



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

I.A. 5574 OF 2023

In

C.P. No. 57 of 2022

Under Section 33(2) read with 33(2) of
Insolvency & Bankruptcy Code, 2016

Filed by

Neha Jain Nemani

(Interim Resolution Professional of Emerald
Performance Chemical Pvt. Ltd.)

Having registered office at: Unir # 207, 2nd
Floor, Kashitij CHS Ltd, Near Azad Nagar
Metro Station, Veera Desai Road, Andheri
West, Mumbai- 400 053

...Applicant/IRP

In the matter of

Synres BV

...Operational Creditor

Versus

**Emerald Performance Chemical Private
Limited**

...Corporate Debtor



Order delivered on: 01.08.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Mr. Charanjeet Singh Gulati, Member (Technical)

Appearance:

For the IRP: Adv. Manish Jha, Adv. Neha Jain Nemani

Per: Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

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1. This application is filed by the Interim Resolution Professional (IRP), of Emerald Performance Chemical Pvt. Ltd., (hereinafter referred as **Corporate Debtor**) seeking liquidation of Corporate Debtor under Section 33(2) of Insolvency and Bankruptcy Code, 2016 (hereinafter "**IBC**") with consequential prayers like appointment of Liquidator and moratorium during liquidation under section 33(5).

The brief facts of the Application are as follows:

2. On an application filed by Synres B. V. under section 9 of IBC, the Corporate Debtor was admitted to Corporate Insolvency Resolution Process (CIRP) vide order dated **27.09.2023** and the Applicant was appointed as Interim Resolution Professional ("**IRP**").



3. Form A public announcement was made in the newspapers, Free Press Journal (English) and Navshakti (Marathi) on 04.10.2023. The last date for submission of claims was 13.10.2023.
4. The CoC was constituted in accordance with the provision of Regulation 21 (1) of the Insolvency and Bankruptcy Code 2016, which consisted of the sole member as mentioned in the below table:

Sr. No.	Name of Financial Creditor (Secured)	Total Amount Claimed (Rs.)	Claim admitted by IRP (Rs.)	Voting (%)
1.	Bharat Co-operative Bank (Mumbai) Limited	10,10,69,667	10,10,69,667	100
	Total Financial Creditors	10,10,69,667	10,10,69,667	100

5. That after the constitution of the Committee of Creditors, the Applicant had called the 1st meeting of the Committee of Creditors on 27.10.2023.
6. That the Corporate Debtor has only some current assets and no fixed assets, as on date.
7. Further, it is also worth mentioning that as per the information received by the Applicant, the Corporate Debtor was only a trading



entity and the trading operations have also ceased for more than a year.

8. Considering the fact that the Corporate Debtor has no ongoing business, the Applicant put forth the agenda before the member of CoC in its 2nd meeting, held on 09.11.2023, for deciding the further course of action in the CIRP of Corporate Debtor. The Applicant had put forth 3 options before the CoC members i.e.

- I. To continue with the current CIRP process and issue Form G for inviting EOI and Resolution Plans,
- II. To consider Liquidation of Corporate Debtor, and
- III. Withdraw from the process under section 12A with 90% approval of the CoC members, in the event a proposal has been received.

9. The Applicant had discussed the above 3 options, at length. After detailed discussion, the members of the CoC considered the option of Liquidation. Accordingly, the Applicant had put the resolution for Liquidation for voting. The said Resolution was approved with 100% voting. The minutes of the 2nd CoC meeting dated 09.11.2023 is reproduced below:

Resolution 1 –

Resolved that pursuant to Section 33 (2) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and IBBI (Liquidation Process) Regulations, 2016, approval of the Committee of Creditors (CoC) is be and hereby accorded to approve the Liquidation process in respect



of EMERALD PERFORMANCE CHEMICAL PRIVATE LIMITED (Corporate Debtor) as well as to recommend the Liquidation to the Adjudicating Authority.

Resolved further that, pursuant to the provisions of Section 33 (1)(a) of Insolvency and Bankruptcy Code, 2016, Ms. Neha Jain Nemani (Interim Resolution Professional) be and is hereby authorized to make necessary application with the Adjudicating Authority (NCLT, Mumbai Bench), intimating the decision of the Committee of Creditors at their meeting held on 09th November, 2023 to liquidate the Company as per direction of the CoC.”

10. The CoC had also resolved to appoint the Applicant Ms. Neha Jain Nemani, as the Liquidator. However, the Applicant has filed additional affidavit dated 09.01.2024 for withdrawing her consent and appoint Mr. Rajkumar Feru Gupta having IBBI Registration No. IBBI/IPA-001/IP-P-02103/2020-2021/13247 as the liquidator. The Applicant has also annexed email dated 21.12.2023 received from the sole CoC Member i.e. Bharat Co-operative Bank wherein the CoC has approved the proposal for appointing Mr. Rajkumar Feru as Liquidator of Emerald Performance Chemicals Pvt. Ltd.
11. In view of the fact that the Corporate Debtor is just a trading unit and no significant operations for more than a year, the CoC is of the view that it would be in the interest of all the Stakeholders to pursue the option of liquidation in accordance with section 33(2)



of Insolvency and Bankruptcy Code 2016. The exact words of section 33(2) are reproduced below for ease of reference:

"(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 ¹[approved by not less than sixty-six per cent. 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 observed from the minutes of the 2nd COC meeting dated 09.11.2023 that the CoC has, with 100% majority, passed the resolution to liquidate the corporate debtor. The decision of CoC to Liquidate the Corporate Debtor is just, equitable and in the interest of all the stakeholders, in view of no ongoing business, there is no chance of reviving the Corporate Debtor. Simply carrying out the CIRP process, would just be an additional cost burden on the debt-ridden Corporate Debtor. Relying on the settled principle of law regarding the commercial wisdom of the CoC, we hereby allow this Interlocutory Application Number 5574 of 2023 by passing the following:

ORDER

- a. The I.A. 5574 of 2023 is **allowed** and order is passed for liquidation of the Corporate Debtor M/s Emerald Performance Chemical Private Limited.



- b. **Mr. Rajkumar Feru Gupta** having IBBI Registration **No. IBBI/IPA-001/IP-P-02103/2020-2021/13247** is hereby appointed as the Liquidator under section 34(1) of the Code.
- c. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as approved by the CoC under regulation 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- d. The Liquidator appointed in this case shall initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- e. All powers of the board of directors and key managerial personnel of the Corporate Debtor shall cease to have effect and shall be vested with the Liquidator.
- f. That the Corporate Debtor to be liquidated in the manner as laid down in Chapter III of the Code including by issuing Public Notice stating that the Corporate Debtor is in liquidation.
- g. Liquidator to send this order to the ROC under which this Company has been registered.
- h. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- i. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except



the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.

j. We note that there are no immovable property, no fixed assets yet there is outstanding amount of Rs. 10.10 crores due to Bank. Liquidator is also directed to consider the Transaction Audit Report, Valuation Report and other relevant documents, if any and if deemed fit to initiate appropriate action against suspended directors.

k. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, if any, except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

With the above directions, this application i.e. I.A. No. 5574 of 2023 is hereby **allowed and disposed of**.

Sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

---Rajeev, PS---

Sd/-

LAKSHMI GURUNG
MEMBER (JUDICIAL)