IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under The Insolvency and Bankruptcy Code, 2016)

IA No.377 of 2021 in
C.P. (IB) No.192 /BB/2020
(Admitted Matter)
U/s 33(1) r/w Section 60(5) of IBC, 2016

In the matter of:

M/S Gangamma Industries ... Petitioner /Operational Creditor

Versus

M/S Aethon Energy LLP ... Respondent/Corporate Debtor

And in the matter of IA No.377/2021:

Mr. Vasudevan Navneeth
Resolution Professional of Aethon Energy LLP ... Applicant-Resolution Professional

Order delivered on: 08th June, 2022

Coram: 1. Hon'ble Shri. Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant/
Resolution Professional : --

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)

1. This application has been filed by Mr. Vasudevan Navneeth, the Resolution Professional of M/s. Aethon Energy LLP (Corporate Debtor) under Section 33 (1) read with Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 for passing an order of Liquidation in the matter of M/s. Aethon Energy LLP (Corporate Debtor) and to appoint the Liquidator for initiation of Liquidation Process of the Corporate Debtor etc.

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2. CP (IB) No. 192/BB/2020 filed under Section 9 of the Insolvency and Bankruptcy Code,2016 by "M/s Gangamma Industries" to initiate Corporate Insolvency Resolution Process (**in short 'CIRP'**) against M/s. Aethon Energy LLP was admitted on 09.11.2020 and Mr. Vasudevan Navneeth was admitted as Interim Resolution Process (IRP).

3. The facts of the case, subsequent to the appointment of the IRP, a public announcement was issued on 28.11.2020 by the applicant, for calling up on the creditors of the Respondent to submit proof of their claims on or before 11.12.2020.

4. The 1st CoC meeting was held on 22.12.2020, the applicant was appointed as the Resolution Professional and the CoC at the said meeting appointed two sets of registered Valuers for valuation of the Stock & Fixed Assets and the Financial Assets. It is submitted that the Corporate Debtor has two bank accounts, i.e., State Bank of India and Union Bank. It is stated that the Resolution Professional has put in place a system wherein payments are being made from these accounts only after his approval.

5. The 2nd CoC meeting was held on 10.02.2021, approved publication of Form G seeking Expression of Interest. It is submitted that Resolution Professional had issued a public newspaper advertisement in Form G in *Financial Express* and *Hosadigantha* dated 15.02.2021 & 16.02.2021, and the last date of receipt of expression of interest was on March 03.03.2021. This was for inviting Prospective Resolution Applicants to submit Resolution Plans for the Respondent Corporate Debtor. However, no response was received against the advertisement in Form G.

6. It is stated that the Corporate Debtor received a Letter from State Bank of India dated 15.01.2021, wherein a Performance Guarantee amounting to Rs.15,85,000/- issued to WAPCOS Limited had been settled by debiting the Fixed Deposit of the Corporate Debtor with the State Bank of India , thus the same had not been informed to the RP.

7. It is stated that, a letter dated 30.01.2021 through its RP was addressed to the Assistant General Manager, SBI pertaining to Encashment of Bank Guarantee issued in favour of WAPCOS Limited, requesting to replenish the Fixed Deposit. Further, it is submitted that, the respondent received a reply from the Assistant

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General Manager, SBI, dated 01.02.2021, stating an exception under Section 3(31) of the Insolvency and Bankruptcy Code, 2016 which states that the expression 'security interest' does not include a Performance Guarantee and there it was not covered under Section 14 of the Code.

8. In the 3rd meeting held on 24.03.2021,the RP informed the CoC that he had not received any response to the advertisement in Form G. The CoC approved the resolution seeking initiation of liquidation of the Corporate Debtor at agenda Item No.9, and the same is as under:-

> *"Resolved that Mr. Vasudevan Navneeth, Resolution Professional be and is hereby authorised to submit the application u/s 33(2) of I&B Code, 2016 along with necessary documents to Adjudicating Authority to initiate the liquidation process against the Corporate Debtor.*
>
> *Further resolved that Resolution Professional is hereby authorised to appoint a legal counsel at such professional fee as may be finalised by the Resolution Professional to appear before Adjudicating Authority for the application to be filed under Section 33(2) of I & B Code, 2016.*
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> *Further resolved that cost which will be incurred for the filing of the application and professional fees will be borne by financial creditors proportionately and it will be included in the claim of financial creditors in the liquidation process if adequate funds are not available to funds these costs."*

9. Further, on the same day i.e., 24.03.2021 the CoC approved the remuneration to be paid to the liquidator at agenda item no.10 and the same is as under:-

> *"Resolved that Mr. Vasudevan Navneeth Resolution Professional of Aethon Energy LLP, be appointed to act as Liquidator of Aethon Energy LLP subject to approval of the Adjudicating Authority as per Sec 34 of the Insolvency & Bankruptcy Code, 2016. Resolved further that Mr. Vasudevan Navneeth, on his appointment as Liquidator be paid a professional fee of Rs.80,000 per month plus reimbursement of actual expenses as per regulation of 39D of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 till vacates his office as Liquidator. This excludes costs on deployment of Personnel at site, stay, travel and boarding expenses*
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> *Further Resolved that the decision to appoint Mr. Vasudevan Navneeth as Liquidator shall be communicated to the Honourable NCLT, Bengaluru Bench."*

10. The Hon'ble NCLAT, in *Praveen Kumar Nand Kumar v. VSL Securities Pvt Ltd.* in CA No.1/2020 in CA No.308/2000, dated 09.06.2020, observed as under:-

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> *"Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review".*

11. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

12. The relevant provisions of Sections 33(1) and 33(2) of the Code are as follows:-

> *"33. Initiation of liquidation.-*
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> *(1) Where the Adjudicating Authority, —*
> *(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56,as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or*
> *(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall—*
> *(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*
> *(ii) issue a public announcement stating that the corporate debtor is in liquidation; and*
> *(iii) require such order to be sent to the authority with which the corporate debtor is registered.*
>
> *(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 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)."*

13. Prescribed period for filing application- In the present case, the Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 was admitted on 09.11.2020 and the period of 180 days were completed on 08.05.2021. The application is filed on 01.12.2021 i.e., after the expiry of the CIRP period. Hence, this application shall be considered under Section 33 (1), but not under Section 33(2).

14. Appointment of Liquidator - Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the CIRP shall, subject

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to submission of written consent, act as the Liquidator for the purpose of Liquidation. **Mr.Vasudevan Navneeth, Resolution Professional with Registration No.IBBI/IPA-001/IP-P01048/2017-2018/11731** has filed the written consent dated 27.08.2021. The Law Researcher of this Tribunal has checked the credentials of proposed Liquidator and nothing adverse has been found on record. Therefore, Shri Vasudevan Navneeth is appointed as the Liquidator.

15. Regulation 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No.IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder:

a. **Liquidation Cost [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016]** -The CoC has not made compliance of Regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 regarding the meeting of liquidation costs. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 regarding the contributions to liquidation costs.

b. **Assessment of Sale as a going concern [Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016]** –The CoC has not made any recommendation regarding sale of the Corporate Debtor as a going concern. Therefore the Liquidator is directed to refer to Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 and take necessary action.

c. **Fees of the Liquidator [Regulation 39 D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.** The fee payable to the Liquidator is as per resolution passed at Agenda Item No.10.

16. Pending applications, if any, and its effects – There are no pending applications which have any bearing on the order of liquidation.

17. In view of the satisfaction of the conditions provided under Section 33 (1) of the Code, the Corporate Debtor, **M/s Aethon Energy LLP is directed to be liquidated**

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in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:

i. That as per Section 33 (5) of the Code and subject to Section 52 of the code, no suit or other legal proceedings shall be instituted against the corporate Debtor;

   Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;

ii. That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and

iii. That this order of liquidation under Section 33 of the Code 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; and

iv. That 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 Liquidator; and

v. That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provision of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.

vi. That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

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vii. That the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016.

viii. That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 every fortnightly thereafter.

18. Thus, **I.A. No. 377 of 2021** stands disposed of.

19. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Bengaluru forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)