

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT - I, MUMBAI BENCH

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IA No.1418/MB/2020

in

CP (IB) No. 3653/MB/2018

In the matter of an Application under Section 33(2) of the Insolvency and
Bankruptcy Code, 2016

Mahesh R. Sureka,
Resolution Professional of Mactores Innovations Private Limited,
Office at 173 Udyog Bhavan, Sonawala Road,
Goregaon (East), Mumbai – 400 063

... Applicant

In the matter of:

Embee Software Private Limited

... Operational Creditor

Versus

Mactores Innovations Private Limited

... Corporate Debtor

Order Dated: 14.10.2020

Coram:

Hon'ble Member (Judicial), Janab Mohammed Ajmal

Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearances (Via Video Conference):

For the Applicant : Mr Avinash Khanolkar, Advocate

ORDER

Per: Janab Mohammad Ajmal, Member (Judicial)

1. This is an Application filed by the Resolution Professional seeking liquidation of the Corporate Debtor under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 (Code).
2. The Applicant submits that the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor on admission of the captioned Company Petition by this Tribunal on 09/10/2019 and the Applicant was appointed as Interim Resolution Professional (IRP).
3. It is submitted that the Applicant issued public notice in "Business Standard" on 15/10/2019 inviting claims from the Creditors.
4. The Applicant submits that no claims were received by him up to 07/11/2019 except from the Operational Creditor who happens to be the Petitioning Creditor. Initially the Committee of Creditors (CoC) was formed with only one Operational Creditor and in the first meeting of the CoC held on 07/11/2019, IRP was confirmed as Resolution Professional (RP) of the Corporate Debtor. Thereafter, some Financial Creditors filed their claims and, on their admission, the CoC was re-constituted. It is submitted that the Suspended Director of the Corporate Debtor also attended the CoC meeting and promised to give certain details required by the CoC and RP.
5. It is submitted that the invitation of Expression of Interest (EoI) was published on 16/12/2019 in two newspapers.

6. The CoC in the 4th meeting on 15/01/2020 discussed about the non-cooperation of the Suspended Directors in providing details required by the CoC and RP and also discussed about the fact that nobody was interested in providing EoIs. Hence, the CoC decided to publish "Form-G" inviting EoIs afresh and "Form-G" was published on 23/01/2020 in two newspapers.
7. It is submitted by the Applicant that no response was received to the "Form-G" and the CoC in the 5th meeting held on 17/03/2020 discussed about the liquidation of the Corporate Debtor.
8. The Applicant submits that CoC in the 6th meeting held on 24/06/2020 resolved to liquidate the Company with the voting share of 90%. The voting Result has been enclosed at page No. 64 of the Application. The CoC also resolved that the liquidator should try to sell the Corporate Debtor as going concern under Regulation 39 C of CIRP Regulations within a maximum period of 90 days and fees for the liquidator for that period will be same as charged by RP and the same will form part of the liquidation costs. The CoC also resolved to appoint Mr. Mahesh R Sureka, the Applicant herein, as the Liquidator of the Corporate Debtor for a fixed fee of ₹3,00,000/- plus applicable taxes for the liquidation process.
9. Section 33(2) of the Insolvency and Bankruptcy Code, 2016 provides as below:

"33. Initiation of liquidation. -

(1)

(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 1 [approved by not less than sixty-six per cent. 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 purpose 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.]

.....”

10. The Resolution passed by the CoC for liquidation of the Corporate Debtor is in consonance with the provisions of Section 33(2) of the Code. The Application can be allowed. Hence ordered.

ORDER

The application be and the same is allowed. The Corporate Debtor, Mactores Innovations Private Limited, shall be liquidated in the manner as laid down in Chapter-III of the Code with the following consequential directions:

- a) Mr. Mahesh R. Sureka having Registration No. IBBI/IPA-001/IP-P00413/2017-18/10736 is appointed as the Liquidator.
- b) The liquidator may sell the Corporate Debtor as going concern within a maximum period of 90 days from this date and his fees for the said period is as that charged by the him as RP. Thereafter, as liquidator his fee would be Rs. 3,00,000/- plus applicable taxes for the remainder of the liquidation period.
- c) He shall issue public announcement stating that the Corporate Debtor is in liquidation.

- d) The Moratorium declared under Section 14 of the Code shall cease to operate here from.
- e) Subject to section 52 of the IBC 2016 no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however 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.
- f) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- g) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.
- h) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- i) 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.
- j) The Liquidator is directed to send a copy of this Order to the Registrar of Companies (ROC) concerned and Insolvency and Bankruptcy Board of India (IBBI), New Delhi for information.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Mohammed Ajmal
Member (Judicial)