SL. No.129

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II

Video Conference

CORAM: HON'BLE BHASKARA PANTULA MOHAN,–MEMBER (J)
CORAM: HON'BLE DR. BINOD KUMAR SINHA -MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 01.06.2022 AT 10:30 AM THROUGH VIDEO CONFERENCE

| | |
|---|---|
| TRANSFER PETITION NO. | |
| COMPANY PETITION/APPLICATION NO. | IA (IBC)/78/2022 in CP (IB) No.232/7/HDB/2020 |
| NAME OF THE COMPANY | Devesh Engineering Enterprises Pvt Ltd |
| NAME OF THE PETITIONER(S) | Tejaswini Engineering Pvt Ltd |
| NAME OF THE RESPONDENT(S) | Devesh Engineering Enterprises Pvt Ltd |
| UNDER SECTION | 7 of IBC |

## ORDER

**IA 78/2022** – IA is allowed. Liquidation Order passed vide separate sheets.

SD/-

MEMBER (T)

SD/-

MEMBER (J)

**Syamala**

**NATIONAL COMPANY LAW TRIBUNAL**
**HYDERABAD BENCH, HYDERABAD**

**I.A. No. 78 of 2022**

**In**

**CP (IB) No. 232/ 7/HDB/2020**

***U/s. 33(1), 33(2) & 34(1) of IB Code, 2016***

**In the matter of**

**M/s Devesh Engineering Enterprises Private Limited**

CS Bhaskar B
Resolution Professional
M/s. Devesh Engineering Enterprises Private Limited
IBBI Regd No. IBBI/IPA-002/IP-N00644/2018-2019/12024
4/447A, 7th Street, Aruna Nagar,
K. Vadamadurai, PO, Coimbatore – 641017
...Applicant/ Resolution Professional

**Date of Order: 01.06.2022.**

**Coram:**

**Shri. Bhaskara Pantula Mohan, Member Judicial**
**Dr. Binod Kumar Sinha, Member Technical.**

**Parties/ Counsels present:**

For the Applicant: Mr. Bhaskar B, RP

**[Per: Bench]**

**O R D E R**

1. The present Application bearing IA No.123/2022 in CP(IB)No.228/7/HDB/2020 is filed U/s.33(1)(A), 33(2) & 34(1) of the I&B Code, 2016 read with Rule 11 of NCLT Rules, 2016 by Resolution Professional *inter-alia* to:-

Sd/-

a. Pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in Section 33(1)(a) of Chapter III of IBC, 2016;
b. To pass an order Appointing Mr. K.J Vinod (IBBI/IPA-003/IP-N00291/2020-2021/13451) as Liquidator for administering the Liquidation Process of the Corporate debtor; and
c. To pass such orders or further orders which may deem to be fit and proper upon the facts and circumstances of the case and thus render justice.

2. Brief facts of the case as stated by the Applicant are as under:-
    a. That the Company Petition for initiation of Corporate Insolvency Resolution Process (CIRP) was filed by the Financial Creditor namely M/s. Tejaswini Engineering Private Limited under Section 7 of the IBC, 2016, read with Rule 4 of Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 seeking the commencement of Corporate Insolvency Resolution Proceedings (hereinafter referred to as "CIRP") against the Corporate Debtor (hereinafter called as "CD") and the same was admitted by this Adjudicating Authority on 19.02.2021 and the Applicant herein was appointed as the Interim Resolution Professional.
    b. The IRP had in accordance with the IBC, 2016 and allied regulation effected public announcement and invited claims from all creditors on 25.02.2021 in one English Newspaper, "Financial Express" and in one Telugu (vernacular) language newspaper, "Nava Telangana" which are known for having wide circulation at the location of the registered office of the Corporate Debtor.
    c. After the receipt of the claims the Applicant herein constituted the Committee of Creditors (CoC) and filed list of Creditors along with the report on Constitution of Committee of Creditors on 13.03.2021.
    d. The 1st CoC meeting was conducted on 22.03.2021. Only the Financial Creditor was present. The Applicant had placed the

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proposal to appoint himself as the Resolution Professional and the resolution was approved by the CoC member. The Applicant informed the CoC about the claims received, verified and admitted by the Applicant based on the books of accounts of the Corporate Debtor. The 2nd CoC meeting was held on 27.04.2021 where the detailed Information Memorandum containing matters referred to in Regulation 36(1) of IBBI (Insolvency Resolution Process for Corporate Persons). Further resolution was passed for issue of Form G (Invitation of Expression of Interest) and the same was published on 08.04.2021 in one English Newspaper, "Financial Express" (Telangana Edition) and in one Telugu (vernacular) language, "Nava Telangana" (Hyderabad Edition) which are known for having wide circulation at the location of the registered office of the Corporate Debtor.

e. The 3rd CoC meeting was held on 13.12.2021 on considering the aspects and the information provided by the Applicant the following resolution were, inter alia, passed with 100% majority as under:
   (i) The CoC decided to proceed with liquidation process since the Corporate Debtor was not having any viable business in hand as there are no fixed assets in the Company. Further, since there is no active interest in the market for taking the company forward as a going concern, the CoC is of the opinion that there is no point in dragging the CIRP process and applying for extension and resolved to liquidate the Corporate Debtor.
   (ii) Considering the above facts, the CoC further resolved to appoint K. J. Vinod as the Liquidator.
   (iii) Furthermore, the CoC discussed regarding cost of liquidation and related matters as per the requirements of Regulation 39B, 39C and 39D of IBBI (CIRP) Regulations.

SD/-

f. The CoC has directed the Applicant/Interim Resolution Professional to approach this Adjudicating Authority:
   (i) For liquidation of the Corporate Debtor immediately.
   (ii) The appoint K.J Vinod as the Liquidator.
g. The applicant submits that there is no possibility of resolution plan since there are no fixed assets in its books of accounts and consequently the Interim Resolution Professional in accordance with Section 33(1)(a) and 33(2) is preferring this application seeking an order of liquidation of the Corporate Debtor and appointing the Mr. K.J Vinod as Liquidator.
h. That as per the provisions of the Code and Regulations the Resolution Professional is filing this Application to seek order for Liquidation of the Corporate Debtor. The RP hereby confirms that the CoC consists of one Financial Creditor and one Operational Creditor in which, by 100% voting the CoC agreed on liquidation of the Corporate Debtor.

3. Heard, perused the records.
4. In view of the facts and circumstances as recorded by IRP in IA No. 78 of 2022 filed in CP(IB) No. 228/7/HDB/2020, since this Adjudicating Authority did not receive any Resolution Plan under Sub-Section (6) of Section 30 of the I&B Code, 2016, this Adjudicating Authority deems it proper to allow the Application bearing IA No.77/2022. Accordingly, in exercise of powers conferred under Sub-Clauses (i), (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the I&B Code, 2016, we proceed to pass Order as follows:—

   (i) This Adjudicating Authority hereby order for Liquidation of M/s. Cosmos Forgings Limited which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;
   (ii) This Adjudicating Authority hereby appoint Mr. K.J.Vinod (IBBI/1PA-003/IPN00291/2020/2021/13451 as Liquidator as resolved by CoC. He has also filed his written consent to act as

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Liquidator in the present case along with Authorisation for Assignment (AoA) within 7 days from date of this order. However, it is seen that the Authorisation for Assignment has expired. Therefore, he is directed to file fresh Authorisation for Assignment within three days from date of this order.

(iii) He shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation;

(iv) The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of Liquidation;

(v) Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.

(vi) We make it clear that para (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

(vii) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the Liquidation process by the Liquidator.

(viii) All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Company Liquidator viz., Mr. K.J. Vinod. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

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(ix) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

(x) The Liquidator shall keep in view the provisions of Regulation 32A of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and shall endeavour to first sell the Corporate Debtor or its business as going concern. However, if he is unable to sell the Corporate Debtor or its business within 90 days from liquidation commencement date, Liquidator shall proceed to sell the assets of the Corporate Debtor under clauses (a) to (d) of Regulation 32 of Insolvency and Bankruptcy Board Of India (Liquidation Process) Regulations, 2016.

(xi) The Liquidator shall be entitled to charge such fee for conducting the Liquidation proceedings in accordance with the decision taken by the CoC under Regulation 39D of IBBI (Insolvency Resolution Process Corporate Persons) Rules, 2016 read with Regulation 4(1) of IBBI (Liquidation Process) Regulations, 2016.

(xii) Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Company Liquidator viz., Mr. K.J. Vinod for information and compliance.

(xiii) Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator.

5. Accordingly, Application bearing IA No. 78/2022 stands disposed off.

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**Dr. Binod Kumar Sinha**
**Member Technical**

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**Bhaskara Pantula Mohan**
**Member Judicial**