The Scheme of Arrangement is placed along with the Application.

2. The instant Application is filed seeking reliefs as follows:

a) Permit the applicant to convene the meeting of creditors/Stakeholders of the Corporate Debtor by video conference/ electronically.

b) Permit the applicant to cause paper publication of Notice for conducting meetings in Newspapers in English and vernacular language.

c) Direct the creditors and stakeholders being secured financial creditors, unsecured financial creditors, operational creditors and other operational creditors, be represented in the meeting.

d) Dispense with calling for a meeting of the Shareholders of the Corporate Debtor.

e) Direct the applicant to issue notices to the authorities contemplated under Section 230(5) of the Companies Act, 2013.

f) Pass any other order/directions which are necessary to empower the applicant to discharge his functions effectively.

g) Pass further order or other orders as may be deemed fit and proper in the facts and circumstances of the case and thus render justice."

3. It is submitted by the Learned Counsel for the Applicant that the CIRP in respect of the Corporate Debtor was initiated on 06.09.2019. And thereafter Liquidation was ordered on 25.04.2022 in IA/1342/2021 and the Applicant herein was appointed as the Liquidator.

4. Pursuant to the same, the Applicant issued publication inviting Scheme of Compromise on 28.04.2022 under Regulation 2B of IBBI (Liquidation Process) Regulation, 2016 with last date of submission of scheme as 24.05.2022 and thereafter the same was extended till 18.06.2022. As a result of which, the Applicant had received Expression of Interest (EoI) from two bidders namely (1) Mr. N. Azhagappan, the Promoter/Suspended Director of the Corporate Debtor along with NTC Holdings Private Limited (RWEL) and (2) Mr. S. Ramanathan along with Mr. M. Karunanithi, who are also the Promoters of the Corporate Debtor on 25.05.2022 and 18.06.2022 respectively.
5. It is submitted that the Stakeholders Consultation Committee (hereinafter referred to as the 'SCC') was duly constituted in terms of Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016. As per the application, the list of the Stakeholders contemplated under Regulation 31 as on 25.05.2023 is as follows,

S.No	Category of Creditor	No. of claims	Amount in Rs.	
			Amount of claim received	Amount of claim admitted
1.	Liquidation Costs incurred till date		-	
2.	Operational creditors (employees)	8	6,43,468	4,80,968
3.	Operational creditors (Govt dues)	5	10,05,39,473	1,20,91,339
4.	Operational creditors (other than workmen and employees)	9	4,00,68,927	50,18,253
5.	Other stakeholders	1	1,31,21,020	1,31,21,020
6.	Secured financial creditor	1	33,46,29,264	33,46,29,264
7.	Unpaid Insolvency Resolution Process Costs		-	
8.	Unsecured financial creditor*	5	13,43,27,310	3,30,04,349
	Total	29	62,33,29,462	39,83,45,193

6. Heard the submissions made by the Learned Counsel for the Applicant. On the perusal of the documents it is seen that the

Liquidation commencement date of the Corporate Debtor was 25.04.2022. The instant application is filed on 22.07.2022, which is beyond the time period prescribed under the Regulation 2B of IBBI (Liquidation Process) Regulation, 2016. However, in view of the Hon'ble Supreme Court decision in the case of *Pioneer Urban Land Infra Ltd & Anr Vs. Union of India & Ors* [WP (Civil) No. 43 of 2019, decided on 09.08.2019] and in the judgement of the Hon'ble NCLAT in the case *Standard Surfa Chem India Private Limited Vs. Mr. Kishore Gopal Somani* [Company Appeal (AT) (Insolvency) No. 684 of 2021, decided on 14.02.2022] the timeline under the said regulation is construed as a directory and the application is taken for consideration.

7. With respect to the proposed Schemes, *prima facie* it is seen that the stakeholders in relation to the Corporate Debtor are agreeable to the compromise and arrangement. Considering this factual matrix leading to the present Company Application, we are inclined to issue directions for convening the meetings of the stakeholders; however, suitably modified to suit the present instance taking into consideration the facts and circumstances of the case.
8. The Liquidator of the Company under liquidation shall place the Schemes of Arrangement proposed before the Stakeholders Committee of the Company in liquidation at their meeting to be called, convened and held, which is as follows: -
 - a) The Liquidator is directed to constitute a Stakeholders Committee in terms of Regulation 31A of IBBI

(Liquidation Process) Regulations, 2016 as prevalent on the date of liquidation for the consideration of the Scheme and voting thereon.

- b) However, the said Regulation shall not apply mutatis mutandis as the following exceptions are required to be made taking into consideration the fact that even though the company is in liquidation, since a Scheme is under contemplation as envisaged under Rule 2B of IBBI (Liquidation Process) Regulations, 2016 and in view of the absence of substantive provisions or rules or regulations, save the judicial precedent for consideration of the Scheme without any commensurate procedure prescribed and the primacy of Secured Creditors is required to be maintained as the liquidation process as such is kept in abeyance.
- c) Save the individual secured financial creditors, all the other stakeholders, be it financial creditors forming part of promoters or otherwise, the respective group of operational creditors, namely employees, statutory dues and other operational creditors and shareholders' shall be represented only by their respective Authorized Representative (AR) to be chosen for each class in the manner as contemplated under sub-section (6) and sub-section (6A) of Section 21 of IBC, 2016 read with Regulation 4A and Regulation 16A of IRPCP Regulations, 2016 as applicable during the CIRP of a Corporate Debtor. The exercise shall be completed by the Liquidator within a period of 15 days from the date of this Order.

- d) Immediately after the AR is chosen by the respective group, the Stakeholders Committee Meeting shall be convened by the Liquidator within 45 days thereof not exceeding 60 days from the date of this Order wherein the Secured Financial Creditors will be entitled to participate and vote on an individual basis and other stakeholders to be represented only by their respective Authorized Representatives and the voting shall be done similar to the one contemplated for the approval of a Resolution Plan under IBC, 2016 read with attendant regulations after proper circulation of notice to the individual stakeholders at their last known e-mail address along with a synopsis of the Scheme as proposed by the 3rd Respondent. The notice of the meeting shall be issued to the Stakeholders at least not less than 30 days prior to the date fixed for the meeting.
- e) The Liquidator is directed to cause publication of notice in "Business Standard" (English, All India Edition) and in "Dinamani" (Tamil, Chennai Edition) within 7 days from the date of this order.
- f) The voting share shall be determined in accordance with Section 5(28) of IBC, 2016 save instead of 'financial creditors', 'financial debt' and 'committee of creditors' specified therein, it shall be substituted with the term 'stakeholders', 'debt' and 'stakeholders committee'.
- g) The notices shall be sent to all the authorities without fail by the Applicant and in addition, notice is also directed to

be issued to the concerned RoC, RD and Income Tax Department including the Jurisdictional Assessing Officer mentioning clearly the PAN number as well as others as contemplated under Section 230 (5) of Companies Act, 2013. The said authorities to whom notices have been issued in terms of the provisions of Section 230(5) of the Companies Act, 2013 shall act in accordance thereof.

- h) The Liquidator shall furnish an Affidavit of service of notice of meetings and publication of advertisement and compliance of all the directions contained herein at least a week before the proposed meeting.
- i) The Chairman for the Stakeholders' Committee meeting to be convened shall be **Mrs. Aneetha Subramaniam, PCS (Contact No. 98400 24178)** who shall file his report in relation to the Stakeholders' Committee meeting and its outcome within seven (7) days from the date of the meeting. Consequently, we hereby appoint **Mr. Vedhavel (Contact No. 73582 89352)** as the scrutinizer for the said meeting and he shall file his report in relation to the Stakeholders' Committee meeting and its outcome within seven (7) days from the date of the meeting. The remuneration payable to the Chairman and Scrutinizer shall be **Rs.50,000/- and Rs.30,000/-** respectively.
- j) The Scheme as approved by the Stakeholders with the requisite voting majority be placed before this Tribunal for the consideration of its sanction within a period of 60 days from the date of this Order.

k) Since the Scheme has been propounded by two proponents we direct them to divide and make arrangements for the expenses likely to be incurred in relation to the meetings including the fees of the Chairman and Scrutinizer appointed as above and for placing the Scheme before the Stakeholders Committee. In case of any query being addressed by the Stakeholders in relation to the Scheme and with a view to address those queries which may be addressed by the Stakeholders and the Scheme Proponent may clarify the same.

9. Accordingly, this **CA(CAA)/58(CHE)/2022** stands **allowed**. In case of any difficulty in implementing the procedure as directed above, the Liquidator is given the liberty to approach this Tribunal as and when required for necessary directions at the earliest without any delay.

-Sd/-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd/-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)