

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court -II)
KOLKATA**

**IA(IBC)/629(KB)2023
in
CP(IB)/958(KB)2019**

Under section 33(1) of the Insolvency & Bankruptcy Code, 2016

In the matter of:

M/s. Gypsy Logistics Private Limited

.... Operational Creditor

Versus

**M/s. Epitome Petrochemical Private Limited
(U24249WB2007PTC117196)**

.... Corporate Debtor

And

In the matter of:

**Meena Sureka,
Resolution Professional of M/s. Epitome Petrochemical Private Limited**

... Applicant

Order reserved on: 12/05/2023

Order pronounced on: 02/08/2023

Coram:

Smt. Bidisha Banerjee

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (through hybrid mode):

For RP

:

Mr. Shaunak Mitra, Adv.

Mr. Saurav Jain, Adv.

Ms. Meena Sureka, RP in person

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/629(KB)2023** is an application filed under section 33(1) of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) by the Resolution Professional (“**RP**”) of **M/s. Epitome Petrochemical Private Limited**, the Corporate Debtor, praying for liquidation of the Corporate Debtor. This application is supported by an affidavit¹ duly affirmed by Ms. Meena Sureka, the IRP.
3. This Adjudicating Authority, on a petition filed u/s. 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Gypsy Logistics Private Limited, the Operational Creditor, *vide* order² dated 05/04/2022 in CP(IB)/958(KB)2019, had ordered initiation of CIRP against M/s. Epitome Petrochemical Private Limited, the Corporate Debtor. Ms. Meena Sureka was appointed as the Interim Resolution Professional (“**IRP**”).
4. In terms of regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Public Announcements³ in **Form A** was published on 07/04/2022 in “*The Financial Express*” (English) and “*Aajkal*” (Bengali) inviting claims from the creditors. A general notice was also published in the newspapers, namely, “*Sikkim Express*” (English) and “*Hamro Prajashakti*” (Nepali) in the State of Sikkim on 29/04/2022 informing creditors of the Corporate Debtor about commencement of CIRP⁴.
5. In response, several claims were received from the creditors. After due verifications of the claims, the applicant prepared List of Creditors and accordingly constituted the Committee of Creditors (in short “**CoC**”). The

¹ At pages 29 and 32 of the application

² Annexure A at pages 33 to 43 of the application

³ Annexure B at pages 44 and 45 & averments in para 2 at page 11 of the application

⁴ Averments in para 2 at page 11 of the application

- applicant had duly filed the List of Creditors and report on constitution of Committee of Creditors with this Adjudicating Authority on 27/07/2022⁵.
6. At the 1st CoC meeting held on 04/05/2022, the IRP was confirmed as Resolution Professional (in short “**RP**”) by the CoC which was recorded in the order dated 25/05/2022. Copy of minutes of the 1st CoC meeting forms **Annexure - C**⁶.
 7. In compliance of regulation 27 of the IBBI (Insolvency Process for Corporate Persons) Regulations, 2016 two registered valuers have been appointed who have submitted their reports⁷.
 8. **Form G** was published on 18/06/2022 in “*The Financial Express*” (English) and “*Aajkal*” (Bengali) as well as “*Sikkim Express*” (English) and “*Hamro Prajashakti*” (Nepali) inviting Expression of Interest (in short “**EoI**”) from the prospective resolution applicants (in short “**PRA**”). The applicant has again re-issued the **Form G** in “*The Financial Express*” (English) and “*Aajkal*” (Bengali) as well as “*Sikkim Express*” (English) and “*Hamro Prajashakti*” (Nepali) twice on 10/07/2022 and 20/08/2022 respectively, which collectively forms **Annexure E**⁸.
 9. In response, only one EoI was received from one PRA, viz., EML Suppliers Pvt. Ltd. on 26/08/2022. After due verification of EoI, the RFRP and Evaluation Matrix as approved by the CoC was given to the PRA, fixing last date of submission of resolution plan as 03/10/2022. At the request of the PRA, the last date was extended till 10/10/2022. Immediately after receiving the resolution plan, it was opened before the CoC member at its 9th CoC meeting held on 17/10/2022 in presence of the representative of the Resolution Applicant⁹.
 10. At the 10th CoC meeting held on 11/11/2022 the resolution plan was placed before the CoC and the same was discussed at length. However, no representative of the Resolution Applicant had attended the said 10th CoC

⁵ Averments in para 3 at pages 11 and 12 of the application

⁶ At pages 46 to 55 of the application.

⁷ Averments in para 7 at pages 14 and 15 of the application

⁸ At pages 57 to 62 of the application

⁹ Averments in para 10 at pages 16 and 17 of the application

meeting in spite of requested them to be present in the meeting¹⁰.

11. At the 11th CoC meeting held on 01/12/2022, discussions and negotiations were held with the Resolution Applicant. After due deliberation, the Resolution Applicant was requested to submit revised resolution plan incorporating the changes as per discussions held and the Resolution Applicant was given time to submit the same by 05/12/2022. At the request of the Resolution Applicant, time was extended from 05/12/2022 to 08/12/2022.¹¹
12. At the 12th CoC meeting held on 13/12/2022 modified resolution plan submitted on 08/12/2022, which was placed before the CoC member. After due deliberations, the same could not be found with complete modification as discussed in the CoC meeting with the Resolution Applicant and sought clarification on the observation made on the modified Resolution Plan from the Resolution Applicant.¹²
13. Thereafter, at the 13th CoC meeting held on 21/12/2022, a specific request has been made to the sole Resolution Applicant to represent themselves before the meeting to make proper representation of their plan and to further discuss the plan with the Resolution Applicant. The plan was discussed at length, and accordingly immediately after the meeting, the RA was provided with the details of observations and seeking necessary clarification regarding the Plan and the meeting was adjourned to 26/12/2022. However, on the adjourned date the Resolution Applicant did not join the meeting and requested the applicant on 30/12/2022 to arrange for the visit of the factory premises of the Corporate Debtor for the better assessment. With the approval of CoC, necessary arrangement for the same was made and accordingly the Resolution Applicant had visited the factory premises on 02/01/2023 and 03/01/2023 respectively. Accordingly, the applicant has sent an e-mail to the Resolution Applicant to provide clarifications as sought from them and called the 14th CoC meeting on

¹⁰ Averments in para 11 at page 17 of the application

¹¹ Averments in para 12 at page 17 of the application

¹² Averments in para 13 at page 17 of the application

13/01/2023 and further requested the Resolution Applicant to be present at the said 14th CoC meeting. Based on brief discussions at the said meeting, the members of the CoC had requested the Resolution Applicant to incorporate all the necessary changes which have been discussed during the meeting and submit the final resolution plan so that they can proceed further for approval from their higher authority. The Resolution Applicant was required to submit the final resolution plan after making all necessary changes on or before 17/01/2023 but could not submit the same within 17/01/2023 owing to sudden demise of the mother of the consultant of the Resolution Applicant. The Resolution Applicant further requested to enlarge the time by 7 days. After taking consent of the CoC, the applicant had enlarged the time to submit the final resolution plan and accordingly the Resolution Applicant had submitted their final resolution plan on 24/01/2023.¹³

14. At the 15th CoC meeting held on 03/02/2023, the CoC after due deliberation on the final resolution plan had requested the applicant to call another meeting before sending the resolution plan for voting as they need to get it vetted from their legal team and also apprised that in the next CoC meeting, the final resolution plan can be further discussed and thereafter the applicant can put the resolution plan for e-voting. Copy of the minutes of the 15th CoC meeting forms **Annexure F¹⁴**.
15. At the 16th CoC meeting held on 10/02/2023, the applicant had apprised the CoC that the resolution plan is commercially viable and put the resolution plan for e-voting. The voting line had initially opened till 21/02/2023. In contrary thereto, the member of the CoC has raised its concern that they need to get it approved by their higher authority, which may take some time and further requested the applicant to approach this Adjudicating Authority to seek further and/or final additional period of 30 days so that the interest of all the stakeholders can be saved. Since this matter was not in the list of agendas, so the applicant has taken

¹³ Averments in para 14 at pages 18 and 19 of the application

¹⁴ At page 63 to 72 of the application

this matter in the discussion in ‘Any other matter’. The matter was discussed at length and thereafter the resolution was passed with 100% voting share. At the request of the CoC voting line has extended from time to time and last such extension was made on 24/03/2023 by which e-voting period was further extended till 5.00 PM on 25/03/2023 based on the enlargement of the specified time period up to 30 days from 01/03/2023 to 30/03/2023 as granted by this Adjudicating Authority vide order¹⁵ dated 21/02/2023. However, the CoC did not vote upon the resolutions put for voting including the resolution listed for approval of the resolution plan. In the absence of voting of CoC, the results of e-voting could not be circulated by the applicant. Copy of minutes of the 16th CoC meeting forms **Annexure G**¹⁶.

16. The applicant at the request of the CoC and considering the expiry of the CIRP period on 30/03/2023, had immediately called the 17th CoC meeting on 28/03/2023 by putting the same agenda for voting including the agenda for approval of the resolution plan. The sole member of CoC has abstained from voting on the resolution plan at the said 17th CoC meeting. However, the CoC has voted on several other agendas, like sale of the corporate debtor as a going concern, appointment of the applicant as liquidator and approval of her fees, approval of the estimated liquidation cost. The resolution passed at the said 17th CoC meeting for liquidation is as follows:

“RESOLVED THAT consent of the members of the CoC be and is hereby accorded to confirm the appointment of Mrs. Meena Sureka, an Insolvency Professional having Regn. No.: IBBI/IPA-001/IP-P01422/2018-2019/12163, as the Liquidator of the Corporate Debtor as per the provision(s) of the Insolvency and Bankruptcy Code, 2016 and IBBI (Liquidation Process) Regulations, 2016, if an order for liquidation is passed under section 33.”

The applicant further states that pursuant to the consent given before the CoC

¹⁵ Annexure K at pages 125 to 129 of the application.

¹⁶ At pages 73 to 82 of the application

meeting, the appointment of the applicant was confirmed as the Liquidator of the Corporate Debtor subject to approval of this Adjudicating Authority. Copies of the consent letter dated 29/03/2023, notice, minutes and voting sheet of the 17th CoC meeting are annexed with the application and collectively marked as **Annexure H¹⁷**.

17. The applicant has also annexed a copy of the order¹⁸ dated 26/12/2022, whereby this Adjudicating Authority had granted additional period of 60 days from 31/12/2022 to 28/02/2023.
18. *Vide* order¹⁹ dated 21/02/2023 in IA(IBC)/395(KB)2023, this Adjudicating Authority has allowed enlargement of the specified time period up to 30 days, i.e., from 01/03/2023 to 30/03/2023.
19. Ms. Meena Sureka, Resolution Professional has submitted her consent to act as the Liquidator of the Corporate Debtor.
20. It is to be noted here that the CIRP period had ended on 30/03/2023 in the meantime.
21. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass an order of liquidation where no resolution plan is received before the expiry of the CIRP. Sub-section (2) thereof requires the Adjudicating Authority to pass the liquidation order where the Resolution Professional intimates to the Adjudicating Authority the decision of the Committee of Creditors approved by not less than 66% of the voting share to liquidate the Corporate Debtor.
22. A conjoint reading of these two provisions leaves this Adjudicating Authority with no other option but to order liquidation of the Corporate Debtor.
23. This Bench, therefore, hereby orders as follows: -
 - a. IA(IBC)/629(KB)2023 filed by **Ms. Meena Sureka, RP** of **M/s. Epitome Petrochemical Private Limited**, the Corporate Debtor, is allowed.

¹⁷ At pages 83 to 121 of the application

¹⁸ Annexure J at page 123 and 124 of the application

¹⁹ Annexure K at page 125 to 129 of the application

Consequently, the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof;

b. Though the RP has given her consent to act as the Liquidator of the Corporate Debtor but in view of direction of the IBBI Circular dated 18/07/2023 vide no. Liq-12011/214/2023-IBBI/840 for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the Code, we are appointing Mr. Anubrata Gangoly (Reg. No. IBBI/IPA-001/IP-P02662/2022-2023/14072) having e-mail i.d. ca.a.gangoly@gmail.com, mobile no. 9836688828 as Liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. The Liquidator is directed to submit his consent to act as Liquidator within **10 days** of receipt of this order. The erstwhile RP shall handover all papers and documents in her possession concerning the Corporate Debtor to the Liquidator appointed in this matter within **10 days**.

c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, stating that the Corporate Debtor is in liquidation.

e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.

f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

- g. 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 proceeding 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.
- h. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
- i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the **Registrar of Companies, West Bengal**, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the **Registrar of Companies, West Bengal**.
24. The application bearing **IA(IBC)/629(KB)2023** shall stand disposed of in accordance with the above directions.
25. **CP(IB)/958(KB)2019** is to come up for filing of Periodical Progress Report on **16/10/2023**.
26. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
27. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 2nd day of August, 2023.

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