

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

111.I.A. 2351/2021
IN
C.P.(IB)-94(MB)/2019

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 **24.11.2021**

NAME OF THE PARTIES: Innovative Technomics Private Limited

V/s

Phoenix Erectors Private Limited.

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Counsel for the Applicant, Mr. Shikhil Suri is present through virtual hearing.

I.A. 2351/2021

The above Application is filed for Liquidation of the Corporate Debtor Company. The above I.A. is allowed. Detailed order will follow.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

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

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

I.A. 2351 OF 2021

Under Section 33(1) of Insolvency &
Bankruptcy Code, 2016

Filed by
Jitendra Palande
Residing at 38, 5-3/D, New Ajanta
Avenue, Paud Road, Kothrud,
Pune-411038

**Resolution Professional/
...Applicant**

In the matter of
C.P. No. 94 of 2019

Innovative Technomics Pvt Ltd,
Gat No. 25, Kanhe Phata, Wadgaon
Maval, Pune - 412108

...Petitioner

Vs.

Phoenix Erectors Private Limited
B-21, Deshmukh Plaza, Sai Nagar,
Hinge Khurd, Pune - 410051

...Respondent

Order delivered on: 24.11.2021

Coram:

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

Appearance:

For the Applicant: Mr. Shikhil Suri, Advocate

1. The above application is filed by Resolution Professional, Mr. Jitendra Palande seeking liquidation of Phoenix Erectors Private Limited., (hereinafter referred as “Corporate Debtor”) under Section 33(1) of Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”), praying for following reliefs:

- a. To allow the present application; and*
- b. To pass appropriate directions under Section 33 of the Insolvency and Bankruptcy Code, 2016; and/or*
- c. To pass consequential directions under Section 34 of the Code for appointment of the Applicant as Liquidator of the Corporate Debtor; and/or*
- d. Pass necessary direction to the applicant/resolution professional thereby relieving and discharging him from all functions and duties as IRP/RP, provided under the Code.*
- e. Pass such other and further relief(s) / order(s)/ direction(s) and to grant and issue such orders and directions which may be necessary and which this Hon’ble Tribunal may deem fit and proper in the circumstances of the present case to meet the ends of justice.*
- f. Pass necessary direction, if any to the applicant/interim resolution professional until the order of liquidation is passed by this Hon’ble Tribunal.*

2. The brief facts of the Application are as follows:

A. The Applicant mentions that this Tribunal vide an order dated 12.04.2019 in Company Petition No. 94 of 2019 admitted the petition under Section 7 of the Code, filed by Innovative Technomics Private Limited (hereinafter referred to as the “Financial Creditor”)

and Corporate Insolvency Resolution Process ("CIRP") was initiated against Corporate Debtor. The applicant herein was appointed as the Interim Resolution Professional ("IRP") of the Corporate Debtor by this Tribunal vide this Order dated 12.04.2019.

- B. The Applicant was subsequently confirmed unanimously as Resolution Professional ("RP") in the first meeting of Committee of Creditors ("CoC") which was held on 12.05.2019.
- C. That on 19.04.2019, the Applicant made a public announcement in Form A in terms of Section 15 of the Code read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("IBBI Regulations, 2016") inviting claims against the Corporate Debtor from the creditors.
- D. That in pursuance of the public announcement, only one claim was received by the Applicant from the Financial Creditor for an amount of Rs. 82.64 lacs (unsecured). The following is the composition of COC:

NO.	NAME OF THE CREDITOR	AMOUNT (In Lacs)	VOTING SHARE
1.	Innovative Technomics Pvt. Ltd	82.64	100%
TOTAL CLAIMS OF CREDITORS		82.64	100%

- E. The CoC in its 5th meeting which was held on 16.09.2019, the CoC further authorized the Applicant to debit the bank account of the Corporate Debtor with CIRP expenses such as fee of RP, fees of

professionals, consultants and lawyers as required and incidental expenses. Further the CoC also resolved and proposed for liquidation of the Corporate Debtor since there are no assets in the Company. The CoC approved the following unpaid expenses to be included in CIRP cost:

CIRP COST	Rs.	GST	Total Rs.
RP Fee	9,00,000	18%	10,62,000
Public Announcement (Form A)	25,000		25,000
Public Announcement (Form G)	25,000		25,000
Legal Cost	50,000		50,000
Total CIRP Cost	10,00,000		11,62,000

The following resolution was tabled for voting after discussion by the CoC,

“Item No. 4

Resolution vs. Liquidations vs. Dissolution

...

“RESOLVED THAT *since the Corporate Debtor do not have assets to be liquidated then it will be advisable to go for dissolution of the Corporate Debtor instead of Liquidation, CoC direct the Resolution Professional to file an application for dissolution of Corporate Debtor.*

“RESOLVED THAT *the realizable properties of the Corporate Debtor are insufficient to cover the cost of Liquidation process, and the affairs of the Debtor do not require further investigation, hence*

application to be made of NCLT for early dissolution of the Corporate Debtor.

***“RESOLVED THAT** if the Adjudicating Authority doesn’t pass an order for dissolution of the Corporate Debtor, then the Resolution Professional appointed for the CIRP under Chapter II shall act as Liquidator for the purpose of liquidation as per Section 34(1) of the Code.”*

***“RESOLVED and PROPOSED** that RP be appointed as Liquidator as per the provisions of the Code.”*

- G. Pursuant to the aforesaid resolution passed in the 5th CoC meeting authorizing the Applicant to file an appropriate application for dissolution before the Ld. Adjudicating Authority, the Applicant moved as application being MA No. 3776/2019 under Section 54 of the Code read with Regulation 14 of IBBI (Liquidation Process) Regulations, 2017 seeking dissolution of the Corporate Debtor.
- H. The Miscellaneous Application 3776/2019 was listed before this Hon’ble Tribunal on 09.07.2021 wherein the Hon’ble tribunal was pleased to permit the Applicant to withdraw the said MA which was filed for direct dissolution of the Corporate Debtor and instead file an application for liquidation first. This Hon’ble Tribunal was pleased to pass the following order on 09.07.2021:

“Counsel for the applicant mentioned that the above M.A. is filed under Section 54 of IBC for direct dissolution of the Corporate Debtor which is under CIRP. This Bench observes that it is against the IBC, where only subsequent to the liquidation of the Company, application can be filed for dissolution of the Company. In view of the

above, the counsel for the applicant would like to withdraw this application or liquidation first.

Registry is directed to list the Company petition along with I.A. filed for liquidation as an when it was filed by RP.”

- I. After hearing the submissions made by the Counsel appearing for the Resolution Professional and upon perusing the material available on record, it is observed from the minutes of the 5th CoC meeting that the CoC has, with 100% majority, decided to liquidate the Corporate Debtor. Since no resolution had happened even after lapse of statutory period.
- J. The Applicant/ Resolution Professional Mr. Jitendra Palande, has agreed to act as liquidator to carry on the process of Liquidation and given his consent to act as Liquidator.
- K. This bench has no option except to allow the above I.A. No. 2351 of 2021 and shall pass an order of liquidation of Corporate Debtor. Accordingly we pass the following:

ORDER

- 1. The above I.A. No. 2351/2021 is allowed and the Corporate Debtor Phoenix Erectors Private Limited., is ordered to be liquidated.
 - a. Mr. Jitendra Palande, having Registration No. IBBI/IPA-003/IP-N00028/2017-18/10188 is hereby appointed as the 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.

With the above directions, this application i.e. I.A. No. 2351 of 2021 is hereby allowed and disposed of.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)