

SL. No.133

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II

Video Conference

CORAM: HON'BLE BHASKARA PANTULA MOHAN,--MEMBER (J)
CORAM: HON'BLE VEERA BRAHMA RAO AREKAPUDI-MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 20.04.2022 AT 02:30 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.632/2019 in CP (IB) No.722/10/HDB/2018
NAME OF THE COMPANY	Polyex Pvt Ltd
NAME OF THE PETITIONER(S)	
NAME OF THE RESPONDENT(S)	
UNDER SECTION	10 of IBC

ORDER

IA 632/2019 is listed for orders today. Liquidation allowed.
Orders pronounced vide separate sheets.


MEMBER (T)

Syamala


MEMBER (J)

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

IA No.632 of 2019
In CP (IB) No.722/10/HDB/2018

In the matter of
M/s. POLYEX PRIVATE LIMITED

Mr. J. Manivannan,
Resolution Professional of
M/s Polyex Private Limited,
8/330, Vishalakshi Nagar,
Fourth Cross Street,
Santhosapuram,
Chennai - 600073.

...Applicant /
Resolution Professional

Date of Order: 20.04.2022

Coram:

Shri Bhaskara Pantula Mohan, Member Judicial
Shri Veera Brahma Rao Arekapudi, Member Technical

Parties/Counsel(s) Present:

For the Applicant : Mr. J. Manivannan, Resolution Professional

[Per Bench]

ORDER

1. The present Application bearing IA No. 632/2019 in CP(IB)No.722/10/HDB/2018 is filed U/s 33 / 34(1) of the I&B Code, 2016 by Resolution Professional *inter-alia* to:-
 - a. To pass appropriate orders that the Corporate Debtor i.e. Polyex Private Limited be liquidated in the manner as laid down under the Code.
 - b. In terms of Section 33/34(1) of the Code to pass an order that existing Resolution Professional shall act as the Liquidator of the



Corporate Debtor for the purpose of liquidation of the Corporate Debtor.

2. Brief facts as stated by the counsel for the Applicant are as follows:-
- a. That M/s. U-Foam Private Limited as the prime borrower availed the financial limits from Indian Overseas Bank (IOB) for which Corporate Debtor was given Corporate Guarantee in favour of IOB and equitable mortgage was created in respect of the properties of the Corporate Debtor. On account of default of the prime borrower and Corporate Debtor as Corporate Guarantor in payment of the dues, the IOB exercised its rights under the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and sold the mortgaged property which was only the asset of the Corporate Debtor in accordance with SARFAESI Act prior to commencement of CIRP.
 - b. That the application under Section 10 of the Insolvency & Bankruptcy Code, 2016 bearing Petition No. CP(IB) No.722/10/HDB/2018 filed by the Corporate Debtor itself i.e., Polyex Private Limited and CP(IB) No. 698/10/HDB/2018 filed by prime borrower i.e., U-Foam Private Limited were admitted respectively by this Adjudicating Authority on 26.12.2018 declaring the moratorium in terms of Section 14(1) of the code and the applicant was appointed as the Interim Resolution Professional (IRP) for both Companies.
 - c. That in pursuance of Section 15 of the Code the IRP invited claim through public announcement on 28.01.2018. The IRP received claims of Rs.44.21 crores from sole financial creditor i.e., IOB and no other claims were received from any of the Creditors. IOB is sole COC member for both Corporate Debtor and Prime borrower respectively.



- d. That the Corporate Debtor was not at operational for more than three years and has no assets and plant and machinery and has no employees as on the date of commencement of CIRP. In these circumstances, the Applicant was not able to appoint the Registered Valuers for determination of fair and liquidation value of the Corporate Debtor, Issuance of Expression of Interest for inviting Resolution Plan and Preparation of Information Memorandum in accordance with the IBC, 2016 and applicable regulations and therefore the Applicant duly briefed the COC about the current status of the Corporate Debtor.
- e. That it is highly impractical to get any viable resolution plan and no use of CIRP and for which the COC requested the suspended directors of the Corporate Guarantor to withdraw the application admitted under section 12A of the IBC, 2016 and COC ready to accord their consent for the same. However, the suspended Management stated that the same can be considered after receipt of order on application vide IA No. 95/2019 in CP(IB) No. 722/10/HDB/2018 filed by them wherein challenging the sale of property of the Corporate Debtor by the sole COC member as undervalued transaction which was happened prior to commencement of CIRP and is pending for disposal.
- f. That the chance of revival of corporate debtor based on the outcome of the CIRP of the prime borrower; however, the prime borrower also not received any viable and feasible resolution plan within the timeframe enshrined under the IBC, 2016. Since there is no viable and suitable plan was approved for the prime borrower, the COC recommended to liquidate the prime borrower in the manner laid down under the IBC, 2016 in the 3rd COC meeting of the prime borrower held on 19.06.2016, 20.06.2016 and 24.06.2016.



- g. That in these circumstances, in the above said meeting the COC decided that the Corporate Debtor also be liquidated and authorized the Resolution Professional to file an intimation to liquidate the Corporate Guarantor under Section 33(2) of the Insolvency and Bankruptcy code, 2016.
3. Heard the RP and perused the records.
4. In view of the facts and circumstances as recorded by IRP in IA No. 632 of 2019 filed in CP(IB) No.722/10/HDB/2018, 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.632/2019. 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. Polyex Private 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 observes that neither CoC has resolved to appoint RP herein as Liquidator nor the RP herein has filed his written consent to act as Liquidator, therefore, this Adjudicating Authority we hereby appoint Mr. Nethi Malikarjuna Setty as Liquidator as resolved by CoC. He is directed to file his consent to act as Liquidator in the present case along with valid Authorisation for Assignment (AoA) within 7 days from date of this order. He shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation;
- (iii) 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;

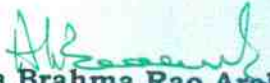


- (iv) Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.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

- (x) 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.
- (xi) 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. Mr. Nethi Malikarjuna Setty for information and compliance.
- (xii) Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator.
5. Accordingly, Application bearing IA No. 632/2019 stands disposed off.


Veera Brahma Rao Arekapudi
Member Technical


Bhaskara Pantula Mohan
Member Judicial

Santi/SKRathi