

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

IA No.235/KB/2020
in
CP (IB) No.546/KB/2019

Under section 33(2) of the Insolvency & Bankruptcy Code, 2016

In the matter of:

Tata Hitachi Construction Machinery Company Private Limited

... Operational Creditor

Versus

Earth Mover Consultancy Private Limited

(CIN: U27100JH1998PTC008560)

...Corporate Debtor

And

Pramod Kumar Singh

RP of Earth Mover Consultancy Private Limited

... Applicant

Order reserved on: 03/05/2021

Order pronounced on: 28/05/2021

Coram:

Shri Rajasekhar V.K. : Member (Judicial)

Shri Harish Chander Suri : Member (Technical)

Appearances (through video conferencing):

For the Applicant : Ms. Urmila Chakraborty, Advocate
Mr. Pramod Kumar Singh, Resolution
Professional

O R D E R

Per: Harish Chander Suri, Member (Technical)

1. This Tribunal convened *via* video conference.
2. This is an application filed by the Resolution Professional seeking liquidation of the Corporate Debtor, *viz.*, Earth Mover Consultancy Private Limited [CIN: U27100JH1998PTC008560], on the ground that the Committee of Creditors ('CoC') at its 3rd meeting held on 31/01/2020 has passed a resolution with 100% voting share for liquidation of the Corporate Debtor before inviting Expression of Interest from prospective resolution applicants.
3. This Adjudicating Authority *vide* its order dated 21/10/2019 on a Petition filed by Tata Hitachi Construction Machinery Company Private Limited (*Operational Creditor*) under section 9 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) directed initiation of the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and appointed the Applicant herein as the Interim Resolution Professional (IRP).
4. In terms of section 15 of the Code, public announcement in Form 'A' was made on 30/10/2019 in "*Hindustan Times, Ranchi Edition*" (English) and "*Hindustan, Jamshedpur Edition*" (Hindi) and also uploaded the same in IBBI Website. Copies of paper publication are annexed with supplementary affidavit dated 23/05/2021 and collectively marked as **Annexure "A" (pages 7 to 9)**.
5. IRP had submitted IP-1 on 30/10/2010 to IBBI. He had also submitted CIRP-1 on 04/11/2019 to IBBI.
6. This Adjudicating Authority *vide* order dated 09/12/2019 has confirmed appointment of Interim Resolution Professional as Resolution Professional. A

copy of the said order dated 09/12/2019 is annexed as “**Annexure A-1**” to the application.

7. On 19/11/2019, the IRP had submitted to the Adjudicating Authority the report on constitution of the CoC.
8. The first and second CoC meetings were held on 26/11/2019 and 09/12/2019 respectively.
9. Initially no information was available as Director and Promoter were untraceable. Subsequently the RP on 20/12/2019 could contact them through his known local Advocate when they provided some information but substantial information and documents are not available.
10. At the 3rd COC meeting held on 31/01/2020, CoC has passed a resolution with 100% voting share for liquidation of the Corporate Debtor before inviting Expression of Interest from prospective resolution applicants recommending appointment of Resolution Professional as Liquidator of the Corporate Debtor. Certified copies of extract of the minutes of the said 3rd CoC meeting are annexed as “**Annexure – A2**” and “**Annexure – A3**” respectively to the application.
11. The Resolution Professional has submitted his consent in Form AA under regulation 3(1A) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a copy whereof is annexed as “**Annexure A-4**” to the application.
12. We have considered the submission made by the Ld. Counsel appearing for the Applicant and perused the records.
13. This is a case where no Expression of Interest was invited and the CoC has recommended liquidation of the Corporate Debtor before expiry of 180 days

CIRP period. Therefore, there is no alternative but to order the liquidation of the Corporate Debtor.

14. This Bench, therefore, hereby orders as follows: -

- a. IA No. 235/KB/2020 filed by Mr Pramod Kumar Singh, RP of Earth Mover Consultancy Private Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof.
- b. Mr. Pramod Kumar Singh, the RP [Reg. No. IBBI/IPA-002/IP-N00678/2018-19/12039], E-mail ID: pramodip09@gmail.com, telephone no. 93346 11489, is hereby appointed as liquidator as provided under section 34(1) of the Code, subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.
- c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. Public Notice shall be issued once in "*Hindustan Times, Ranchi Edition*" (English) and once in "*Hindustan, Jamshedpur*" (Hindi) stating that the Corporate Debtor is in liquidation.
- e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.

- f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
 - g. On initiation of the liquidation process but 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, as provided in section 33(5) of the Code read with its proviso.
 - h. In accordance with section 33(7) of the Code, 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.
 - i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Jharkhand, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, Jharkhand.
15. The application bearing **IA No. 235/KB/2020** shall stand disposed of in accordance with the above directions.
 16. **CP (IB) No. 546/KB/2019** to come up for filing of periodical report on **27.07.2021**.
 17. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
 18. Certified Copy of this order may be issued, if applied for, upon compliance of all

requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Signed this 28th day of May, 2021.

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