



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

I.A./2104/2021 In CP(IB)/559/(MB)/2018

*Application filed under section 33(2) and 12(3) of
Insolvency and Bankruptcy Code, 2016.*

Divyesh Desai

(RP of Trend Electronics Limited)

...Applicant

I.A./2858/2021 In CP(IB)/559/(MB)/2018

*Application filed under section 12A and 60(5) of
Insolvency and Bankruptcy Code, 2016.*

Venugopal Dhoot

...Applicant

V/s

1. Divyesh Desai

2. CoC of Trend Electronics Limited

... Respondents

In the matter of

State Bank of India

...Financial Creditor

V/s

Trend Electronics Limited

...Corporate Debtor

Order Pronounced on:- 10.02.2023

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances (through video conferencing)

For the Resolution Professional : Mr. Ankit Lohia, Advocate

For the Applicant in IA/2858/2021: Mr. Vidit Divya Kumat, Advocate

a/w Amir Arsiwala, Advocate

ORDER

Per- Coram

1. It is an Interlocutory Application/2104/2021 filed by Mr. Divyesh Desai, Resolution Professional under section 12(3) and 33(2) of Insolvency and Bankruptcy Code, 2016 for initiation of liquidation process of the Corporate Debtor viz. Trend Electronics Limited (hereinafter referred to as "Corporate Debtor") as a going concern as approved by the Committee of Creditors ("COC") with 100% voting in its 30th meeting held on 19.07.2021.

The Applicant has further prayed to grant exclusion/extension of 30 days in the CIRP period of the Corporate Debtor (pursuant to expiry of 270 days), so that the CIRP period which was earlier ending on 10.08.2021 may now be extended upto 09.09.2021.

Simultaneously, Mr. Venugopal Dhoot has filed another Interlocutory Application/2858/2021 under the provisions of Section 12A and Section 60 (5)(c) of the IBC, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking appropriate orders under Section 12A of the IBC for withdrawal of the present Corporate Insolvency Resolution Process against the Corporate Debtor in light of restructuring proposal submitted by him.

2. On perusal of the Interlocutory Applications No. 2104 and 2858 of 2021, it reveals that the CIRP was initiated against the Corporate Debtor by this Tribunal vide order dated 25.09.2018 and Mr. Dushyant Dave (“erstwhile RP”) was appointed as the Interim Resolution Professional of the Corporate Debtor who was subsequently appointed as the Resolution Professional by the COC.

Further on the Application made by SBI and Mr. Venugopal Dhoot, ex-promoter of Videcon, the Hon’ble Principal Bench transferred all matters where CIRP commenced in respect of the 15 Videcon Industries Limited Companies to this Bench. Thereafter, based on the Miscellaneous Applications filed by SBI and Mr. Venugopal Dhoot, this Hon’ble Tribunal vide common order dated 08.08.2019 approved consolidation of CIRP of 13 VIL Companies except the Corporate Debtor herein and KAIL Limited. Further, this Tribunal has appointed the Mr. Divyesh Desai as IRP of Corporate Debtor and directed to complete the CIRP within 180 days from the date of the Consolidation Order. The Applicant was approved as Resolution Professional of the Corporate Debtor and the COC resolved re-invitation of EOI after updating the Information Memorandum, during the 7th COC Meeting held on 06.09.2019. Subsequently, the RP informed the COC members that EOI had been received from three potential resolution applicants namely -Salzer Electronics Limited (“Salzer”), Altius Digital Private Limited (“Altius”) and Marathwada Audyogic & General Kamgar Sangthana, out of which only Salzer met the eligibility criteria as specified in the invitation of EOI. Thereafter, on the withdrawal of Salzer from submission of Resolution Plan, the COC resolved that EOI shall be invited once again after



I.A./2104/2021 & I.A./2858/2021 In CP(IB)/559/(MB)/2018 amending the eligibility criteria, during the 11th CoC meeting, held on 18.12.2019. Subsequently, on request made by Altus, the COC resolved to extend the time for submission of Resolution Plan till 30.01.2020. On the withdrawal of EOI by Altius on 21.01.2020, the COC resolved to extend the CIRP of the Corporate Debtor by 90 days and to re-issue EOI for calling prospective Resolution Applicants, during their 13th meeting held on 31.01.2020. Further, this Tribunal, by way of order dated 19.02.2020 granted the extension of CIRP period by 90 days with effect from 04.02.2020.

3. Thereafter, on 17.06.2020, the COC has approved the extension of last date for submission of resolution plan by 24.07.2020. The RP informed the COC members that Mr. Anurag Dhoot, promotor of Epitome Components Private Limited (“Epitome”) has expressed interest in submitting a resolution plan. Subsequently, the COC passed a resolution to extend the last date for submission of Resolution Plan to 31.08.2020. Pursuant to which, resolution plans were received from Epitome and Puneet Advisory Services Pvt. Ltd. (“PASPL”), a related party of the erstwhile RP. Further, the RP received a consolidated 12A proposal on 31.08.2020, from Mr. Venugopal N Dhoot, the promoter of Trend Electronics Limited for all 15 Videocon Group Companies.

On 03.09.2020, the erstwhile RP and Mr. Nishit Dave of PASPL along with Mr. Anurag Dhoot attended the 19th COC meeting. The representatives from PASPL were asked to submit relevant documents being affidavits, undertakings, declarations, KYC documents, related party information and bid bond guarantee at the earliest. Additionally, Mr. Dhoot presented the key highlights of the Resolution Plan of Epitome. The Applicant also



I.A./2104/2021 & I.A./2858/2021 In CP(IB)/559/(MB)/2018 submitted the 12A proposal to the COC which was not accompanied with bank guarantee. Thereafter, on 02.11.2020, Mr. Venugopal N Dhoot has submitted updated 12A proposal for all 15 Videocon Companies and submitted the same before the RP. Further, on being dissatisfied with both resolution plans, during the 22nd COC meeting held on 25.11.2020, it was resolved to reissue the request for Resolution Plan and invitation of EOI with last date for submission of Resolution Plan to 31.12.2020.

4. Further, on the 24th COC meeting held on 24.02.2021, the RP conveyed to the COC members that he has received 3 resolution plans viz. PASPL, Epitome and Mr. Prakash Satyanarayan Jalan and he has requested all the three Resolution Applicants to submit their revised resolution plans by 29.05.2021. Thereafter, during the 28th COC meeting, the RP apprised the COC members that there are certain deficiencies in submission of resolution plans by Epitome and Mr. Jalan and PASPL had not submitted a revised resolution plan. Further, it was conveyed to PASPL that documents/ proof was required to demonstrate the availability of funds for infusion in the Corporate Debtor and that the Resolution Plan is not in conformity with respect to the requirement of Bid Bond Guarantee and Performance Bank Guarantee.

On 31.07.2021, the COC decided that the RP will file an application seeking final extension of date of completion of CIRP by 30 days and the distribution working for the amount to be received by Financial Creditors as per PASPL's Resolution Plan was discussed. On the conclusion of e-voting in pursuance of the 30th COC meeting held on 31.08.2021, the COC members unanimously voted against the resolution plan of PASP and the 12A proposal



I.A./2104/2021 & I.A./2858/2021 In CP(IB)/559/(MB)/2018 and **approved the liquidation** of the Corporate Debtor as a going concern, with 100% of majority. Thereafter, in pursuance of the 31st COC meeting, the COC by way of e-voting unanimously authorized the Applicant to file an application of extension of CIRP timeline. In such circumstances, the RP has filed IA/2104/2021 for initiation of liquidation process of the Corporate Debtor and exclude/extend 30 days in the CIRP Period.

5. Subsequent to this, Mr. Venugopal Dhoot, Promoter filed an IA/2858/2021 seeking withdrawal of the CIRP against Corporate Debtor and in order to made his case, the Counsel for Mr. Venugopal argued that they have submitted a restructuring proposal to the RP and the CoC for withdrawal of the CIRP of the present Corporate Debtor. The proposal of the Applicant was first referred to a consultant (Dun & Bradstreet) appointed by the CoC for conducting a technical evaluation of it. The said consultant, “Dun & Bradstreet” sought various information from the Promoter and his staff for the purpose of preparing a technical evaluation report.
6. The proposal of the Promoter contained two options. *First*, the Applicant proposed to modernise the operations of the Corporate Debtor and continue doing job work of manufacturing of set-top boxes but to modern specifications. Through this, he proposed to repay an amount of Rs. 400 Crores to the financial creditors over a period of ten years and the other one is if the Applicant is allowed to use the “Videocon” and “Kelvinator” brands for the Corporate Debtor, then the Corporate Debtor may be able to pay amount of Rs. 3000 Crores to the financial creditors over a period of ten years.

In relation to this, the Counsel has submitted that the CoC of the Corporate Debtor considered the proposal of the Applicant at its meeting dated 08.06.2021 and sought for more information, same was provided. Thereafter, it appears that the restructuring proposal of the Applicant was considered but his restructuring proposal was rejected and same was informed by way of an email dated the 01.09.2021, that his restructuring proposal has been rejected. It is notable that the Applicant was neither provided with a copy of the minutes of the 30th meeting of the COC nor was provided with a copy of the final technical evaluation report prepared by the said "Dun & Bradstreet". Further submitted that his restructuring proposal under section 12A of the IBC was superior to even the resolution plans received by the RP.

However, the CoC has neither chosen a resolution plan nor has opted for restructuring. For the aforesaid reasons, liquidation of the Corporate Debtor will benefit no one except the RP who will act as a liquidator entitled to fees for acting as such. The Applicant/promoter submitted that he is ex promoter of the Videocon Group of companies and is fully aware of the status of the Corporate Debtor, verily believes that its liquidation value is below Rs. 50 Crores. On the other hand, the restructuring proposal presented by him ensures payment of between Rs. 400-3000 Crores to the financial creditors depending on whether he will be allowed to use name of the "Videocon" and "Kelvinator" brands. It is submitted that there can be no commercial wisdom to the decision of the CoC to outright reject the restructuring plan without assigning cogent and adequate reasons behind their decision.

It is further submitted that the restructuring of the Corporate Debtor will lead to its revitalisation as a going concern, which will also greatly benefit the stakeholders. In addition to his submission, the Counsel for the Promoter again submitted that in case the Corporate Debtor is liquidated, the Operational Creditors and other stakeholders are not likely to get anything; on the other hand, if the Corporate Debtor is restored as a going concern, all stakeholders will benefit.

7. In response to this application, the RP has filed a detailed reply and has submitted that application filed by the Ex-promoter is nothing but a mala fide attempts to delay the commencement of liquidation process of the Corporate Debtor. Further submitted that despite substantial efforts made to resolve the Corporate Debtor and when no resolution plan came to be approved by the members of the COC of the Corporate Debtor, the COC in its commercial wisdom voted unanimously in favour of liquidation of the Corporate Debtor as a going concern, as evident from the e-voting on 31.08.2021 in pursuance of the 30th COC meeting held on 19.07.2021.

Further, in relation to settlement, the RP submitted that restructuring/settlement proposal under Section 12A of the Code from Mr. Venugopal Dhoot, the promotor of Trend Electronics Limited was not specific to the Corporate Debtor but it was a consolidated restructuring/settlement proposal for all the 15 Videocon Group companies. The RP had circulated the proposal to the COC members along with the notice of the 19th COC meeting. However, Mr. Pradipkumar N. Dhoot, also a promotor and guarantor of Trend Electronics Limited had conveyed that a revised



I.A./2104/2021 & I.A./2858/2021 In CP(IB)/559/(MB)/2018 proposal would be submitted. Subsequently, a revised unsigned 12A proposal was submitted on 02.11.2020 by one Mr. Rohit Jadhav on behalf of Mr. Pradipkumar N. Dhoot for all the 15 Videocon Group companies. However, the COC members conveyed that 12A proposal of 13 Consolidated Videocon group companies is under consideration and that depending upon the outcome of it, the COC will decide about 12A proposal for the Corporate Debtor. Subsequently, on 27.11.2020, Mr. Pradipkumar N. Dhoot submitted a proposal under Section 12A of the Code for restructuring of the Corporate Debtor. Pursuant to various discussions and deliberations in this regard during the course of various subsequent COC meetings, the aforesaid proposal was put up as a voting agenda pursuant to the 30th COC meeting, and the aforesaid proposal stood rejected unanimously by the COC members i.e., with 100% voting against the proposal. Moreover, the COC members unanimously approved the liquidation of the Corporate Debtor as a going concern as well as the appointment of the RP as the liquidator of the Corporate Debtor. The RP has further submitted that the restructuring proposal in question was unanimously rejected by the COC of the Corporate Debtor, which is a matter of their commercial wisdom but even then, the Ex-promoter has filed the frivolous application, which is nothing but a mala fide attempt to delay the commencement of liquidation process of the Corporate Debtor.

8. After hearing both the parties and on perusal of the IA's 2104 & 2858 of 2021 including other material on record, we are of the view that as per *Regulation 30A of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)*



Regulation, 2016, the application for withdrawal under Section 12A of IBC, 2016 may be made to the Adjudicating Authority- ***after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be.*** In the present case, the application for withdrawal is filed by the Ex-promoter directly and not through the Resolution Professional of Corporate Debtor. The Applicant has miserably failed to make out a case as to why the present application, that has been filed without following the proper procedure, should be entertained by this Bench.

Moreover, Mr. Pradipkumar N. Dhoot submitted a proposal under Section 12A of the Code for restructuring of the Corporate Debtor. Pursuant to various discussions and deliberations in this regard, the aforesaid proposal was put up for voting before CoC in the 30th COC meeting. The said proposal was rejected unanimously by the COC members i.e., with 100% voting against the proposal. Further, the COC members unanimously approved the liquidation of the Corporate Debtor as a going concern and passed a resolution to appoint the current RP as the liquidator of the Corporate Debtor. The minutes of the 30th COC meeting was circulated to all the participants of the aforesaid meeting and the restructuring proposal in question was unanimously rejected by the COC of the Corporate Debtor, which is a matter of their commercial wisdom, and ought not to be questioned or challenged unnecessarily. Moreover, the Corporate Debtor has been undergoing the corporate insolvency resolution process due to the failure of the suspended promoters (*including the Applicant in IA/2858/2021*) and the suspended directors to run the Company efficiently. As such, the Ex-promoter coming forward and presenting to revive the



I.A./2104/2021 & I.A./2858/2021 In CP(IB)/559/(MB)/2018 Corporate Debtor and to take it to greater height, even after unanimous rejection of the restructuring proposal by the COC, whose commercial wisdom is to be considered paramount, appears to be nothing but a mala fide attempt to delay the commencement of liquidation process of the Corporate Debtor. In view of the same, we are of the opinion that the application filed for withdrawal is to be dismissed. Hence, **IA/2858/2021** is **dismissed** with no cost.

We are of the further opinion that this is a fit case for liquidation. Therefore, we extend the CIRP period for 30 days from 10.08.2021 to 09.09.2021 and hereby, order the liquidation of the company as a going concern with directions as follows:

- a. The **Mr. Divyesh Desai**, holding Registration **No. IBBI/IPA-001/IP-P00169/2017-2018/10338**, is appointed as the Liquidator in terms of Section 34 of the Code;
- b. Registry is directed to communicate this Order to the Registrar of Companies, Mumbai and to the Insolvency and Bankruptcy Board of India;
- c. 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;
- d. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- e. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II



I.A./2104/2021 & I.A./2858/2021 In CP(IB)/559/(MB)/2018 of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.

- f. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- g. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- i. Copy of this order be sent to the financial creditors, corporate debtor, the Liquidator for taking necessary steps.

9. The **IA/2104/2021** filed by the RP for Liquidation of the Corporate Debtor as going concern stands **allowed**.

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

JUSTICE P.N. DESHMUKH
(MEMBER JUDICIAL)