

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD, BENCH-2**

IA NO. 853 OF 2021

IN

COMPANY PETITION NO.(IB)/44/(AHM)/2018

[An application filed under section 33(2) and 34(1) of the Insolvency and Bankruptcy Code,2016 for initiation of liquidation of the Corporate Debtor]

IN THE MATTER OF:

Mr. Dhaval Jitendrakumar Mistry
(The Resolution Professional of
Eagle Corporation Private Limited)
Having its office at
9B Vardan Tower
Near Vimal House, Lakudi Circle
Navrangpura
Ahmedabad 380 014
Gujarat State

...

Applicant/ Resolution Professional

Order Pronounced on: 30/03/2022

Coram:

**Dr. DEEPTI MUKESH, MEMBER (JUDICIAL)
KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)**

MEMO OF PARTIES

Mr. Dhaval Jitendrakumar Mistry
(The Resolution Professional of Eagle Corporation Private Limited, Corporate Debtor)

[IP Reg. No. IBBI/IPA-001/IP-P-011853/2019-2020/12849]

Office of RP:

9B Vardan Tower

Near Vimal House, Lakudi Circle

Navrangpura

Ahmedabad 380 014

... Applicant/ Resolution Professional

Present:

For the RP : Ms. Garima Malhotra, Advocate, Mr. Nipun Singhvi,
Advocate/w Mr. Pratik Thakkar, Advocate.

For Respondent : Mr. Kiran Shah, PCA, Mr. Dhruvit Shah, Advocate
R-2 (RP)

For ERP : Mr. S.K. Agarwal, ERP

ORDER

Per : Kaushalendra Kumar Singh

1. This is an application filed by the Resolution Professional (hereinafter referred to as "RP") under Section 33(2) and 34(1) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") for passing an order of liquidation of the Corporate Debtor, M/s. Eagle Corporation Private Limited.

2 The facts of case are as under:

- (i) The Operational Creditor, M/s. VE Commercial Vehicles Limited had filed an application under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as the 'CIRP'), against the Corporate Debtor, M/s. Eagle Corporation Private Limited, which was admitted vide order dated 15.10.2019 and Mr. Sunil Kumar

Agarwal was appointed as Interim Resolution Professional (hereinafter referred to as “IRP”).

- (ii) The IRP under Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, made a public announcement in FORM-A on 17.10.2019. The last date for submission of a claim by the creditors was 31.10.2019.
- (iii) The IRP collated all claims submitted by the creditors pursuant to Public Announcement and accordingly constituted a Committee of Creditors (hereinafter referred to as the “COC”) as per Regulation 16 of CIRP Regulations. Thereafter, the 1st COC meeting was held on 13.11.2019 wherein it was discussed to appoint two valuers in each category i.e. land, building, plant and machinery. It was further resolved to continue IRP as Resolution Professional (hereinafter referred to as “RP”) of the corporate debtor.
- (iv) In the 2nd COC meeting held on 10.12.2019, it was resolved to (i) Publish Form – G, (ii) RP was directed to make required appointments as deemed necessary for the process of Corporate Insolvency Resolution Process (iii) Minimum Criteria and Evaluation Matrix was approved and (iv) M/s. KRA & Co. was to be appointed as Forensic Auditor.
- (v) The RP published Form-G as per Regulation 36A (1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, in the newspaper i.e. Divya Bhaskar (Gujarati) and Indian Express (English) on 29.12.2019, respectively and the last date for submission of expression of interest was 28.01.2020.
- (vi) In the 5th meeting of CoC on 01.07.2020 wherein irregularity in conducting the CIRP was re-discussed which also evidently

indicates the trust deficit between the CoC and RP. Number of electronic mails exchanged between RP and members of CoC were referred which clearly establish that there was a trust deficit between CoC and RP of the corporate debtor and thus, during said period corporate insolvency resolution process of the corporate debtor was drudged and no substantial duties could be performed even after specific guidance/direction(s) on the part of the members of CoC.

- (vii) The RP convened 6th meeting of CoC on 18.07.2020 wherein it was resolved to extend CIRP period by 90 days beyond 180 days and was further resolved to change RP of the corporate debtor. Accordingly, application under section 60 (5)(c), 12(2), 27 of IB Code read with Regulation 40 and 40C of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 came to be preferred by erstwhile RP and in IA No. 449 of 2020 vide order dated 08.09.2020 this Adjudicating Authority appointed present applicant to act as resolution professional of the corporate debtor.
- (viii) The Adjudicating Authority vide order dated 08.09.2020 granted extension of 90 days beyond 180 days and the period of lockdown i.e. from 25.03.2020 to 31.05.2020 was excluded from CIRP period.
- (ix) The copy of order dated 08.09.2020 passed in IA No. 449 of 2020 in CP (IB) No. 44/NCLT/AHM/2018 came to be received by the applicant only on 15.09.2020. The period of 270 days of CIRP of the corporate debtor after the extension of 90 days beyond 180 days granted by this Adjudicating Authority vide order dated 09.09.2020 and after exclusion of the period of lockdown under the outbreak of COVID -19 pandemic as per Regulation 40C of Insolvency and Bankruptcy Board of India

(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 i.e. from 25.03.2020 to 31.05.2020 ended on 17.09.2020; however, considering the exclusion of the aforementioned period of lockdown of 68 days i.e. from 25.03.2020 to 31.05.2020, the maximum period of 330 days has not been completed as on date which shall end on or around 16.11.2020 and accordingly, the present application is preferred before the Adjudicating Authority well within the time limit of maximum period of 330 days.

- (x) In the 7th Meeting of CoC on 24.09.2020 it was resolved by 100% of the members to file the present application for exclusion of certain time period from the timeline of CIRP of corporate debtor which has occurred due to pending litigation for the appointment of applicant as RP and further it was also observed that CIRP was also not properly conducted by erstwhile RP on account of trust deficit between CoC and erstwhile RP.
- (xi) It was informed by the CoC in the 7th meeting that the 5th and 6th meeting held on 01.07.2020 and 18.07.2020 were not ratified by the members of CoC as most of the discussions made in those meetings were not included in the minutes by the RP. That it was also discussed that for the effective resolution process of corporate debtor, the period was to be excluded and fresh Form – G was resolved to be published.
- (xii) The applicant had convened 8th meeting of the CoC on 12.10.2020 wherein two resolutions were approved 1) to approve the cost of CIRP process and 2) to approve the sale of scrap buses of the corporate debtor.
- (xiii) The applicant had convened 9th meeting of the CoC on 23.10.2020 wherein the following resolutions were approved:

1. To initiate the EoI process;
 2. To approve the E-valuation matrix;
 3. To approve draft request for resolution plan;
 4. To approve cost of publication of form G and E-auction sale notice.
- (xiv) The applicant had published form G as per Regulation 36A (1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The applicant submits that said publication was published in news paper i.e. Divya Bhaskar (Gujarati) and Business Standard (English) on 24.10.2020 respectively and the last date for submission of expression of interest was 23.12.2020.
- (xv) The applicant had convened 10th meeting of the CoC on 07.10.2021. The applicant had communicated more than 200 Travel Agencies out of them 2 parties, 1) Mr. Harsh Vardhan Reddy and 2) Ms. Mona Harsh Kotak had submitted expression of interest in respect of the corporate debtor, however, till 23.12.2020 the applicant had not received any resolution plan from the prospective resolution applicants.
- (xvi) The applicant had convened 11th meeting of the CoC on 08.02.2021 wherein the applicant had received one resolution plan from the prospective resolution applicant i.e. M/s. Modern Tours & Travels on 03.02.2021 (after last date of Resolution Plan 23.12.2020) and the applicant had duly appraised the CoC regarding the same.
- (xvii) The applicant had convened 12th meeting of the CoC on 05.03.2021 wherein the members of the CoC had resolved to approve the resolution for the exclusion of 60 days in the CIRP period. Also, the members of CoC had discussed the resolution plan received from M/s. Modern Tours & Travels and had

approached the resolution applicant to raise the consideration offered as per the resolution plan from 3 crores to 4 crores.

- (xviii) Pursuant to the above, the applicant had filed an application for the exclusion of 60 days in the CIRP period on 26.04.2021, the application bearing IA 344 of 2021 in CP IB No. 44 of 2018 which was disposed of as infructuous vide order dated 04.01.2022.
- (xix) The applicant had convened 13th meeting of CoC on 22.07.2021, wherein one of the financial creditors i.e. HDFC Bank had approached the resolution applicant to increase their proposal from 3 crores to 4 crores; however, despite several discussions with the prospective resolution applicant, the resolution applicant did not agree to increase their offer with the CoC members. Also, another resolution pertaining to the approval of CIRP cost was disapproved by the CoC members.
- (xx) The applicant had convened 14th Meeting of CoC on 04.10.2021 wherein it was resolved to approve the CIRP cost.
- (xxi) The applicant convened 15th meeting of CoC on 18.10.2021 wherein the applicant had put the following resolutions for the voting for member of the CoC:
1. to approve revised resolution plan submitted by Modern Tours & Travels;
 2. to approve the cost of Resolution Professional;
 3. to approve the initiation of Liquidation Process;
 4. to approve the best estimates of liquidation cost and the value of the liquid assets available to meet liquidation cost, to approve a plan providing for contribution for meeting the difference between the two, in accordance with Regulation 39B of the CIRP regulations;
 5. to approve the assessment of sale as a going concern;

6. to consider the approval of liquidation fees.
- (xxii) The CoC passed Resolution No. 2 to 6 in the voting' however, the CoC had dis-approved Resolution No. 1.
- (xxiii) The members of the CoC in the 15th meeting dated 18.10.2021 resolved to appoint the applicant as liquidator of the corporate debtor and thus, the applicant submits his written consent dated 18.10.2021 to act as liquidator of the corporate debtor.
3. In view of the aforesaid facts and circumstances, the applicant has preferred the present application seeking liquidation of the corporate debtor.
4. For the sake of ready reference, the relevant provision of section 33 (2) of the Code, which is applicable is reproduced hereunder:
- (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 66% 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 purposes 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].*
5. Considering the documents and submission made, since the COC in its commercial wisdom has decided to take the Corporate Debtor into liquidation, we are of the opinion that the decision of COC should not be interfered. The present application seeking liquidation of the

Corporate Debtor M/s Eagle Corporation Private Limited, in the manner laid down in Chapter III of Part II of the Code is allowed.

6. We appoint RP Mr.Dhaval Jitendrakumar Mistry who has also consented to act as Liquidator and filed his written consent, having registration No. IBBI/IPA-001/IP-P-01853/2019-2020/12849, having address at 9-B, Vardan Complex, Nr. Vimal House, Lakudi Circle, Navrangpura, Ahmedabad 380 014, Gujarat, as liquidator in terms of Section 34(1) of the Code with the following directions:
- a) The liquidator to issue a Public Announcement stating that the corporate debtor is in liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
 - b) The liquidator 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.
 - c) The liquidator to follow up and continue to investigate the financial affairs of the corporate debtor to determine any undervalued and preferential transactions etc.
 - d) This order is 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.
 - (e) The Liquidator to 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.

7. As a consequence of the application being admitted, the moratorium as envisaged 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.

8. A copy of the order shall be communicated to the applicant RP and the corporate debtor as well as to the liquidator above named. The liquidator is to be informed of his said appointment by the Registry. In addition, a copy of said order shall also be forwarded to IBBI for its records and ROC for updating the Master Data. ROC shall send a compliance report to the Registrar, NCLT.

Sd/-

(Kaushalendra Kumar Singh)
Member(Technical)

Sd/-

(Dr. Deepti Mukesh)
Member(Judicial)

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