NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 12-09-2023 AT 02.15 P.M. THROUGH VIDEO CONFERENCING:

PRESENT: SHRI. SANJIV JAIN, HON'BLE MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)

IN THE MATTER OF : **Sri Chandra Moulishvar Spinning Mills Pvt Ltd**

PETITION NUMBER : **CP/588/IB/2018**

APPLICATION NUMBER : **a) IA/1346(CHE)/2022 in MA/92/2019**
b) IA/1345(CHE)/2022 in MA/92/2019

ORDER

201)(a)IA/1346(CHE)/2022 IN MA/92/2019 IN CP/588/IB/2018

Liquidator Mr. Muthuiah Thevar Rajapandian is present in person.

Synopsis has been filed.

All the assets and inventories of the Corporate Debtor are stated to have been taken over and sold by Canara Bank.

Arguments on the application heard.

Order Reserved.

201)(b)IA/1345(CHE)/2022 IN MA/92/2019 IN CP/588/IB/2018

Liquidator Mr. Muthuiah Thevar Rajapandian is present in person. Ld. Counsel Mr. M.S. Viswanathan for M/s. Canara Bank. Ld. Counsel Mr. A.G. Sathyanarayana for IRP CA Mahalingam Suresh Kumar.

IA/1345(CHE)/2022 has been filed seeking the following reliefs:

a) *Canara Bank, ARM Branch, Coimbatore to pay the balance CIRP expenditure incurred by the IRP CA Mahalingam Suresh Kumar as per his claim submitted to Liquidator in Form G Rs.2,08,897/-.*

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b) Canara Bank, ARM Branch, Coimbatore to pay the Liquidator fees of Rs.7,08,000/- and Liquidation expenditure Rs.4,01,061/- Total Rs.11,09,061/- to Muthuiah Thevar Rajapandian, Liquidator of the Corporate Debtor towards the Liquidation cost.

c) And pass any such other appropriate order, orders, direction or directions that the Hon'ble Tribunal may deem fit for the interest of justice and equity and thus render Justice.

In reply, it is stated that the account of the Corporate Debtor became NPA on 30.12.2016. The Respondent Bank thereafter initiated the recovery proceedings, and obtained order from the District Magistrate, Tirupur and took physical possession of the mortgaged properties in April 2018. The liquidation thereafter commenced on 04.02.2019 where the Respondent intimated its decision not to relinquish the security interest to the liquidation estate to the liquidator and also obtained order under Section 52 of IBC, 2016 from the Adjudicating authority in MA/198/2019 on 25.03.2016 to sell the assets under the SARFAESI Act (the details are mentioned in para 5 of the counter filed by the Respondent). It is stated that the Respondent vide its email dated 25.03.2022 informed the Applicant about sale of the above assets of the Corporate Debtor and about the present liability as on 28.02.2022. It is stated that this Tribunal vide order dated 12.10.2018 in MA/449/IB/2018 had directed the Respondent Bank to pay Rs.6.00 Lakh towards the remuneration of the IRP within one week from the date of the order with liberty to the Respondent Bank to receive the payment from the members of the CoC on pro-rata basis. The Respondent complied with the order and paid Rs.6.00 Lakh, but the applicant did not take any initiative to recover from the rest of the CoC members and pay to the respondent the said sum on pro-rata basis. It is stated that the Respondent has paid the IRP costs.

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Ld. Counsel submits that the proportionate share of the Respondent during the CIRP is less than Rs.1.00 Lakh but the Respondent has already paid Rs.6.00 Lakh. The Applicant has not made any effort to recover the money from the other Financial Creditors who are 71 in numbers.

It is stated that the Respondent cannot alone be made liable to pay any further amount towards CIRP / Liquidation costs.

In Rejoinder, it is stated that realisation of assets by the secured creditor does not relieve of its obligations to pay the Liquidator for the services rendered by the Liquidator. The administration and management of liquidation process, are distinct and separate from the actions taken by the secured creditor to recover their secured debt. Payment of fees to the Liquidator, as stipulated under subsection 34(8), is an integral part of the liquidation process.

In the instant application, the Applicant has claimed balance CIRP expenditure of Rs.2,08,897/- , Liquidator fees of Rs.7,08,000/- and liquidation expenses of Rs.4,01,061/-.

It is seen from the the proceedings that the Respondent has already paid Rs.6.00 Lakh towards the CIRP and liquidation costs. It is not the case of the Applicant that the Respondent is the sole Financial Creditor of the Corporate Debtor. There are other Creditors. There is nothing to indicate what efforts the Applicant made to recover the CIRP and liquidation costs from the other financial creditors / stake holders. That being the position, the Respondent cannot be fully held responsible to pay the CIRP and liquidation costs which as per law has to be shared by all the Financial Creditors in equal proportions.

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Considering the above facts and circumstances, the Application filed by the Applicant qua directing the respondent / Canara Bank to pay the whole CIRP and Liquidation costs does not hold any merit. **The Application is dismissed** with liberty to the Applicant to recover the CIRP and liquidation costs from the other financial creditors as per law. **It is also ordered that** if any excess payment of cost has been made to the erstwhile IRP, the Applicant is entitled to recover the excess payment from the erstwhile IRP to meet his expenses.

-Sd-

RAVICHANDRAN RAMASAMY
Member (Technical)

-Sd-

SANJIV JAIN
Member (Judicial)

Phk