# THE NATIONAL COMPANY LAW TRIBUNAL DIVISION BENCH-II, CHENNAI IA(IBC)/2308 (CHE)/2023

# In CP(IB)/48(CHE)/2023

(filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016)

### MR. RAVINDRA BELEYUR

Resolution Professional of Reliable Cashew Company Pvt.td. Ltd Having office at "Shreevathsa" 428, 19<sup>th</sup> B Cross, 3'd Block, Jayanagar, Bangalore - 560 011

... Applicant

Order Pronounced on 9th August 2024

# **CORAM**

# SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL) SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

### Present:

For Applicant

: Mr. T.Ravichandran, Advocate

Mr.Ravindra Beleyur, Resolution Professional

# <u>ORDER</u>

(Hearing Conducted through Video Conferencing)

This Application has been filed under Section 33(2) of Insolvency and Bankruptcy Code, 2016 by Mr.Ravindra Beleyur, Resolution Professional of Reliable Cashew Company Private Limited (hereinafter referred to as "Corporate Debtor") seeking to order liquidation of the Corporate Debtor and to appoint him as a Liquidator of the Corporate Debtor.

- 2. It is stated in the application that CIRP in respect of the Corporate Debtor was initiated on 22.06.2023 and the Applicant herein was appointed as the Interim Resolution Professional (IRP).
- 3. Pursuant to that the Applicant issued public announcement on 26.06.2023. In turn, the Applicant had received claims from the three Financial Creditors, after verifying their claims the IRP had constituted CoC in following composition,

S.No.	Name	Claim Amount admitted	Voting Share (%)
1	State Bank of India	86,04,05,200	74.974
2	Samunnati Financial Intermediation & Services Private Limited	7,08,88,558	6.177
3	IndusInd Bank Ltd	21,63,10,349	18.849
*	Total	1,14,76,04,107	100.000

<sup>\*</sup>As per claim records updated as on 9th October 2023

4. In the 1<sup>st</sup> meeting of the CoC held on 20.07.2023 the Applicant was confirmed as the Resolution Professional (RP). It is stated the Applicant had published Form-G on 08.08.2023 for inviting Expression of Interest (EoI). After the 3<sup>rd</sup> meeting of the CoC held on 02.09.2023, the Applicant issued information memorandum, evaluation matrix and Request for Resolution Plan (RFRP).

- 5. It is stated that only one Prospective Resolution Applicant (PRA) viz. Rare Asset Construction Limited had submitted the Resolution Plan on 13.10.2023. The said Resolution Plan was discussed in the 4<sup>th</sup> meeting of the CoC held on 16.10.2023. The CoC treated Plan as Non-Responsive and has not accorded its approval and adjourned the meeting to 19.10.2023.
- 6. It is stated that on 19.10.2023 the CoC after deliberate discussions felt that there are no PRA available to take over the business of the Corporate Debtor and decided to liquidate the Corporate Debtor. Further in the said meeting the CoC with 100% voting resolved to liquidate the Corporate Debtor and to appoint the Applicant as the Liquidator of the Corporate Debtor.
- 7. It is stated that the Applicant had filed the following applications in terms of Regulation 35A, of the IBBI (CIRP Regulation, 2016.

Sl.No	IA No/ Filing	Provision	Brief details	Parties
	NO.	of the	of	
		Code	transactions	
1	2166/2023	Section	Issue	Sri Ravindra
	l	66(1) of the	regarding	Beleyur vs Sri
		Code	submission	Shanthanu
			of False CA	Malnad & 8
	1		certificate to	ors
			the Bank	
			regarding	
	1		confirming	
			the receipt of	
			25 Cores as	
	1		margin	
			money	
2	IA/1809/2023	Section	Fraudulent	Sri Rayindra
	IA/1809/2023	66(1) of the		
		Code		
		Code		
		1	the Caproate	The state of the s
			Debtor	ors
3	IA/1810/2023	Section	Fraudulent	Sri Ravindra
	1	66(1) of the	sale of a Flat	
	1	Code	owned by	Shanthanu

			the Caproate Debtor	Malnad & 5
4	2299/2023	Section 66(2) of the Code	transaction under Section 66(2)- Wrongful Trading	ors Sri Ravindra Beleyur vs Sri Shanthanu Malnad & 7 ors
5	3305118/ 03420/ 2023	Section 66(1) of the Code	Transaction	Sri Ravindra Beleyur vs Sri Shanthanu Malnad & 10 ors

- 8. Heard the submissions of the Ld. Counsel for the Applicant and perused the documents on record.
- 9. It is seen that the Corporate Debtor was admitted to CIRP on 22.06.2023. Till 19.10.2023 no viable Resolution Plan has come. It is also seen that in the 4<sup>th</sup> meeting of the CoC held on 19.10.2023 the CoC with 100% voting resolved to liquidate the Corporate Debtor. The relevant extract of the minutes is reproduced hereunder,

"RESOLVED THAT Committee of Creditors of Reliable Cashew Company Private Limited under CIRP ('the Corporate Debtor') be and is hereby decided to initiate the Liquidation process of the Corporate Debtor in accordance with the provisions of Insolvency and Bankruptcy Code, 2076 and Regulations thereunder in view of following reasons:

- a) Though there were 2 EOI received in the Resolution Plan Process, only one Applicant had submitted a Resolution Plan and that too was not in compliance of RFRP issued to the Resolution Applicant;
- b) There was no other serious interest shown by any entity to participate in the Resolution Plan Process any further;
- c) The Company has not been operative since FY 2020-27 since there is no significant turnover for the said year and no turnover for the subsequent years; and most of the equipments are out dated and some plant & machinery is placed in leased premises; and
- d) There are no employees / workmen on the rolls of the company.

RESOLVED FIIRTHER THAT, the committee of Creditors of Reliable Cashew Company Private Limited be and is hereby authorise Sri. Ravindra Beleyur, Resolution Professional to submit necessary application to the Adjudicating Authority with respect to decision of the Committee of Creditors to Liquidate the Corporate Debtor for further approval by the Adjudicating Authority."

10. The relevant voting pattern of the CoC is extracted hereunder,

Reliable Cashew Company Private Limited under CIRP Minutes of Adjourned 4<sup>th</sup> Meeting of the Committee of Creditors held on 19<sup>th</sup> October 2023

Details of E-voting Results are follows:

Particulars	CoC Members	% Voting Share	Status of Voting
Resolution No.	State Bank of India	74.974 %	Voted in "Favour"
1 Approval for initiating the liquidation of the Reliable	Samunnati Financial Intermediation & Services Private Limited	6.177 %	Voted in "Favour"
Cashew Company Private Limited	IndusInd Bank Ltd	18.849 %	Voted in "Favour"

The resolution has been approved with 100% voting by CoC.

11. Section 33 of the Insolvency and Bankruptcy Code, stipulates as follows,

# *Section 33 (2)*

"Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)."

12. It is seen from the resolution passed by CoC that the CoC is interested to sell the Corporate Debtor as going concern as per Regulation 32A of IBBI (Liquidation Process) Regulations, 2016. Form-H has also been place on record.

- 13. Since, the CoC with 100% voting unanimously resolved to liquidate the Corporate Debtor. This Tribunal is of the opinion to Liquidate the Corporate Debtor. Accordingly we order liquidation of the Corporate Debtor.
- 14. It is also noticed from the minutes that the CoC has recommended Mr.Ravindra Beleyur (Applicant herein) to act as the Liquidator of the Corporate Debtor.
- 15. In the circumstances, we appoint **Ravindra Beleyur** Resolution Professional **(e-mail:)** ravi@beleyur.com bearing **Reg No. IIBI/PA-001/IP-00189/2017-18/10368** having AFA valid till **18.09.2024** 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) 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.
- e) 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.
- f) 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.
- g) 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.

- h) 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.
- i) The Liquidator directed explore the possibilities of selling the Corporate Debtor as the going concern.
- 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, viz., company-in-liquidation.
- 16. The application IA(IBC)/2308(CHE)/2023 stands Allowed with the aforesaid directions.
- 17. The Registry is directed to commusnicate this order to the Registrar of Companies, and to the Insolvency and Bankruptcy Board of India.

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RAVICHANDRAN RAMASAMY MEMBER (TECHNICAL) JYOTI KUMAR TRIPATHI MEMBER (JUDICIAL)