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

IA No. 203/MB/2021
IN
C.P (IB) No. 2849/MB/2018

Under Section 33 (1) (a) of the Insolvency and Bankruptcy Code, 2016 for the direction of the Liquidation Process of the Corporate Debtor.

Filed by
Mr. Sundaresh Bhat,
Resolution Professional of
M/s. EMCO Limited
Office at: BDO Restructuring Advisory LLP, Level 9, The Ruby, North West Wing, Senapati Bapat Road, Dadar West, Mumbai – 400028, Maharashtra.

...Applicant/Resolution Professional

IN THE MATTER OF

Jet Roadlines (India) Private Limited
...Petitioner/Operational Creditor

Versus

M/s. EMCO Limited
...Respondent/Corporate Debtor

Order Pronounced on: 09.08.2021

Coram:

Hon'ble Member (Judicial) : Mr. Ashok Kumar Borah
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances (through video conferencing)

For the Applicant : Mr. Ayush J Rajani, PCA.

ORDER

Per: Shri Ashok Kumar Borah, Member (Judicial)

1. It is an application filed by Resolution Professional, Mr. Sundaresh Bhat seeking liquidation of EMCO Limited (hereinafter referred as Corporate Debtor) on the ground that no Resolution Plan has been approved and the Committee of Creditors (CoC) has unanimously decided to initiate liquidation proceedings of the Corporate Debtor in its 22nd meeting. Hence this application under Section 33(1)(a) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter call as "the code"), praying for Liquidation of the Corporate Debtor.
2. The Applicant states that the present Company Petition was filed by an Operational Creditor Jet Roadlines (India) Private Limited under Section 9 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor. This Tribunal vide an Order dated 22.07.2019 admitted the said Petition resulting into initiation of the Corporate Debtor into Corporate Insolvency Resolution Process (CIRP) and vide the same order, this Tribunal appointed Mr. Kedar Ramratan Laddha as the Interim Resolution Professional of the Corporate Debtor.

3. The Applicant states that the Committee of Creditors of the Corporate Debtor (CoC) at its first meeting, by requisite majority replaced the IRP and appointed Mr. Sundaresh Bhat, Applicant herein as the Resolution Professional (RP) of the Corporate Debtor. An order confirming the Appointment of Mr. Sundaresh Bhat as the Resolution Professional of the Corporate Debtor was passed by this Tribunal on 14.10.2019. Therefore, the Applicant herein took charge of the Corporate Debtor only on 11.11.2019.

4. The Applicant submits the captioned petition was admitted by this Tribunal vide order dated 22.07.2019 filed by Operation Creditor under section 9 of the Insolvency and Bankruptcy Code, 2016 and directed initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed Mr. Kedar Ramratan Laddha as the Interim Resolution Professional (IRP) later on at the first meeting of CoC by requisite majority replaced the IRP and appointed Mr. Sundaresh Bhat, Applicant herein as the Resolution Professional (RP). An order confirming the appointment of Mr. Sundaresh Bhat as the Resolution Professional of the Corporate Debtor was also passed on 14.10.2019.

5. The Applicant/RP further submits that in an attempt to attract more Resolution Plans, amended RFRP was issued whereby the last date of submission of Resolution Plan was 27.01.2020. The Applicant submits that it received two Resolution Plans from Augusta Ventrures (Consortium) (Augusta) and Fefex Industries Limited

(Refes) who were part of the four parties as per the final list of prospective Resolution Applicants. The said Resolution Plans were shared with the CoC during the 7th CoC meeting held on 28.01.2020 for further discussions and deliberation.

6. The Applicant also submits that the valuation reports received from two registered valuers i.e. Mr. Sujit Shrikant Joglekar and Mr. Vineet Rathi, Mrs. Ashima Narula and Mr. Rakesh Narula were presented to the CoC Members during the 7th CoC meeting held on 28.01.2020.

7. The Applicant submits that during the 10th CoC meeting held on 24.02.2020, both the plans were placed before the CoC for their consideration either to approve or to record reasons for rejection. The CoC Members felt that both the Resolution Plans were not commercially attractive and hence, decided not to vote on it. One of the Resolution Applicant i.e. Refex sought another opportunity to revise its plan and accordingly time was granted to both Resolution Applicants till 26.02.2020.

8. The CoC Members in an attempt to attract more Resolution Applicants instructed the Applicant to publish an advertisement inviting EoIs/Resolution Plans in the bit process during the 13th CoC meeting held on 11.03.2020. Accordingly, the timeline under RFRP for submission of Resolution Plan was extended till 27.04.2020.

9. Subsequent to the advertisement dated 12.03.2020, an entity namely East India Udyog Limited submitted its EoI with the Applicant and was considered as one of the prospective Resolution Applicant. Therefore, there were three prospective Resolution Applicants in the first bid process i.e. Refex, Augusta and East India Udyog Limited.

10. The Applicant submits that thereafter, nationwide lockdown was imposed due to the outbreak of Covid-19 pandemic and hence, the prospective Resolution Applicants sought extension of time for submission of final Resolution Plan which was allowed. This was discussed during the 15th CoC meeting held on 09.06.2020 while the last date of filing the Resolution Plan was extended till 15.06.2020 with a provision of further extension if the need arises.

11. The applicant/RP further submits that the CIRP period of 180 days expired on 25.12.2019, and no Resolution Plan has been received by the RP for the Corporate Debtor. Further, the CoC are also not desirous of seeking any extension of time for the CIRP as there is no Resolution Plan nor has the RP received any Expression of Interest from any Applicant. In the circumstances, the CoC deems fit that the Corporate Debtor shall be liquidated as per the provisions of the Code.

12. The Applicant submits that during the 21st CoC meeting held on 06.10.2020, the CoC deliberated liquidating the Corporate Debtor, including as a going concern. The Applicant informed the CoC that

the Corporate Debtor was not functioning as a going concern since it had no operations while all the units of the Corporate Debtor was closed prior to initiation of CIRP. The matter was scheduled for conclusive discussions for the next CoC meeting.

13. The Applicant submits that eventually during the 22nd CoC meeting held on 15.10.2020, it was discussed that despite the RP under instructions of the CoC having had initiated three bid processes to seek Resolution Plans for the Corporate Debtor and having put in all efforts to seek a Resolution Applicant for the CoC's consideration including detailed investor search, to ensure that the Insolvency status of the Company is resolved and all the stakeholders including creditors, employees and workmen's claims are taken care of, despite of various efforts made by the RP, neither the bid processes yielded a Resolution Plan, which could have reached the voting stage. Therefore, the CoC Members decided that the only way left with them in the given time especially when there is no Resolution Plan in the hand of CoC and merely six days' time left with them to complete the CIRP period, the Corporate Debtor must be liquidated and further, since the Corporate Debtor is currently not a going concern on account of all units of the CD being closed prior to the CIRP/CD being non-operational since prior to ICD and only project which has been entirely sub-contracted by the Corporate Debtor is on, the Corporate Debtor cannot/should not be liquidated as a going concern. Accordingly, the CoC

unanimously instructed and authorized the Applicant to initiate the liquidation process in absence of any Resolution Plan and directed the Applicant to file an Application with the Adjudicating Authority under Section 33(1)(a) of the Code. Since the Code provides that upon expiry of the maximum period permitted for completion of CIRP under Section 12 whereby no Resolution Plan is received under Section 30(6) of the Code, the Adjudicating Authority shall pass an Order requiring the Corporate Debtor to be liquidated and hence a separate vote on liquidating the Corporate Debtor is not required.

14. Considering, that the CIRP period expires on 21.10.2020 and the decision of the CoC Members to initiate liquidation proceedings of the Corporate Debtor in absence of any Resolution Plan, hence the present Application is filed by the Applicant.

15. Hence the CoC unanimously decided to liquidate the Corporate Debtor by passing the following resolution:

    ""RESOLVED THAT" the members of the Committee of Creditors of EMCO Limited hereby approve and ratify that if in the event the Resolution Professional of EMCO Limited, Mr. Sundaresh Bhat (insolvency professional reg. no. IBBI/IPA-001/IP-P00077/2017-18/10162) faces a legal embargo in being appointed as Liquidator then insolvency professional Mr. Amit Chandrakant Shah (IBBI reg. no. IBBI/IPA-001/IP-P00821/2017-2018/11397) be proposed to the Adjudicating Authority to be appointed as the Liquidator for EMCO Limited and accordingly, directs that the consent form of said

Mr. Amit Chandrakant Shah be filed with the Adjudicating Authority; and

"FURTHER RESOLVED THAT" the Resolution Professional of EMCO Limited be and is hereby authorised to take such steps as may be necessary, in relation to the above if required and to settle all matters arising out of and incidental thereto and sign and execute all documents and writings that may be required and generally to do all acts, deeds and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to the aforesaid Resolution.".

Order

16. We have heard the Applicant and perused all the documents submitted by them. It is observed from the minutes of the 22nd CoC meeting that the CoC has, with 100% majority, decided to liquidate the Corporate Debtor and relying on the settled principle of law regarding the Commercial Wisdom of the CoC, we hereby allow this Interlocutory Application No. 203 of 2021 with the following observations and directions:

    a. ***Mr. Sundaresh Bhat*** *(insolvency professional reg. no. IBBI/IPA-001/IP-P00077/2017-18/10162)* is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.

    b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.

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 is 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 proceedings 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.

17. With the above directions, this application i.e. I.A. 203/2021 is hereby **allowed** accordingly.

Dated this the 9th day of August, 2021

Sd/-
(SHYAM BABU GAUTAM)
MEMBER (TECHNICAL)

Sd/-
(ASHOK KUMAR BORAH)
MEMBER (JUDICIAL)