

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

**M.A. No. 2422 of 2019
In
C.P. No. 405/IB/2018**

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

In the matter of
SREI Infrastructure Finance Ltd.
... Petitioner
Operational Creditor
V/s.
M/s. Sterling SEZ and Infrastructure Ltd.
... Corporate Debtor

M.A. No. 2422/2019

Mr. Manoj Kumar Agarwal... Applicant/
Resolution Professional

Order delivered on 18.10.2021

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Aniruth Purusothaman, Advocate
Mr. Manoj Kumar Agarwal, Resolution
Professional-in-person

ORDER

1. It is an application filed by the Applicant/ Resolution Professional, seeking liquidation of the Corporate Debtor namely (M/s. Sterling SEZ and Infrastructure Ltd.) on the ground that no resolution plan has been received by him, hence this application under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016, praying following reliefs:

- a. *To pass an order directing the initiation of Liquidation of the corporate Debtor in accordance with Section 33 of the Insolvency Bankruptcy Code, 2016;*
 - b. *To Appoint Applicant as the liquidator of the Corporate Debtor;*
 - c. *To pass an order directing exclusion of time from CIRP Process of the Corporate Debtor.”*
2. This bench vide its order dated 16.07.2018 on a Petition filed by the Financial Creditor under Section 7 of the Code directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely M/s. Sterling SEZ and Infrastructure Ltd., wherein Mr. Vishal Ghisulal Jain, was appointed as Interim Resolution Professional (IRP). Thereafter, in the 1st Committee of Creditors (CoC) meeting held on 27.08.2018, Mr. Vishal Ghisulal Jain, was resolved to be appointed as Resolution Professional (RP) and the same approved by this Bench vide an order dated 11.10.2018.
3. Heard the Counsel appearing for Resolution Professional and perused the record. Before deciding the above Interlocutory application it is important to mention here that the CoC previously filed an Application under Section 12A of the Insolvency & Bankruptcy Code, 2016 through Resolution Professional basing which this Bench allowed withdrawal of CIRP against Corporate Debtor. Subsequently on noticing the fact that the withdrawal order dated 10.04.2019 was passed by this Bench without hearing the Ministry of Corporate Affairs, this Bench passed an order staying the CIRP on the basis of urgent motion made by Ministry of Corporate Affairs, Government of India through its Ld. Representative Mr. Sanjay Shorey.

4. Finally, this Bench, vide an order dated 26.01.2019 recalled the withdrawal of CIRP Order dated 10.04.2019 passed by this Bench by making certain adverse remarks against the CoC in misleading and obtaining order of withdrawal from this Bench.
5. It was also observed in the order dated 26.04.2019 that the maximum period of 270 days for completion of the CIRP in the above matter was got over on 11.04.2019 and this Bench has power to extend the same beyond 270 days on an appropriate Application filed by the Resolution Professional as per the law. Subsequently, neither an Application has been filed by the Resolution Professional for extension of period of CIRP nor any Resolution plan is placed before this Bench for approval nor any resolution was passed by CoC to go for liquidation in the above matter for the reasons best known to them.
6. It is appropriate to mention here that the CIRP order was passed by this Bench on 16.07.2018 and more than 358 days has been lapsed on the date of filing of this Application i.e. 08.07.2019 without there being any resolution by CoC and the maximum period provided under the code for completion of CIRP was lapsed by afflux of time.
7. Under these facts and circumstances this Bench has no option except to order for liquidation. Accordingly, this Bench allow this Application. Hence ordered;

ORDER

- a. Mr. Vishal Ghisulal Jain, having Registration No. IBBI/IPA-001/IP-P00419/2017-2018/10742, Email Id: vishal@cavishaljain.com, herein is hereby appointed as 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 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.
- j. The Miscellaneous Application No. 2422 of 2019 is hereby allowed and disposed of.

Sd/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

108. I.A. 224/2021
I.A.1593/2020 IN
M.A.1245/2019
M.A. 3026 /2019
M.A. 2422/2019
M.A. 2677/2019
M.A. 1181/2019
M.A. 519/2019
IN
C.P.(IB)-405(MB)/2018

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **18.10.2021**

NAME OF THE PARTIES: SREI Infrastructure Finance Ltd

V/s

Sterling Sez And Infrastructure Ltd.

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Counsel for the Resolution Professional, Mr. Prakash Shinde, Mr. Aniruth Purusothaman & Mr. Manoj Agarwal and counsel for the Liquidator, Mr. Sandeep Bajaj are present through virtual hearing. Adv. Dev Upadhyay is also present.

I.A.1593/2020

The above Interlocutory Application has become infructuous and stands disposed of in view of recall order dated 26.04.2019 passed in section 12A application.

M.A.1245/2019

The above Interlocutory Application has become infructuous and stands disposed of in view of order dated 26.04.2019 and also separate application filed for the liquidation by the Resolution Professional.

M.A.519/2019

The above Misc. Application is filed for non-cooperation from statutory auditor and one of the ex-directors of the Corporate Debtor has become infructuous and stands disposed of in view of separate application filed for liquidation by the Resolution Professional.

M.A.2677/2019

The above Misc. Application is filed by Resolution Professional seeking permission to convene COC and to take approval from COC for appointment of statutory Auditor has also become infructuous and stands disposed of.

M.A.3026/2019

The above Misc. Application has been filed by M/s. PI Industries Limited praying this Bench to permit them to file Resolution Plan with the COC.

The above M.A.3026/2019 has become infructuous and stands disposed of in view of passing liquidation order against the Corporate Debtor in M.A.2422/2019.

M.A. 2422/2019

The above Misc. Application is filed by Resolution Professional for liquidation. Resolution Professional would continue as a liquidator and the fee would as per the relevant section of the IBBI.

The above M.A. is allowed. Detailed order will follow.

M.A.250/2019

The above Misc. Application has been taken up suo moto on board today on the representation being made by Resolution Professional.

The above Misc. Application is filed by the Resolution Professional for further extension of time upto 28.02.2019 for convening the Annual General Meeting (AGM) for the Financial Year 2017-2018 of the Corporate Debtor. The above M.A. has become infructuous and stands disposed of in view of convening the AGM by the Resolution Professional.

List other pending applications on 29.11.2021.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

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