IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT II

IA No. 3945 of 2022

In

C.P.(IB) No. 1796/MB/2017

Application filed under Section 33(3) of the Insolvency and Bankruptcy Code, 2016.

State Bank of India

……. Applicant

V/s

1.Anand Teknow Aids Engineering India Limited

……. Respondent No.1

2. **M/s. Equilibrated Venture Cflow Pvt. Ltd. (Resolution Applicant)**

……Respondent No.2

<u>IN THE MATTER OF</u>

Hallmark Metals Private Limited

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

IA No. 3945 of 2022
In
C.P.(IB) No. 1796/MB/2017

...Operational Creditor

V/s

Annand Teknow Aids Engineering India Limited

... Corporate Debtor

Order delivered on: - 30.07.2024

Coram:

Anil Raj Chellan **Kuldip Kumar Kareer**

Member (Technical) **Member (Judicial)**

Appearances:

For the Applicant/FC: Counsel, Subir Kumar a/w Disha Shah and Abhinav Palsikar

For Respondent No.1 and 2: Counsel, Urmila Pulekar

ORDER

Per: - Coram

1. The present Interlocutory Application no. 3945 of 2022 has been filed by State Bank of India for itself and on behalf of all the other Financial

Creditors under Section 33(3) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016 seeking following reliefs:

- That this Tribunal be pleased to pass an Order of Liquidation of Respondent No.1 Annand Teknow Aids Engineering India Limited.
- That this Tribunal be pleased to issue a public announcement stating that the Respondent No. 1 is in liquidation;
- That this Tribunal be pleased to direct that till the disposal of this Application, the moratorium imposed in accordance with the Section 14 of the Code to continue to protect and preserve the assets of the Respondent No. 1

Submissions of Applicant

2. The Applicant submits that this application has been filed due to repeated violations by Respondent No. 2 ('Successful Resolution Applicant') in implementing the Resolution Plan dated 20.11.2020. The plan, approved by the Committee of Creditors with 76.69% e-voting on 26.11.2020, and by the Tribunal on 17.06.2022, required the first payment of Rs. 1 crore within 60 days and the second payment of Rs. 2 crores within 120 days from the effective date. However, Respondent No. 2 has failed to meet these deadlines and is unlikely to

make even the remaining payment within 180 days. Therefore, this application seeks to initiate the liquidation process of the Corporate Debtor.

3. The Applicant submits that the Applicant is a public sector Bank and a secured financial creditor of the Corporate Debtor. The Applicant is filing this Application on behalf of itself and the following financial creditors of the Corporate Debtor:

    a. State Bank of India
    b. Canara Bank
    c. Bank of India
    d. Bank of Maharashtra
    e. Bank of Baroda
    f. Punjab National Bank

    It is submitted that the Applicant along with the other financial creditors named hereinabove held approximately 82.95% voting share in the committee of creditors of the corporate debtor.

4. The Applicant submits that in the Monitoring Committee Meeting on 06.09.2022, Respondent No. 2 assured to make payment of Rs. One Crore within 8 to 10 days. However, in the Joint Lenders Meeting on 04.10.2022, it was reported that no payments had been made.

Respondent No. 2 attributed the delay to issues with the Registrar of Companies but promised to make both payments within 10 days. The financial creditors warned that failure to make the first payment by 14.10.2022 would result in invoking the performance bank guarantee and filing for liquidation.

5. Further, due to continued contravention of the Resolution Plan by Respondent No. 2, the financial creditors decided at the Joint Lenders Meeting (JLM) held on 16.11.2022 to file for liquidation application and authorized the Applicant to proceed with the filing. The Applicant also invoked the Performance Bank Guarantee and received Rs.1 crore.

6. The Applicant submits that as per Clause 1.2.2 of the Resolution Plan dated 20.11.2020, the Financial Outlay of the Plan submitted by Respondent No. 2 is as under:

   1.2.2: Financial Outlay of the Plan:

   "The Resolution Applicant proposes a total financial outlay of IN 64.75 Cr. along with Applicable Interest (as defined below) on the Deferred Payment Amount. Out of the aforesaid payable amount of INR 64.75 Cr., an amount of INR 57.75 Cr. shall be distributed, in tranches, amongst the creditors and other stakeholders of the Corporate Debtor in full and final settlement of their Claims

against the Corporate Debtor and balance INR 7.00 Cr. shall be utilized by the Corporate Debtor for working capital, capex and improving its operations.

Summarized bifurcation of the proposed amount is as under:

(INR in Cr.)

Sr. No.	Particulars	Amount
1.	Payment towards CIRP, operational creditors, financial creditors, other creditors and Workmen within 180 days from the Effective Date of the Resolution Plan as follows "Upfront Amount":	11.34
	a) Estimated CIRP Cost	2.50
	b) Towards upfront payment of Operational Creditors	0.80
	c) Towards upfront payment of Workmen	0.88
	d) Upfront payment to Financial Creditors	6.82
	e) Upfront payment to other Creditors	0.34
2.	Deferred Payment in 4 years to Financial Creditors	46.41
	Sub-Total	57.75
3.	Working Capital Infusion as and when required for the business of the Corporate Debtor	7.00
	Total Plan value (1+2+3)	64.75

Out of the aforesaid upfront payment amount of INR 6.82 Cr. payable to Financial Creditors 1.00 Cr. shall be paid within 60 days from effective date,

INR 2.00 Cr. shall be paid within 120 days from effective date and balance amount shall be paid within 180 days from the Effective Date.

Upfront Amount shall be paid out of the funds infused by Mis. Equilibrated Venture CFLOW Private Limited in the form of capital/ unsecured loans and balance payable amount of INR 46.41 Cr. ("Deferred Payment Amount") shall be paid out of the cash accruals generated by the Corporate Debtor. "

7. The Applicant submits that Respondent No. 2 has contravened the terms of the Resolution Plan repeatedly after the approval of the Resolution Plan. Further, the Respondent No. 2 has failed to adhere to the timeline of 60 days from the effective date for the first trench payment of Rs. 1 Crore and has further failed to pay the second trench payment of Rs. 2 Crore within 120 days from the effective date. This clearly demonstrates that Respondent No. 2 does not have the bona fide intention to implement the Resolution Plan at any stage.
8. The Applicant submits that the financial creditors of the Corporate Debtor have been gravely prejudiced by the inactions of Respondent No. 2 towards the non-implementation of its Resolution Plan.
9. No Reply has been filed by Respondent No.1 and 2 despite ample opportunity afforded for the purpose and the right to file was forfeited vide order dated 24.11.2024.

10. We have heard the Counsel for the Applicant and have gone through the records.

11. In this case the resolution plan was approved by the CoC on 26.11.2020 and further, the plan was approved by this Authority on 17.06.2022. As per the terms of the resolution plan, out of the total outlay of Rs. 64.75 crores, the Successful Resolution Applicant was required to pay a sum of Rs. 1,00,00,000/- (Rupees One Crore) within 60 days and Rs. 2,00,00,000/- (Rupees Two Crores) within 120 days from the effective date i.e. 17.06.2022. However, till date, no payments have been made by the Successful Resolution Applicant despite the fact that a period of more than two years has since elapsed.

12. In the meetings held on 04.10.2022 and 16.11.2022, the joint lenders impressed upon and granted time to the Successful Resolution Applicant to make the payment, as stipulated in the Resolution Plan and since the payments were not made, it was decided to apply for liquidation of the Corporate Debtor.

13. In the additional affidavit dated 15.03.2024 filed by the Applicant, it has been stated that the Successful Resolution Applicant was granted time to make upfront payments as per the resolution plan before 31.03.2024 but despite that the Respondent no.2/ SRA has failed to make any

payments. Taking into consideration the facts and circumstances of the present case and further that the SRA/Respondent No.2 has miserably failed to comply with the terms and conditions of the resolution plan and despite ample time having been afforded, has failed to make the payment, this Authority is left with no option, but to order the liquidation of the Corporate Debtor, as prayed for in the application.

14. This order is accordingly in the following terms: -

a. Mr. Gaurav Ashok Adhukia, holding Registration No. IBBI/IPA-002/IP-N00457/2017-18/11293, 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. This order shall be deemed to be a notice of discharge to the officers, employees, and workmen of the Corporate Debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

d. 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, and in accordance with the relevant rules and regulations.

e. 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.

f. 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 if any as per law.

g. 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;

h. A Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps.

15. The IA No. 3945 of 2022 filed by the RP for Liquidation of the Corporate Debtor stands allowed accordingly in aforesaid terms.

Sd/-	**Sd/-**
ANIL RAJ CHELLAN	**KULDIP KUMAR KAREER**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**