

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

IA/887/CHE/2021 in IBA/1045 & 1169/2019

*(Filed under Section 33(2) & 34 of the Insolvency and Bankruptcy Code,
2016 read with Rule 11 of the NCLT Rules, 2016)*

In the matter of **M/s. Easun Reyrolle Limited**

Mr.B.Parameshwara Udpa
Resolution Professional of
M/s. Easun Reyrolle Limited
H.No.827/7, 8th A Main, 4th Block,
BEL Laout, Vidyaranyapura
Bangalore – 560 097

... Applicant /Resolution Professional

Order Pronounced on 17th February, 2022

CORAM:

**R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant : *B. Dhanaraj, Advocate*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

This is an application filed under Section 33(2) & 34 of the Insolvency and Bankruptcy Code, 2016 read with Rule of the NCLT Rules, 2016) seeking relief as follows:

- (i) To pass an order of Liquidation of the Corporate Debtor Viz, Easun Reyrolle Limited under Section 33(2) of I & B Code, 2016 as unanimously resolved in the 16th CoC Meeting dated 01.09.2021.

- (ii) Appoint Mr.Mahalingam Suresh Kumar as the Liquidator of the Corporate Debtor Viz, Easun Reyrolle Limited as resolved in the 16th CoC Meeting dated 01.09.2021.
- (iii) Pass such further or orders which this Hon'ble Tribunal may deem fit and proper in the circumstances of this case and thus render justice.

2. From the averments made by the Applicant, it is evident that the CIRP of the Corporate Debtor was initiated and the Applicant herein was appointed as IRP on 05.05.2020. IRP caused public announcement calling for the claimants from the Creditors of the Corporate Debtor by virtue of publication dated 10.05.2020.

3. Pursuant to that the 1st meeting of the CoC was held on 10.06.2020 & 12.06.2020 and as voted with 87.92% in favour of IRP's continuation as the RP during the E-Voting held from 16.06.2020 till 18.06.2020. Thereafter, the RP convened the 2nd CoC meeting on 10.07.2020, wherein the RP informed the CoC on details of claims, status of the unaudited Financial Statements of the Corporate Debtor, finalization of list of valuers and further discussed as to ratification of cost incurred to the tune of Rs.16,02,392/- from the date of commencement of CIRP till the date of the 2nd CoC (i.e., for the period from 08.05.2020 till 07.07.2020) were taken up, Resolutions were



passed as recorded in the Minutes of the 2nd CoC Meeting dated 10.07.2020.

4. It was averred in the Application that the CoC in its 3rd meeting held on 22.07.2020, discussed on quotation of the Valuers and payment of wages and salaries of workmen and Employees for the period from 05.05.2020 to 30.06.2020 as directed by the Hon'ble Supreme Court of India in WP (c) Diary No. 10983/2020 and the CoC was resolved to defer the above matters till next CoC meeting.

5. It is averred in the Application that in the 4th CoC meeting held on 28.08.2020. Further, the 5th CoC meeting held on 09.10.2020 wherein the CoC resolved to exclude the COVID-19 lockdown period from 05.05.2020 till 31.08.2020 (119 days) from the computation of the CIRP period and extend the CIRP till 27.02.2021 as 180th day of CIRP of the Corporate Debtor. As resolved by the CoC, the Applicant has filed an application bearing IA/1262/IB/2020 before this Tribunal on 29.10.2020 for exclusion.

6. It was further averred in the application that the 7th CoC Meeting held on 30.01.2021, the RP explained to file a fresh application for exclusion of subsequent period of lockdown for 153 days from

01.09.2020 till 31.01.2021 and corresponding extension of CIRP period till 30.07.2021 as 180th day of CIRP period, in view of the novel COVID-19 outbreak. Thereafter, the CoC with a voting of 61.94 % resolved to file a fresh application before this Tribunal by way of an application bearing IA/480/CHE/2021.

7. Further, the RP made a public announcement for Expression of Interest ("EoI") in Form-G on 10.02.2021 and fixed the last date for submission of EoI on or before 25.02.2021. Thereafter the RP received Expression of Interest from one Mr. Syed Fahad in consortium with M/s. Greenergy Wind Corporation Private Limited and the RP has prepared the Provisional List of prospective Resolution Applicant on 07.03.2021 and the Final List of prospective Resolution Applicant on 22.03.2021 comprising of Mr. Syed Fahad in consortium with M/s. Greenergy Wind Corporation Private Limited.

8. Subsequently, the RP filed an Application bearing IA/273/CHE/2021 on 18.02.2021 under Section 19(2), 19(3) & 60(5) of IBC, 2016, seeking directions against the Ex-Directors of the Corporate Debtor, which is pending adjudication before this Tribunal. Further the Applicant RP also filed an Application bearing IA/274/CHE/2021 before the Hon'ble Tribunal on 18.02.2021 under

Section 60(5) of IBC, 2016 read with Section 97 of the Companies Act, 2013 seeking direction of this Tribunal to call for an Annual General Meeting of the Corporate Debtor on or before 31.03.2021 by the Applicant RP, which is pending adjudication before this Tribunal.

9. It was further averred in the Application that the RP conducted the 8th CoC Meeting of the Corporate Debtor dated 02.03.2021, 9th CoC Meeting dated 23.04.2021, 10th CoC Meeting dated 12.05.2021, 11th CoC Meeting dated 28.05.2021, 12th CoC Meeting dated 28.06.2021 and 13th CoC Meeting dated 08.07.2021, with regard to extension of time for submitting the Resolution Plan in view of the Lockdown due to second wave of COVID-19, verification of Resolution Plan by the Applicant RP, Legal Opinion on the Resolution Plan and also granted time to prospective Resolution Applicant to submit the revised Resolution Plan.

10. It was further averred in the Application that the 13th CoC Meeting of the Corporate Debtor was held on 08.07.2021, wherein the RP informed the members of the CoC about his Report dated 06.07.2021 on the Resolution Plan of the prospective Resolution Applicant after incorporating modifications. The members of the CoC resolved for e-voting of the Resolution Plan from 10.00 A.M of

22.07.2021 to 5.00 P.M of 24.07.2021 to decide on acceptance or non-acceptance of the Resolution Plan.

11. It was further averred in the Application that this Tribunal by its Common Order dated 20.07.2021 allowed both the Applications bearing IA/1262/1B/2020 and IA/480/CHE/2021 by excluding the COVID Lockdown period from 05.05.2020 till 31.01.2021 (272 days) and further extended the 180th day of the CIRP period of the Corporate Debtor till 30.07.2021.

12. The Applicant submitted that the 14th CoC Meeting of the Corporate Debtor held on 22.07.2021, considered the pendency of the Resolution Plan before the CoC and passed a resolution with 100% voting share to file an Application before the Hon'ble Tribunal for exclusion of 38 days i.e., 10.05.2021 to 17.06.2021 from the period of CIRP period, on account of COVID-19 pandemic and extend the 180th day of CIRP till 06.09.2021. Further, the members of the CoC requested the Applicant to cancel the scheduled E-Voting on the Resolution Plan with immediate effect in order to obtain suitable sanction from their competent authorities and to reopen the E-Voting immediately after filing of the Application. Accordingly, the RP cancelled the scheduled E-



Voting and also filed an application for exclusion and extension of CIRP period as resolved before the Hon'ble Tribunal.

13. It was further averred in the Application that the E-Voting on the Resolution Plan was re-opened by the RP from 10.00 AM of 09.08.2021 to 10.08.2021. In the interregnum, the Application bearing IA/967/IB/2020 filed by the RP against DBS Bank Limited, the Financial Creditor seeking directions for remitting their share of CIRP costs and expenditure of the Corporate Debtor during CIRP and subsequently this Tribunal by its Order dated 12.08.2021 in IA/967/IB/2020 directed the Applicant RP to remove the DBS Bank as a members from the CoC and to reconstitute the CoC afresh. Further, this Tribunal observed that the claim of DBS Bank will remain intact and only from participating in any of the meetings of the CoC, DBS Bank is barred.

14. It was further averred in the Application that the 15th CoC Meeting of the Corporate Debtor held on 23.08.2021. The Applicant further informed the members of the CoC on the decision of the E-Voting results of the Resolution Plan. The E-Voting Results reveals that the Resolution Plan submitted by the prospective Resolution Applicant namely M/s. Syed Fahad & M/s. Greenergy Wind Corporation Private Limited is not approved and hence, rejected by the members of the

CoC with a voting of 100 % voting share including the DBS Bank Limited.

15. It was further averred in the Application that the Applicant further submits that the details of E-Voting Results shows that the DBS Bank casted their vote considering that the E-Voting was commenced at 10 AM on 09.08.2021 and even keeping the E-Voting of DBS Bank in abeyance, the Resolution Plan was rejected by the CoC with a vote of 92.77% which satisfies the requirements of 66% as per the I&B Code, 2016. Accordingly, the resolution for liquidation was passed by the members of the CoC and since, the RP expressed his intention not to continue as the Liquidator of the Corporate Debtor, the CoC has decided to appoint the Liquidator and his terms and conditions on the next date of CoC meeting.

16. It was further averred in the Application that the 16th CoC Meeting of the Corporate Debtor was held on 01.09.2021, the resolution for Liquidation was unanimously approved by the members of the CoC and passed a resolution for an appointment of Liquidator and Estimated Liquidation Costs of the Corporate Debtor and both the resolutions were put for E-Voting from 4 P.M of 02.09.2021 to 4 P.M of 03.09.2021 on



Claim-Bridge Platform. The above Resolutions are reproduced hereunder:

(a) "Initiation of Liquidation" as per Sec 33(2) of the Insolvency and Bankruptcy Code, 2016.

i) Resolution: The CoC Members Unanimously hereby approve the Liquidation of Easun Reyrolle Ltd as per Sec. 33 of the Insolvency and Bankruptcy Code, 2016.

ii) Further unanimously Resolved that - The Resolution Professional be and hereby authorized intimating the Adjudicating Authority of the Decision of the CoC to Liquidate the Corporate Debtor M/s Easun Reyrolle Ltd.,"

(b) Appointment of Liquidator and Terms of Appointment

Resolution: It was resolved to appoint Mr. Mahalingam Suresh Kumar (IBBI/IPA-001/IP-P00110/2017-2018/10217) Address: SPP & Co, No.27/9, Nivedh Vikas, Pankaja Mill Road, Puliyakulam, Coimbatore, Tamil Nadu 640028 as Liquidator."

17. It was further averred in the Application that the Applicant submits that the resolution for Liquidation was passed unanimously by the members of the CoC and in respect to resolution for appointment of Mr. Mahalingam Suresh Kumar as the Liquidator and Estimation of Liquidation Costs, the E-Voting Reports reveals that the both the resolutions were passed by the Members of the CoC with 87.52% voting share in favor.



18. The proposed Liquidator, Mr. Mahalingam Suresh Kumar has also filed his written consent to act as the Liquidator of the Corporate Debtor and also on verification from the IBBI Website, it is seen that the Authorization for Assignment (AFA) for the RP is valid up to 25.11.2022.

19. It was further averred in the Application that the Applicant/RP has complied Compliance Certificate in Form-H with all the mandatory requirements of CIRP of the Corporate Debtor as provided under the I&B Code, 2016 and its allied Regulations, 2016.

20. It was further averred in the Application that no successful resolution plan have been received by the CoC during the CIRP period of the Corporate Debtor and the resolution passed by the Committee of Creditors during the 16th CoC Meeting dated 01.09.2021 and confirmed through E-Voting held from 02.09.2021 to 03.09.2021.

21. In the circumstances, we hereby appoint **Mr. Mahalingam Suresh Kumar**, with Reg. No. IBBI/IPA-001/IP-P00110/2017-18/10217 as the Liquidator of the Corporate Debtor, to carry out the liquidation process subject to the following terms of the directions.



- a) The Liquidator 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 amended upto date enjoined upon her.
- b) The Liquidator 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 and file suitable application before this Adjudicating Authority.
- 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 also 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 Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.



j) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

22. Accordingly, IA/887/CHE/2021 filed for Liquidation of the Corporate Debtor stands **allowed**.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

Sriram Ananth .V