

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT III

25. I.A. 2700/2021
I.A. 811/2020
IN
C.P.(IB)-3517(MB)/2018

CORAM: SHRI H. V. SUBBA RAO, MEMBER (J)
SMT ANURADHA SANJAY BHATIA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **12.10.2022**

NAME OF THE PARTIES: Mahalaxmi Trading Corporation

V/s

En Power Solution Pvt Ltd

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

I.A. 811/2020

Mr. Vishal Shriyam, counsel appearing for the Resolution Professional and
Mr. Amit Jaste, counsel appearing for the Respondent No.2 in I.A. 2700/2021
are present through virtual hearing.

The above I.A. 811/2020 is filed by the Resolution Professional for liquidation
of the Corporate Debtor.

Heard the counsel appearing for the Resolution Professional. The above
Application is **allowed**. Detail order would follow:

List other pending application on **07.11.2022**.

Sd/-
ANURADHA SANJAY BHATIA
Member (Technical)
//rks//

Sd/-
H. V. SUBBA RAO
Member (Judicial)

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

IA. No. 811 of 2020

IN

C.P.No.(IB)3517(MB) of 2018

Under Section 33(3), r/w 14 of Insolvency
& Bankruptcy Code, 2016

In the matter of

EN Power Solutions Pvt. Ltd.

.... CORPORATE DEBTOR

I. A. No. 811 of 2020

Mr. Amit C Poddar

.... Applicant/Liquidator

Order delivered on 12.10.2022

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay, Member (Technical)

For the Applicant: Mr. Vishal S. Shriyan,(Advocate)

CA Amit C Poddar, RP

1. The above application I.A. No. 811/2020 is filed by Resolution Professional, Mr. Amit C Poddar (hereinafter referred to as the "Applicant") seeking liquidation of **En Power Solutions Private Limited.** (hereinafter referred to as the "Corporate Debtor") under Section 33(3) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:

- a. *This Hon'ble Tribunal be pleased to pass appropriate order under section 33(2) of Insolvency and Bankruptcy Code, 2016, requiring the Corporate Debtor to be liquidated in the manner as laid down under the provisions of Insolvency and Bankruptcy Code, 2016, by appointing another suitable Liquidator; and*
- b. *For any such other order as this Hon'ble Tribunal may deem fit.*

2. The brief facts of the application are as follows:

- A. The present Application has been filed by Mr. Amit C Poddar (IP Registration No. IBBI/IPA-001/IP-P00449/2017-18/10792, the Resolution Professional of EN Power Solutions Pvt. Ltd. ("Corporate Debtor") under Section 33(3) of the Insolvency and Bankruptcy code, 2016 ("the code"), in order to bring to the kind notice of this Hon'ble Tribunal that the Committee of Creditors ("COC") of the Corporate Debtor, which consists of the financial creditor, namely South Indian Bank, has resolved to liquidate the Corporate Debtor.
- B. On 15.11.2019, in the first meeting of the Committee of Creditors (hereinafter referred to as the "CoC"), wherein the Applicant/RP appointment was kept pending.
- C. On 17.12.2019, in the 2nd meeting of the CoC, members unanimously decided to take the CD into liquidation and authorized the Applicant/RP to file Liquidation Application. The RP/Applicant Amit C. Poddar proposed himself to be appointed as liquidator and the resolution for the same was also approved.
- D. On 28.01.2020, wherein in the 3rd CoC meeting conducted, wherein the RP/Applicant informed the CoC members that

the Information Memorandum (IM) was no longer required to be prepared.

Further, a resolution to appoint the RP Amit C. Poddar as liquidator. However due to disagreement in the liquidator's fees between the RP and the CoC members, the RP refused to accept the liquidator's appointment and as such the resolution of appointment of RP as liquidator passed in the 3rd meeting stood revoked/cancelled.

The CoC members in the same meeting passed a resolution for liquidator's fees i.e. the liquidators fees shall be as per the chart given in Regulation 4(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations,2016, subject to minimum fees of Rs. 2,50,000/- plus taxes for the entire liquidation process.

- E. It is further stated by the Applicant that on 18.10.2019 a public announcement in Form A as per the Regulation 6 of the IBC,2016 was made inviting claims from the Creditors of the Corporate Debtor in two newspapers namely The Times of India, (English Newspaper) and Maharashtra Times (Marathi Newspaper).
- F. In the 2nd Meeting of the CoC members discussed and decided on the eligibility criteria for Resolution Applicant for Inviting Expression of Interest in Form-G for publishing the same in Newspapers. The Applicant further stated that the Chairman informed that the draft form 'G' along with eligibility criteria for submission of EOI has been prepared and tabled before the Committee of Creditors. The IRP informed request to go through the same and discuss the conditions for the same for publishing in the newspapers. However, the CoC members expressed their decision to take the CD directly into

liquidation without going in for Form 'G'. Accordingly, the following resolution was passed:

“Resolved that the members of the Committee of Creditors of ‘En Power Solutions Private Limited’, unanimously decided to file an application under section 33(2) of Insolvency and Bankruptcy Code, 2016 with the Hon’ble National Company Law Tribunal (NCLT), Mumbai Bench, to take the Corporate Debtor ‘En Power Solutions Private Limited’ into liquidation; and hereby authorizes the Resolution Professional, Mr. Amit Chandrashekhar Poddar to file the liquidation application to this effect before the Hon’ble NCLT, Mumbai Bench.”

The IRP put the matter to vote and concluded and announced that the above resolution was passed with voting of **100%** in favour of the resolution.

G. The CoC in its 3rd meeting, proposed the RP CA. Amit C. Poddar, being eligible, proposed himself as the Liquidator and the following Resolution was proposed to be passed:

“Resolved that the members of the Committee of Creditors of “En Power Solutions Private Limited” under CIRP Process, be and hereby appoints Mr. Amit Chandrashekhar Poddar as the Liquidator for the proposed Liquidation process of “En Power Solutions Private Limited.’

The Above resolution was passed with voting of 100% in favour of the resolution.

However the RP refused to accept the liquidation assignment and hence the above resolution stands revoked/cancelled. Accordingly, as the CoC has not proposed any other liquidator’s name, this bench shall appoint a liquidator from the IBBI’s panel.

The Applicant submitted that the CoC member Mr. Justin Jose mentioned that there are no immovable assets in the name of the Corporate Debtor, and the only property mortgaged with their Bank is in the name of the one of the suspended directors. Mr. Jose further informed that their Bank do not wish to make that property part of the liquidation estate, and that they will be considering selling that property under SARFAESI. The RP and other members present took note of the same.

H. The Applicant further stated that the CoC members discussed and agreed for the above. Thereafter the following resolution was proposed to be passed:

“Resolved that the members of the Committee of Creditors of 'En Power Solutions Private Limited' under CIRP Process, be and hereby approves a plan for contribution of the estimated liquidation costs of Rs. 2,50,000/- in four (4) installments into an escrow account to be nominated and opened by the liquidator. The installments shall be paid in the first week of every month to be started from the date of liquidation order to be passed by the Hon'ble NCLT, and the 1st installment shall be of Rs. 1,00,000/- and the other 3 installments shall be of Rs. 50,000/- each.”

The above resolution was passed with 100 % in favour of the resolution.

I. The Applicant submitted that as per the RP suggestion to open escrow account in South Indian Bank at C.A. Road Branch, Nagpur, to which the CoC members agreed. Thereafter the following resolution was proposed to be passed:

“Resolved that the members of the Committee of Creditors of ‘En Power Solutions Private Limited’ under CIRP Process, be and hereby accords its consent to open an escrow account in The South Indian Bank Limited, C.A. Road Branch, Nagpur, for the liquidation process.”

The above resolution was passed with voting of 100% in favour of the resolution.

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, it is observed from the minutes of the 3rd CoC meeting that the CoC has unanimously decided to liquidate the Corporate Debtor. The CoC has appointed the Applicant as Liquidator to carry on the process of Liquidation of the Corporate Debtor. The Applicant has not agreed to act as Liquidator to carry on the process of Liquidation and not given his consent to act as Liquidator. This bench, therefore allows the above Interlocutory Application Number 811 of 2020 and passed the following:

ORDER

1. The above I.A. No. 811/2020 is Allowed and the Corporate Debtor En Power Solutions Pvt. Ltd. is ordered to be liquidated.
 - a. **Mr. Sourabh Modi**, having Registration No. IBBI/IPA-001/IP-P02409/2021-22/13696 and having E-Mail address and contact no. as sourabhmodi21@gmail.com and 7021450026 respectively is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
 - b. That the Liquidator for the conduct of Liquidation proceedings would be entitled to a remuneration shall be

as per the chart given in Regulation 4(2) of the IBBI (Liquidation Process) Regulation 2016, subject to minimum fees of RS. 2.50 lakhs plus taxes for the entire liquidation process.

- c. The Liquidator appointed in this case to 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.
- d. The Liquidator appointed under section 34(1) of the Code. Will have all 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 with the liquidator.
- e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
- g. 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.
- h. 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.

- i. 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.

With the above directions, this application i.e. I.A. No. 811 of 2020 is hereby allowed and disposed of.

Sd/-

Anuradha Sanjay Bhatia
MEMBER (TECHNICAL)

Sd/-

H.V. Subba Rao
MEMBER (JUDICIAL)