



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

IA /IBC / 2398 (CHE) / 2023

IN

CP (IB) / 56 (CHE) / 2022

*(Under Section 33(2) & 34(1) of Insolvency & Bankruptcy Code, 2016 r/w Rules 11 &
32 of NCLT Rules, 2016)*

Shri R Thamodharan

Resolution Professional of

M/s. Cethar Constructions Limited,

No. 107, Dhurvatarra Appartments, 241, Dr. Rajendraprasad Road,
Tatabad, Coimbatore, Tamil Nadu – 641 012.

... Applicant

In the matter of

M/s. JMC Projects (India) Limited

... Applicant /Operational Creditor

Versus

M/s. Cethar Constructions Limited

... Respondent /Corporate Debtor

Order Pronounced on 9th August 2024

CORAM

Shri JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

Shri RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

For Applicant:

Mr. B.Dhanaraj, Mrs. Deepa Mariappan & Mr. Mohammed Umar, Advocates

ORDER

(Heard through video conferencing)

1. IA(IBC)/ 2398(CHE)/2023 in CP (IB)/56 (CHE)/2022 is an application filed under section 33 of the Insolvency & Bankruptcy code, 2016 (herein after termed as “the Code”) by Mr. R Thomodharan, RP of **M/s. Cethar Constructions Limited** i.e. the Corporate Debtor (hereinafter referred as “CD”) seeking following reliefs as follows,

“1. To condone the delay of 60 days in filing the Liquidation Application before the Hon’ble Tribunal.



2. *Pass an Order of Liquidation of the Corporate Debtor "M/s. Cethar Constructions Limited" under Section 33(2) of I&B Code, 2016 as resolved in the 6th CoC Meeting dated 01.12.2023.*
 3. *Appoint Mr. Mathur Sabapathy Viswanathan as the Liquidator of the Corporate Debtor "M/s. Cethar Constructions Limited" as resolved in the 6th CoC Meeting dated 01.12.2023."*
2. M/s. Cethar Constructions Limited, the corporate debtor, was admitted to Corporate Insolvency Resolution Process, (hereinafter referred as "CIRP") vide an order dated 25.11.2022 passed by this Adjudicating Authority and applicant herein Mr. R.Thamodharan, was appointed as the Interim Resolution Professional of the CD.
3. Heard the Ld. Counsel appeared on behalf of the applicant and perused the records.
4. Form the Compliance certificate (Form H) attached with the application the dates and events subsequent to initiation of CIRP of the CD is as follows,

S. No	Date	Events
1.	25.11.2022	Commencement of CIRP
2.	29.11.2022	Publication of Public announcement in Business Standard (English), The New Indian Express (English) and Dinamani (Tamil).
3.	16.12.2022	Constitution of Committee of Creditors (CoC) by IRP
4.	23.12.2022	1 st CoC meeting approving admission of Additional Financial Creditors and including Operational Creditors having more than 10% total claim to be part of CoC without any voting rights along with confirmation and continuance of IRP as Resolution Professional (RP) of the CD.
5.	06.01.2023	Confirmation of RP during 2 nd CoC
6.	24.05.2023	Expiry of 180 days of CIRP
7.	15.06.2023	1 st Extension of CIRP by 90 days till 22.08.2023 Vide IA(IBC)/ 935(CHE)/ 2023
8.	17.11.2023	2 nd Extension of CIRP by 60 days till 21.10.2023 Vide IA(IBC)/ 1611(CHE)/ 2023
9.	23.10.2023	Completion of 330 days from CIRP commencement



10.	22.11.2023	5 th CoC meeting which resolved recommendation of Liquidation of the CD without going through Expression of Interest (EoI) process.
11.	1.12.2023	6 th CoC meeting which approved the RP to file the application for Liquidation of CD.
12.	20.12.2023	Date of filing Liquidation application before this Adjudicating Authority

5. It is stated that CD was not in operations and the registered office was not in the Premises as stated in the Master Data. Later the applicant found the whereabouts of the Suspended Managing Persons, namely Mr. N. K. Pothiraj, Mr. Subburaj and Mr. S. Kanagaraj. Further issued a letter on 02.12.2022 calling for information such as Statutory Registers, Fixed Assets Register, Audited Financial Statements and Tally Accounts until date of CIRP commencement which were required for continuing the CIRP.
6. It is stated the said suspended managing persons vide reply dated 06.12.2022 informed the applicant that the present CD which is 99.96% subsidiary of M/s. Cethar Limited which is also currently under Liquidation. The records which the applicant RP sought were in the registered office of M/s. Cethar Limited.
7. It is submitted that owing to absence of records and documents pertaining to CD, applicant to a possible extent collated the Claims received upon clarification and constituted the CoC with ICICI Bank as the Sole Member with 100% voting rights and M/s. JMC Projects (India) Limited having more than 10% of the total claim without voting rights.
8. It is submitted that the applicant was confirmed as Resolution Professional during the 2nd CoC meeting dated 06.01.2023.
9. It is stated that the applicant with his team visited the address of the M/s. Cethar Limited where the records of this CD is kept as per the information of the suspended management. Subsequently it is found the said office premises were sold by the Liquidator of M/s. Cethar Limited and nothing is available.



10. It is stated that applicant has moved an application, IA(IBC) / 541(CHE)/2023 before this Tribunal seeking co-operation from the Suspended Management which is pending adjudication.
11. It is submitted that during the 6th CoC meeting dated 01.12.2023 the CoC unanimously resolved to liquidate the Corporate Debtor and authorized the applicant/ RP to file an application. The extracts of relevant liquidation Resolution are hereunder,

RESULTS OF THE BALLOT VOTING by Members of the CoC:

Resolution: "Resolved to approve the Resolution for Liquidation of M/s. Cethar Constructions Limited as already maximum period of 330 days of CIRP period was completed on 21.10.2023, because Fixed assets Register, statutory registers, documents, Financials as on 31.03.2018 onwards including Financials as on CIRP commencement date and Physical Assets were not handed over to the RP to prepare IM, Issue Form G, prepare RFRP, etc.,

Further resolved to authorize the Resolution professional to file the application to the Hon'ble NCLT the result of the Voting as the decision of the CoC U/s. 33(2) of the IBC 2016"

Details of members' Voting in compliance with Regulation 25(4)

S.No	Members who participated in the Ballot Voting	Members Who voted for the Resolution	Members Who voted against the Resolution	Members Abstained
1	ICICI Bank Ltd	100%	0	0
	TOTAL	100%	0	0

Accordingly, it has been decided to take up a voice voting on the same Resolutions for Re-Confirmation by the CoC Members, and to seek approval for filling the Application for Liquidation with the Hon'ble NCLT.

Hence the Chairman, read out the following Resolutions and called for the Voice vote of the members present:

Result of the Voice vote of the members of the Resolution is given below:

"Resolved to approve the Resolution for Liquidation of M/s. Cethar Constructions Limited as already maximum period of 330 days of CIRP period was completed on 21.10.2023, because Fixed assets Register, statutory registers, documents, Financials as on 31.03.2018 onwards including Financials as on CIRP commencement date and Physical Assets were not handed over to the RP to prepare IM, Issue Form G, prepare RFRP, etc.,

Further resolved to authorize the Resolution professional to file the application to the Hon'ble NCLT the result of the Voting as the decision of the CoC U/s. 33(2) of the IBC 2016"

Details of members' Voting as per the Voice Vote recorded in the meeting on 01.12.2023 in compliance with Regulation 25(4)

S.No	Members who participated in the Ballot Voting	Members Who voted for the Resolution	Members Who voted against the Resolution	Members Abstained
1	ICICI Bank Ltd	100.00	0	0
	TOTAL	100.00	0	0

The Chairman declared that the Resolution was passed with 100 % votes in favour, which is more than the 66% prescribed U/s. 33(2) of the IBC 2016. Accordingly, the Chairman stated that the CoC has conveyed their decision to liquidate the CD with 100 % vote and authorized the RP to file an application for liquidation of the CD U/s. 33(2) of the IBC 2016.



Item No. 6: To inform the CoC Members - the provisions of the Liquidation

a. The Liquidation of the company – Sec 33(2) of IBC

The Resolution Professional informed the members the provision of Sec 33(2) of IBC, 2016 and application to be filed with the Hon'ble NCLT after getting not less

than 66% of vote of CoC members. Accordingly following resolution was passed by CoC members having 100 % Voting rights

"Resolved that the company be liquidated in accordance with provisions of 33(2) of IBC, 2016 and the Resolution Professional, Mr. R. Thamodharan be and is hereby authorised to sign and file necessary application before NCLT, Chennai Bench on or before 20.12.2023".

b. Appointment of Liquidator – Sec 34 of IBC

The RP informed the CoC members the provision of Sec 34 of IBC, 2016 regarding appointment of Liquidator which was given in the Notice of 6th CoC Meeting and the Members having voting rights of 100 % Unanimously passed following resolution:-

"Resolved to appoint, Mr. Mathur Sabapathy Viswanathan (IBBI Regn No. IBBI/IPA-001/IP-P00674/2017-2018/11148) as Liquidator of M/s. Cethar Constructions Ltd.

f. Liquidator Fees – Regulation 39D

The Resolution Professional informed the members of the CoC, provision of Regulation 39D of IBBI(CIRP) Regulations 2016 on the matter of Liquidator Fees. The CoC members informed that this item will be discussed after appointment of Liquidator and at the first meeting of the Stakeholders Consultation Committee meeting. The following Resolution was passed:

"Resolved to decide and pass necessary resolution on the Liquidator Fees by the incoming Liquidator in the First Stakeholders Consultation Committee meeting"

12. It is seen that From the minutes of 6th CoC meeting dated 01.12.2023, the name of the Operational Creditor having more than 10% of the total claims, i.e. M/s. JMC Projects (India) Limited has changed its name to M/s. Kalpataru Power Transmission Limited.

Item No. 7: To discuss such other matters with the permission of the Majority of members of the Committee of Creditors as may be deemed necessary for the smooth functioning of the Corporate Insolvency Process.

Mr. Mallikarjuna Rao, Senior Deputy General Manager – Legal, M/s. Kalpataru Projects International Limited from operational Creditor having more than 10% of Total Claim informed that their company name was changed to M/s. Kalpataru Projects International Limited from M/s. Kalpataru Power Transmission Limited (Earlier it was M/s. JMC Projects (India) Limited). The future communication to be forwarded to the above company name.

13. It is stated that the CoC has recommended *Mr. Mathur Sabapathy Viswanathan* for appointment as Liquidator in respect of the this CD and thus the applicant RP has sought for Proposed Insolvency Professional to be appointed as Liquidator as per the code.



14. It is observed that since the period of maximum limit of 330 days in respect of CIRP is extinguished and no information, records and documents could be collected, the CoC decided to liquidate the CD. Therefore the above resolution for Liquidation of the Corporate Debtor has been passed taking into consideration, the interest of the Corporate Debtor and all other stakeholders concerned. Thus CoC directed the Resolution professional to file application for Liquidation of the Corporate Debtor.
15. The Applicant/RP submitted FORM-H as per Regulation 39 (4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016. The same is placed at Page 48 – 59 of the application.
16. After verifying the disciplinary status from the IBBI portal, we appoint **Mr. Mathur Sabapathy Viswanathan** having **Reg. No. IBBI/IPA-001/IP-P00674/2017-2018/11148**, email id: msv8200@gmail.com with valid **AFA till 20.12.2024** as the Liquidator for the Corporate Debtor.
17. Applicant submitted that the present application is filed with delay of 60 days and sought condonation of delay as one of the reliefs. This Tribunal vide order dated 04.01.2024 condoned the delay of 60 days in filing the present application.
18. From the above facts and circumstances, considering the decision taken by the CoC of the Corporate Debtor, this Adjudicating Authority deems it fit to order Liquidation of the Corporate Debtor. Accordingly, we order **Liquidation** of the Corporate Debtor i.e. **M/s. Cethar Constructions Limited** by appointing the above **Mr. Mathur Sabapathy Viswanathan** as the Liquidator to carry out the liquidation process subject to the following terms/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 up to date enjoined upon him.*



- 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 a suitable application before this Adjudicating Authority.*
- d. The Registry is directed to communicate this order to the Registrar of Companies, Chennai and 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 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 individual 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 reports 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 cooperation in relation to the Liquidation process of the Corporate Debtor.*

19. With the above directions, **IA(IBC)/ 2398(CHE)/2023 IN CP (IB)/56 (CHE)/2022** stands allowed and disposed of.

-Sd/-

**RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)**

-Sd/-

**JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)**