

THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(through web-based video conferencing platform)

IA No. 902/2020

In

CP (IB) No. 359/Chd/Hry/2018
(Admitted Matter)

Under Sections 33(2) & 60(5) of
the Insolvency & Bankruptcy
Code, 2016

In the matter of:

M/s Gujarat Poly Electronics Limited

Vs.

Bony Paul Systems Private Limited

...Petitioner-Operational Creditor

....Respondent-Corporate Debtor

In the matter of IA No. 902/2020:-

Mr Anil Arora

Resolution Professional of

M/s Bony Paul Systems Private Limited

Resident of # 4, Srinivas Colony, Rajbaha road,

Patiala- 147001 (Punjab)

Email: ca.anil@gmail.com

IBBI Reg. No.: IBBI/IPA-001/IPPO0729/2017-2018/11224

Ph: 9876110038

....Applicant/ Resolution Professional

Order delivered on: 13.07.2022

Coram: Hon'ble Mr Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr Subrata Kumar Dash, Member (Technical)

For Applicant-Resolution Professional
in IA No. 902/2020:

Mr Nahush Jain , Advocate



IA No. 902/2020

In

CP (IB) No. 359/Chd/Hry/2018

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

IA No. 902/2020

The present application is being filed by Mr Anil Arora, Resolution Professional (RP) of Bony Paul Systems Pvt. Ltd. (herein referred to as "Corporate Debtor") under section 33 of Insolvency and Bankruptcy Code, 2016 ('IBC') for the initiation of liquidation of Corporate Debtor.

2. It is prayed by the applicant to pass an order to liquidate the corporate debtor i.e. M/s Bony Paul Systems Pvt. Ltd., under Section 33 of the IBC, 2016 and to appoint the applicant as a Liquidator. It is further prayed to give liberty to the corporate debtor to continue pursuing the arbitration claim initiated by the corporate debtor, which is pending before the Arbitrator in terms of Section 33(5) of IBC, 2016 and further allow to continue the proceedings before relevant Appellate Authority.

3. The brief facts of the case, as stated in the application, is that the Corporate Insolvency Resolution Process was initiated against the Corporate Debtor vide order dated 23.10.2019, and the applicant was appointed as an Interim Resolution Professional (IRP). Pursuant to the order dated 23.10.2019, IRP made a public announcement on 25.10.2019 inviting the claims from the public. The Committee of Creditors (CoC) was constituted on 17.11.2019, having 18 operational creditors only as no claims were received from any financial creditor. In the first meeting of CoC held on 22.11.2019, it was resolved that the present applicant will be continued as Resolution Professional (RP). A copy of the minutes of the first meeting of CoC is attached as Annexure A-3 of the application.



4. It is further submitted that in the 3rd meeting of CoC held on 06.02.2020, it was intimated by the Resolution Professional that new claims have been received and the CoC was reconstituted. In the aforesaid meeting, the decision on Publication of invitation of Resolution Plan was taken. As a result of which the Applicant published Invitation for Expression of Interest (in Form G) for Submission of Resolution Plan, as per regulations 36A (1) on 12.02.2020 in two newspapers. The last date for the submission of the Resolution Plan was fixed as 12.02.2020. However, only one EOI was received but no resolution plan was received.

5. It is pertinent to mention that an application for extension of the CIRP period and to exclude the period of lockdown was filed by the vide IA No. 522 and 521 of 2020, and this adjudicating authority vide order dated 16.10.2020 extended the CIRP period by 90 days and allowed the exclusion of period of lockdown from 25.03.2020 to 31.07.2020.

6. In the 6th meeting of COC held on 17.10.2020, it was resolved to republish Form G again, inviting Expression of Interest (EOI). However, the same could not be published since the CIRP period was expiring on 25.11.2020. In the 7th meeting of COC held on 25.11.2020, the members of CoC discussed the liquidation of Corporate Debtor along with other issues. In the same meeting, it was unanimously resolved to liquidate the Corporate Debtor as no Resolution Plan was received. A copy of the minutes of the 7th meeting of CoC is attached as Annexure A-11 of the application. It is further mentioned that a claim petition is instituted by Corporate Debtor under Arbitration and Consideration Act against Larsen and Turbo Limited for the claim of Rs. 2,15,50,269 is pending, and if it is decided in favour of Corporate Debtor, it may add to the value of Corporate Debtor and can be the part of the Liquidation Estate.



7. Now, coming to the merit of the application, before considering the prayer, we would like to refer the Section 33(2) of IBC, and the same is reproduced below:-

"Section 33(2): Initiation of liquidation

(1)

(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).*

[Explanation. - For the purpose of this sub-section, it is hereby declared that the Committee of Creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of Section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

8. A bare perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

- i. Before the expiry of the Insolvency Resolution Process period;
- ii. Maximum period permitted for completion of the Corporate Insolvency Resolution Process under Section 12 or the fast track Corporate Insolvency Resolution Process under Section 56 as the case may be; and
- iii. If does not receive a resolution plan under sub-section (6) of Section 30.

9. In the present case, the Resolution Professional has published Form G inviting the Expression of Interest (EOI) on 12.02.2020. However, pursuant to the above publications, only one EOI was received and no Resolution plan has been received. In the Seventh Meeting of COC held on 25.11.2020, the COC has





decided to liquidate the Corporate Debtor by passing a Resolution in the aforesaid meeting.

10. It may be noted that the agenda for the appointment of Resolution Professional as Liquidator has been discussed in the 7th CoC Meeting held on 25.11.2020 and voted by 36.63% in favour of it. The relevant provisions for the appointment of the liquidator are mentioned in Section 34 and are reproduced below:

Section 34-Appointment of liquidator and fee to be paid.

(1) *Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under [Chapter-II [or for the pre-packaged insolvency resolution process under Chapter III-A] shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form,] act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).*

(4) *The Adjudicating Authority shall by order replace the resolution professional, if—*
(a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or
(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded [in writing; or]
[(c) the resolution professional fails to submit written consent under subsection (1).]

11. It is observed that in the present case, the members of the CoC have neither proposed any other liquidator to be appointed nor recommended his replacement. Moreover, the Resolution Professional has given his written consent in Form-AA to act as a liquidator of the Corporate Debtor, which is attached as Annexure A-12 of the application.

The Law Research Associate of this Tribunal has checked the credentials of Mr Anil Arora, and there is nothing adverse against him. In view of



the above, we appoint Mr Anil Arora Registration No. IBBI/IPA-001/IP-P00729/2017-18/11224, email: ca.anil@gmail.com as the Liquidator.

13. It is averred that the COC in its 7th meeting held on 25.11.2020 has discussed the agenda of the liquidation fees at Item No. B (v) regarding approval of fees as per regulation 39D sub-regulation (b) and (c) IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with regulation 32 (e) and (f) of IBBI (Liquidation Process) Regulation, 2016. The said resolution has been voted by 47.05% in favour and 52.95% against the agenda. In view of the above, the liquidator's fee will be decided in accordance with Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

14. It is stated that the COC in its 7th meeting held on 25.11.2020 has discussed the best estimate of the liquidation cost and liquid assets in consultation with Resolution Professional as required under regulation 39B of the IBBI (IRPCP) Regulations, 2016. The said resolution has been discussed and voted by 47.05% in favour in favour of the agenda. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.

15. The CoC has not discussed the agenda of the sale of the corporate debtor as a going concern in any of the meetings. The Liquidator has been directed to first explore the prospects of sale of the corporate debtor as a going concern as per Regulation 32 & 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.



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16. In view of the satisfaction of the conditions provided under Section 33 of the Code, the Corporate Debtor i.e. **Bony Paul Systems Private Limited**, is directed to be liquidated in the manner as laid down in Chapter III of the Code.

17. Accordingly, by exercising our power under Section 33(2) pass the following order:-

- (i) The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016;
- (ii) Mr Anil Arora bearing Registration No. IBBI/IPA-001/IP-P00729/2017-18/11224, Mobile No. 9876110038, email: ca.anil@gmail.com is hereby appointed as liquidator;
- (iii) Mr Anil Arora shall take over the charge of the entire records and assets of the corporate and perform his duty, as required under the Code and Regulations
- (iv) The liquidator is directed to take custody and control of the assets, and property of the Corporate Debtor with immediate effect and made a public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- (v) The liquidator is directed to continue pursuing the arbitration claim initiated by the corporate debtor, which is pending before the Arbitrator in terms of Section 33(5) of IBC, 2016 and to further allow to continue the proceedings before the relevant Appellate Authority.



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- (vi) The Provision of Section 33 (5), (6) and (7) of the IBC, 2016 shall have come into force with immediate effect. 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;
- (vii) 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;
- (viii) The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- (ix) The Liquidator shall file regular progress reports as per Regulation 15 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 every fortnightly thereafter;
- (x) The Liquidator shall take necessary legal action to recover the trade receivables and other credits such as loans and advances from the parties which are reflected in the latest Balance Sheet of the Corporate Debtor, if any. This direction is hereby given in concurrence of the jurisdiction prescribed under Section 33(5) of the Code.
- (xi) On initiation of the liquidation process but 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 proceedings on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.

- (xii) That all the powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case maybe, shall cease to have an effect and shall be vested in the liquidator,
- (xiii) That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor, and provisions of Section 19 of the Code shall apply in relation to the voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional;
- (xiv) The Registry is directed to communicate a copy of the Order to the Corporate Debtor immediately;
- (xv) A copy of this order be sent by the Registry to the Registrar of Companies (RoC), NCT of Delhi and Haryana for updating the Master Data. After updating the Master Data, RoC shall send a compliance report to the Registrar, NCLT within a period of 30 days;





- (xvi) The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record.
- (xvii) The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.

18. Thus, IA No. 902/2020 stands disposed of.

Sd/- 13.7.22

(Subrata Kumar Dash)
Member (Technical)

July 13, 2022
SA



Sd/- 13.7.22

(Harnam Singh Thakur)
Member (Judicial)



कार्तिकेय वर्मा / KARTIKEYA VERMA
निबन्धक/Registrar

राष्ट्रीय कंपनी विधि अधिकरण - National Company Law Tribunal
चंडीगढ़ बेंच / Chandigarh Bench, कॉर्पोरेट भवन / Corporate Bhawan
प्लॉट नंबर 2 - बी / Plot No. 4-B, भूतल / Ground Floor,
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