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**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
SINGLE BENCH, CHENNAI**

*MA/286/2018 filed in CP/431/IB/2018  
by Mr. Varadachari Kumar, Resolution  
Professional Section 33(2) of the  
Insolvency and Bankruptcy Code, 2016.*

In the matter of

**M/s. Syndicate Bank**

... Financial Creditor

**Vs.**

**M/s. Akshaya Imaging Systems Private Limited**

... Corporate Debtor

Corporate Debtor through RP viz., Mr. Varadachari Kumar

*Order delivered on 7<sup>th</sup> of August, 2018*

CORAM:

**CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)**

*For Financial Creditor: Aishwarya V., Counsel*

*For RP : Shubharanjani Ananth, Counsel*

**ORDER**

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL):

1. The Miscellaneous Application No. 286/2018 in CP/431/IB/CB/2018 has been filed on 30.07.2018 by the Resolution Professional viz., Mr. Varadachari Kumar, under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, (in short 'I&B Code, 2016').

2. The prayers made by the Resolution Professional are as under: -

- a. *Pass an Order of Liquidation of the Corporate Debtor Estate under Section 33(2) of the Code;*
- b. *Permit/Appoint this Resolution Professional to continue and act as the Liquidator to inter alia carry on the duties of Liquidation under Chapter III of the Code;*
- c. *Pass Orders fixing the remuneration of the Liquidator as set out under Regulation 4 of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016;*
- d. *Permit the Guarantor property being the Schedule mentioned property land which has been improved from the credit facilities availed from Financial Creditor for the purpose of Corporate Debtor and is currently vested with the Corporate Debtor; to be treated as part of the liquidation asset under Section 36(3)(h) of the Code;*

- e. *Direct the Petitioner/Financial Creditor to bear the cost and expenses of liquidation process and to make an initial deposit of a sum of Rs.5 Lakhs with the proposed Liquidator towards costs, charges and expenses; and*
- f. *Pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the interest of equity and in the circumstances of this case and thus render justice.*

2. It is averred in the Application that the Financial Creditor viz., Syndicate Bank has filed CP/431/IB/2018 under Section 7 of the I&B Code, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz., M/s. Akshaya Imaging Systems Private Limited, claiming the outstanding debt to the tune of Rs.13,35,55,068.51p. This Adjudicating Authority vide its Order dated 31.05.2018, admitted the Application, declared Moratorium and appointed the Interim Resolution Professional.

3. It is further averred by the Resolution Professional that on receipt of the Order, the Resolution Professional has invited the claims both in English and vernacular newspapers on **05.06.2018**. The CoC was constituted with Syndicate Bank having 100% voting rights. In the 1<sup>st</sup> meeting of CoC held on 29.06.2018 the IRP was appointed as RP and the suspended Directors of the Corporate Debtor has tendered a letter dated 17.07.2018 requesting *inter alia*, the Resolution Professional to seek and obtain orders from this Authority for liquidation of the Company through sale of the asset of the Corporate Debtor together with the property mortgaged by the suspended Directors as Guarantors to the credit facilities availed by the Corporate Debtor. The request letter of the suspended Directors of the Corporate Debtor is placed at pages 16 and 17 of the typed set filed with the Application.

4. It is stated by the Resolution Professional that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents viz., suspended Directors of the Corporate Debtor has made requests as under:-




- i. *Revival is not possible as running the unit is not viable due to the competitive price offered by pure trading community;*
- ii. *They want quick sale and save further interest/expenses;*
- iii. *They agree to treat the mortgaged land also as part of the assets of the Corporate Debtor to be liquidated as they are not third parties and*
- iv. *They agree to sell the land parcel mortgaged to the Financial Creditor as part and parcel of the Liquidation Asset.*

5. It is further averred by the Resolution Professional that in the 2<sup>nd</sup> meeting of CoC held on 18.07.2018 the deliberations in relation to the request of the suspended Directors of the Corporate Debtor were *inter alia* made, and the CoC has agreed and conveyed its

decision to liquidate the Corporate Debtor by duly including and treating the land owned by the guarantors and mortgaged to Financial Creditor as an asset vested with the Corporate Debtor and resolved as under:-

*“Syndicate Bank, the lone FC in this CIRP process then conveyed their decision to liquidate the corporate debtor duly including and treating the land owned by the personal guarantors and mortgaged to the FC as an asset vested with the Corporate Debtor as per provisions available under Section 33 (C) (h) (as (i) that land is leased to the CD, (ii) the personal guarantee liability co exists with the principal debt and (iii) the owner of land, guarantor/s, mortgagor/s have advised that they are not third parties and given their consent to treat this security as part of the liquidation estate and consented for its sale and appropriation).”*

8. It is not in dispute that the land in question which belongs to the Guarantor has been improved 

with the credit facilities availed from the Financial Creditor for the purpose of Corporate Debtor which is currently vested with the Corporate Debtor. The perusal of letter dated 17.07.2018 sent by the Corporate Debtor and its suspended Directors to the Resolution Professional, the copy of which is placed at pages 16 and 17 of the typed set filed with the Application reveals at internal page 2, that the suspended Directors have categorically stated that they jointly and severally as the company, its Directors, Guarantor/s to the debt raised by AISPL (Corporate Debtor) from the Financial Creditor and the mortgagor/s of the landed property mortgaged to the Financial Creditor, hereby irrevocably offer, agree and give their consent jointly and severally to the capacities as aforesaid, to sell the assets of the company. In other words, the suspended Directors being the guarantors, in explicit and unequivocal terms have given consent to sell their land/property morefully described in the Schedule to the Application and appropriate the sale proceeds towards the dues of the

Corporate Debtor. The scheduled (land) property in question belongs to the guarantor, has been improved with the credit facilities provided by the Financial Creditor, which is leased out to the Corporate Debtor and is vested in the Corporate Debtor on the insolvency commencement date, thereby is falling within the purview of Section 36(3) (c) and (h) of the Insolvency and Bankruptcy Code, 2016. Therefore, the Resolution Professional is permitted to sell the Scheduled property and appropriate the proceeds towards the dues of the Corporate Debtor.

9. The Resolution Professional has made a specific prayer for direction to the Petitioner/Financial Creditor to bear the costs and expenses of liquidation process and to provide him initial deposit of a sum of Rs.5 Lakhs. Therefore, the sole Financial Creditor is directed to approve and provide a sum of Rs.5 Lakhs to the Resolution Professional/Liquidator toward costs and expenses to be incurred during the process of liquidation.



of the estate of the Corporate Debtor including assets vested in the same.

**ORDER**

9. In view of the facts and circumstances recorded by Resolution Professional in the Miscellaneous Application No.286/2018 filed in CP/431/IB/CB/2018, and the resolution passed by the CoC as referred hereinabove, this Authority in exercise of powers conferred under Sub-Clauses (i)(ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the I&B Code, 2016, proceed to pass Order as follows:-

I. This Authority order; for liquidation of the Corporate Debtor viz., M/s. Akshaya Imaging Systems Private Limited, which shall be conducted in the manner as laid down in Chapter III of Part II of the I&B Code, 2016;

II. This Authority appoints the Resolution Professional viz., Mr. Varadachari Kumar

*f* as Company Liquidator, who shall issue a public announcement stating therein that the Corporate Debtor is in liquidation;

III. The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of liquidation;

IV. Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.

V. This Authority makes it clear that para (IV) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in *m*

consultation with any financial sector regulator.

VI. This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

VII. All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the Company Liquidator viz., Mr. Varadachari Kumar. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

VIII. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

IX. The Company Liquidator shall be entitled to charge such fee for the conduct of the liquidation proceedings in such a proportion to the value of the liquidation estate assets as may be specified by the Board. Accordingly, the fees of the conduct of the liquidation proceedings shall be paid to the Company Liquidator from the proceeds of the liquidation estate.

X. Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, and Registered Office of the Corporate Debtor by the Company Liquidator viz., Mr. Varadachari Kumar, for information and compliance.



10. In terms of the above, Miscellaneous Application No.286/IB/2018 in CP/431/IB/CB/2018 filed by the Resolution Professional under Section 33(2) of the I&B Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor viz., M/s. Akshaya Imaging Private Limited, stands **disposed of**.

11. The Registry is directed to send a copy of this Order to the Company Liquidator with immediate effect for information and compliance.

12. Order pronounced in open Court.

  
[CH.MOHD SHARIEF TARIQ]  
MEMBER (JUDICIAL)

P. ATHISTAMANI