

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – II, CHENNAI

IA/976/IB/2020 in IBA/676/2019 filed
under Sections 33 (1) (a) of the Insolvency
and Bankruptcy Code, 2016

In the matter of M/s. Energex Systems India Private Limited

Ms. Rajalakshmi Vardarajan,
Resolution Professional
[IBBU/IPA-003/IP-N000145/2017-18/11597]
for M/s. Energex Systems India Private Limited
351/18, Aishwarya Flats
36th Street, I Block, Anna Nagar,
Chennai-600040

....Applicant/Resolution Professional

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)
B. ANIL KUMAR, MEMBER (TECHNICAL)

For Applicant : Ms. G. Anitha, Advocate

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Order Pronounced on: 27.01.2021

It is an application filed under Section 33 (1) (a) of the IBC, 2016
by the Resolution Professional, seeking for the liquidation of the

Debtors namely M/s. Energex Systems India Private



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2. From the averments made in the Application, it is evident that the CIRP of the Corporate Debtor was initiated by this Tribunal on 10.09.2019 and the applicant was appointed as Interim Resolution Professional (IRP). The IRP caused public announcement calling for the claims from the Creditors of the Corporate Debtor by virtue of publication dated 13.09.2019 and the last date of submission of claims was 25.09.2019.

3. The IRP received claims with proof of claim from the following creditors:

(a) **Financial Creditor:** Corporation Bank, Hosur Branch (Corporate Debtor hypothecated machineries and equipments to secure the term loan from the Bank) Rs.99,37,126/-

(b) **Operational Creditors:**

S.No.	Name of the Creditors	Amount Claimed (in Rs)	Claim Admission
1.	Ganesh Industrial Supplies, Bengaluru	42,71,886	42,31,696
2.	Annapurna Rice Mill, West Bengal	27,00,000	Nil
3.	Shah Brothers Ispat Pvt. Ltd., Chennai-56	10,96,431	9,48,365
4.	Metal Tech Engineers, Bangalore	6,88,581	4,19,742
	Peenya Gas, Bangalore	87,214	87,214
	Anju Electricals, Trichy	6,43,588	6,43,588
	Total	94,87,700	63,30,605



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4. It is seen from the averments that the CoC was constituted on 30.09.2019 and the 1st meeting of the CoC was held on 09.10.2019 and IRP was appointed as Resolution Professional in the 2nd CoC meeting held on 02.03.2020. It is also evident that the Corporate Debtor Company was not functional and that the condition of the machineries kept in the premises of the promoter director was such that it could only be sold as scrap. The applicant submits that since the CoC did not cooperate with the RP, she filed an application before this Tribunal and obtained order dated 11.02.2020 directing the CoC member to cooperate with the RP to continue the CIRP against Corporate Debtor.

5. It is averred in the Application that in the 2nd CoC meeting held on 02.03.2020, the CoC member decided to liquidate the corporate debtor with 100% voting and formally conveyed their recommendation for liquidation on 20.03.2020. Meanwhile, the RP

has appointed the Registered Valuers on 18.09.2019.



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6. The Learned Counsel for the RP submits that in view of the fact that the Corporate Debtor cannot be continued as a going concern as it was not functional at the time of initiation of the CIRP, machineries were rusted and that the condition of the assets was too bad to be considered for sale as equipment and they could only be sold as scrap and hence the CoC members decided that the best option available for realisation was to leave the machinery at the current location and dispose them off on as-is-where-is condition. The CoC members further decided that it is not feasible to keep the Corporate Debtor as a going concern under the current economic aspects and thereby decided to liquidate the company, and hence this Application is filed. It is further submitted that the CIRP of 180 days ended on 08.03.2020.

7. During the course of submissions, Learned Counsel for the Resolution Professional brings to the notice of this Tribunal that the valuation was done on "as is where is" basis and the machines were

valued based on its physical condition and reusability. Average Fair Value of plant and machineries for Rs.1,95,800/- and Liquidation

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Value of Rs.1,56,000/- was arrived at by the Registered Valuers in respect of the assets of the Corporate Debtor.

8. On perusal of the records filed by RP, we noticed that as against the claim of Financial Creditor/ Operational Creditors Rs.1,94,24,826/- (admitted amount of Rs.63,30,605/-), the liquidation value of the Corporate Debtor is only 1,56,000/-, and there is a gross mismatch between the assets and liabilities of the Corporate Debtor and the Insolvency of the Corporate Debtor is manifestly evident from the above figures.

4. The Applicant further submitted that the formal approval received on 20.03.2020 from COC members for recommending the liquidate the Corporate Debtor. Pursuant to the resolution passed in the 2nd CoC meeting dated 03.02.2020 approving the RP to act as a Liquidator of the Corporate Debtor, the RP has filed written consent letter dated 11.11.2020 with SR No. 3339/2020 giving her consent to take the assignment as liquidator.



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5. In view of the above, we hereby order for liquidation of the Corporate Debtor namely M/s. Energex Systems India Private Limited and Ms. Rajalakshmi Vardarajan having [Reg No. IBBI/IPA-003/IP-N000145/2017-2018/11597] is appointed as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions.

a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date.

b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential



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transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.

d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;

e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authority which governs the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.



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- g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.



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ORDER DATED 12/01/2019 in IBA/676/2019
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1) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor, viz., and company-in-liquidation.

6. Hence, this application IA/976/IB/2020 stands disposed of with the aforesaid terms.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

TJS

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)



Certified to be True Copy

K. Nataraj
11/2/2021
DEPUTY REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
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