

IN THE NATIONAL COMPANY LAW TRIBUNAL
AT JAIPUR

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**
**SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER**

IA No. 53/JPR/2021
In CP No. (IB)-164/9/JPR/2019

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

M/s. Eltech Electro- Controls Pvt. Ltd.

...Operational Creditor/Applicant

VERSUS

M/s. Digicontrols Northern Private Limited

...Corporate Debtor/Respondent

MEMO OF PARTIES

M/s. Eltech Electro-Controls Private Limited

Shop No. 27, Plot No. 5, H Pocket Market
Sarita Vihar, New Delhi-110076

...Operational Creditor/Applicant

VERSUS

M/s. Digicontrols Northern Private Limited

Shop No. 46, Arcade Market
Omaxe Panaroma City, Alwar Road
Opposite Sizewark INK Company,
Bhiwadi- 301018, Rajasthan

...Corporate Debtor/Respondent

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AND IN THE MATTER OF
IA No. 53/JPR/2021

Ranjeet Kumar Verma,
Resolution Professional
G-129, First Floor, Sector-63,
Noida – 201303

... Applicant

For the Applicant : Joginder Kumar Chowdhary, Adv.
Ranjeet Verma, RP

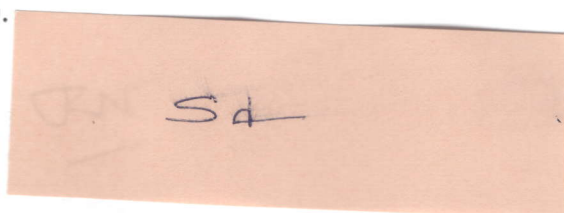
For the Respondent : Yogesh Kumar Tyagi , Adv.

Order Pronounced On: 11.03.2022

ORDER

Per: Shri Raghu Nayyar, Technical Member

1. This Application bearing IA No. 53/IPR/2021 is filed by the Resolution Professional of Digicontrols Northern Private Ltd ('Applicant' / 'RP') under Section 33 and Section 34 of the Insolvency and Bankruptcy Code, 2016 ('Code') for passing an order of Liquidation against Digicontrols Northern Private Ltd ('Corporate Debtor').
2. The Adjudicating Authority vide order dated 11.10.2019 had admitted the Application filed by M/s Eltech Electro-Controls Private Limited ('Operational Creditor') under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of Corporate Debtor and as a consequence thereof appointed Mr. Ranjeet Kumar Verma as Interim Resolution Professional ('IRP').



3. In compliance with provisions of the Code, the IRP constituted the Committee of Creditors ('CoC'). The 1st meeting of CoC was held on 25.11.2019, wherein the CoC unanimously appointed the IRP as the Resolution Professional ('RP') and the same was confirmed by this Adjudicating Authority vide order dated 09.01.2020. It is also seen that the RP had appointed two registered valuers to determine the fair and liquidation values under Regulation 35 of the CIRP Regulations, 2016.
4. It is submitted that the RP had initially made the publication of Form G on 10.02.2020 and invited Expression of Interest ('EOI') for submitting a resolution plan for the Corporate Debtor. The RP neither received the EOIs nor any resolution plan(s) under the Code's prescribed time. In the 4th CoC meeting held on 06.03.2020, the RP proposed the liquidation of the Corporate Debtor. By a majority vote of not less than 66% voting, the CoC has resolved to liquidate the Corporate Debtor. Copy of the minutes of the 4th meeting of CoC is annexed as Annexure 7 (Colly) of the Application.
5. We have carefully heard and considered the arguments of the learned counsel for the RP and perused the records. Taking into consideration the above facts concerning the affairs of the Corporate Debtor, the provision of Section 33 of IBC, 2016 is as follows: -

"33. Initiation of liquidation. —

(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

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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, if 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 creditor 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-clause (i), (ii) and (iii) of clause (b) of sub-Section (1)”.

6. The Hon'ble National Company Law Appellate Tribunal ('NCLAT'), in *Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 308 of 2020* observed as under:

“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of the 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”.

However, whether the relevant Application is filed within stipulated timelines as per the applicable procedure is to be seen.

7. **The prescribed period for filing Application** - In the present case, the Application under Section 9 of the Code was admitted on 11.10.2019, and the RP filed the present Application on 11.02.2021. Accordingly, the date

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for completion of CIRP was 07.04.2020.

8. In view of the situation of COVID-19 pandemic, the Hon'ble Supreme Court of India in *Suo Motu Writ Petition (Civil) No(s). 3/2020 in Re: cognizance for extension of Limitation*, vide order dated 23.03.2020, passed the following order: -

"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks."

9. The Hon'ble NCLAT in *Suo Moto-Company Appeal (AT) (Insolvency) No. 01 of 2020* vide order dated 30.03.2020, observed as under: -

"Upon requests for urgent listing of cases having been made telephonically to Registrar of this Appellate Tribunal from various

persons, who were unable to physically file the same on account of complete lockdown declared by Government with effect from 25th March 2020, we take suo moto cognizance of the unprecedented situation arising out of the spread of COVID19 virus declared a pandemic. Having regard to the hardships being faced by various stakeholders as also the legal fraternity, which go beyond filing of Appeals/ cases, which has already been taken care of by the Hon'ble Apex Court by extending the period of limitation with effect from 15th March, 2020 till further order/s in terms of order dated 23rd March, 2020 in Suo Motu Writ Petition (Civil) No(s).0372020, inasmuch as certain steps required to be taken by various Authorities under Insolvency and Bankruptcy Code, 2016 or to comply with various provisions and to adhere to the prescribed timelines for taking the 'Resolution Process to its logical conclusion in order to obviate and mitigate such hardships, this Appellate Tribunal in exercise of powers conferred by Rule 11 of National Company Law Appellate Tribunal Rules, 2016 raw the decision of this Appellate Tribunal rendered in "Quinn Logistics India Pvt. Ltd. vs. Mack Soft-Tech Pvt. Ltd. in Company Appeal (AT) (Insolvency) No.185 of 2018" decided on 8th May, 2018 do hereby order as follows: -

(1) That the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for 'Resolution Process under Section 12 of the Insolvency and Bankruptcy Code, 2016, in all cases where 'Corporate Insolvency Resolution Process has been initiated and pending before any Bench of the National Company Law Tribunal or in Appeal before this Appellate Tribunal."

10. Thereafter, the Insolvency and Bankruptcy Board of India ('IBBI'), inserted Regulation 40C to the Insolvency and Bankruptcy Board of India (Insolvency

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Resolution Process for Corporate Persons) Regulations, 2016, vide notification dated 29.03.2020 and the same is as under: -

“40C. Special provision relating to time-line

Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of the COVID-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.”

11. Similarly, the IBBI vide notification dated 20.04.2020, inserted Regulation 47A to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the said regulation reads as under: -

“Exclusion of period of lockdown

47A. Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purpose of computation of the timeline for any task that could not be completed due to such lockdown, in relation to any liquidation process.”

12. As per Notification No. IBBI/2020-21/GN/REG059 dated 20.04.2020, the period of Lockdown is excluded to calculate the timelines in the CIR Process. Hence, the present application is filed within the prescribed period. In view of the same, the Application under consideration is taken up under Section 33(2) of the Code.
13. **Appointment of Liquidator and fee to be paid**— 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

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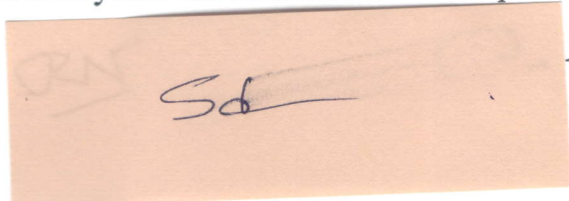
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appointed for the corporate insolvency resolution process shall, subject to submission of written consent act as the Liquidator for liquidation. The relevant provisions of Section 34(1) of the Code are as follows: -

“(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4)”.

14. The present RP, Mr. Ranjeet Kumar Verma, is eligible as a Liquidator. It is noted that liquidation proceedings herein, at the instance of CoC, because no expression of interest(s) has been received according to the invitation in Form G, are initiated due to prescription of statute. We do not find any reason to replace the existing RP. Mr. Ranjeet Kumar Verma, Resolution Professional with IBBI Registration No. IBBI/IPA-003/IP-N000148/2017-18/11610 has filed his consent in Form-AA dated 23.02.2022 to act as the Liquidator vide Dairy No. 521/2022 dated 24.02.2022. Thus, Mr. Ranjeet Kumar Verma is appointed as the Liquidator.
15. It is also seen that Regulation 39B, 39C and 39D in the CIRP 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.

16. **Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)** - The Liquidator vide Dairy No.52-1/2022 dated 24.02.2022 has submitted its Final Report whereby the CoC in its 4th meeting held on 06.03.2020 has decided the estimated liquidation cost to be Rs. 1,05,000/-. The necessary action following IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs have been followed.
17. **Assessment of sale as a going concern (Regulation 39C of CIRP Regulations, 2016)** — The CoC in its 4th meeting has discussed selling the Corporate Debtor as a going concern, as the first option or selling the business(s) of the Corporate Debtor as a going concern, as the second option, before exploring other options as per Regulations 32 & 32A of IBBI (Liquidation Process) Regulations, 2016 and Regulation 39C of CIRP Regulations, if the Adjudicating Authority passes an order of liquidation. The RP explained that the Corporate Debtor has no means to run the business as the unit has already been closed, so it is not practically possible to explore the possibilities to sell as a going concern. With a 100% voting share, the CoC discussed that it is not possible to sell as a going concern, and they passed the resolution.
18. **The fee of the Liquidator (Regulation 39D of CIRP Regulations, 2016)** - The CoC in its 4th meeting has not discussed the bearing of additional cost towards IRP fees and liquidation cost beyond the actual realisation/proceeds



from the sale of inventory/assets or recovered on account of the Corporate Debtor. However, as per the registered valuer, the liquidation value of the Corporate Debtor is Rs. 1,15,000/-, which can meet the cost of the liquidation. Further, the CoC has agreed that the period of sale will be 30 days from the approval of the Adjudicating Authority, with the balance period of liquidation being 60 days. All members unanimously passed this resolution and therefore is per IBBI (Liquidation Process) Regulations, 2016.

19. In view of the satisfaction of the conditions provided under Section 33(1) of the Code, including the Rules and Regulations thereunder, the Corporate Debtor, Digicontrols Northern Private Limited, is directed to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include: -

(i) 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 by or against the Corporate Debtor;

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

(ii) The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings concerning such transactions as may be notified by the Central Government in consultation with any financial

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- sector regulator;
- (iii) This order of liquidation under Section 33 of Code shall be deemed as notice of discharge to the officers, employees and workmen of the Corporate Debtor;
- (iv) 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 an effect and shall be vested in the Liquidator;
- (v) 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 provisions of Section 19 of the Code shall apply concerning liquidation process as they apply with CIR process with the substitution of references to the Resolution Professional for the Liquidator;
- (vi) The Liquidator shall publish a public announcement per Regulation 12 of the IBBI (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 stakeholders 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;
- (vii) Under Regulation 13 of the IBBI (Liquidation Process) Regulations,

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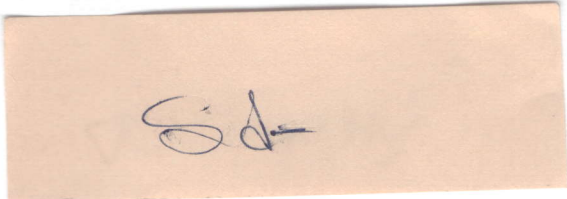
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2016, the Liquidator shall file his preliminary report within 75 days and regular progress reports according to Regulation 15.

22. In view of the foregoing, IA No. 53/IPR/2021 is disposed of. Copy of this order is supplied to the counsel for the Liquidator and the Registrar of Companies forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAGHUNAYYAR,
TECHNICAL MEMBER**