IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

I.A. No. 252 of 2022 in
C.P. (IB) No.112/BB/2021
(Admitted Matter)
U/s 33(2) of the I&B Code, 2016

Sushanta Kumar Choudhury
Resolution Professional of
East Mond Infra & Trade Pvt. Ltd. - Applicant / R.P.

In the matter of:

M/s. NHDPL South Private Limited - Petitioner / Operational Creditor

Versus

M/s. East Mond Infra & Trade Pvt. Ltd. - Respondent / Corporate Debtor

Order delivered on: 29th September, 2022

Coram: 1. Hon'ble Shri Kishore Vemulapalli, Member (Judicial)

2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties / Counsels Present:

The RP : Shri Sushanta Kumar Choudhury
For the RP : Shri Narayana Kamma, Adv.

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

I.A. No. 252 of 2022:

1. This application has been filed by Shri Sushanta Kumar Choudhury, Resolution Professional of M/s. East Mond Infra & Trade Private Limited (hereinafter as 'Corporate Debtor') under Section 33(2) of the Insolvency and Bankruptcy Code,

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2016 *inter alia* seeking an order of Liquidation in the matter of Corporate Debtor and to appoint the Applicant herein as Liquidator of the Corporate Debtor, etc.

2. The main Petition bearing CP (IB) No.112/BB/2021 was filed u/s 9 of the I&B Code, 2016 by M/s. NHDPL South Pvt. Ltd. (hereinafter as 'Operational Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP') against M/s. East Mond Infra & Trade Pvt. Ltd. and the same was admitted by this Adjudicating Authority on 05.01.2022 by appointing Mr. Nitin Daga as the Interim Resolution Professional (IRP) to carry out the resolution process of the Corporate Debtor.

3. Pursuant to Regulation 6 of the IBBI (CIRP) Regulations, 2016 ('Regulations'), the IRP had caused a Public Announcement in Form-A in *'The Financial Express'* (English language) and *'Vijayavani'* (Kannada language) on 08.01.2022, copies of which were attached as Annexure-2. Copy of the said public announcement was also displayed in IBBI website and the IRP had intimated the ROC, IT and GST Departments about the order for commencement of CIRP of the Corporate Debtor.

4. Pursuant to Regulation 21(1) of the aforesaid Regulations, the following Committee of Creditors (CoC) was constituted on 26.01.2022:

Sl. No.	*Name of the Creditors / Claimant*	*Claim Amount (Rs.)*	*Type of Creditors & Nature of Claim*	*Date of Receipt of Claim*	*% of Claim / Voting Share*
1.	NHDPL South Pvt. Ltd.	150,39,14,084	Operational – Unsecured	17.05.2022	66.36
2.	NUDPL Ventures Pvt. Ltd.	76,20,73,793	Operational – Unsecured	17.05.2022	33.64
	Total	**226,59,87,877**			**100.00**

5. Pursuant to Regulation 17 of the Regulations, a report certifying the constitution of CoC was submitted to this Adjudicating Authority on 27.01.2022. Subsequently, the CoC at its 1st meeting held on 02.02.2022 appointed the Applicant herein as the Resolution Professional (RP) of the Corporate Debtor and the same was confirmed by this Adjudicating Authority *vide* order dated 21.03.2022. Further, as per the

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decision of the CoC, the return in Form GNL-2 intimating the change in the registered office of the Corporate Debtor was filed with the ROC / MCA through e-filing on 24.02.2022.

6. It is stated that during the CIRP period, both the IRP and RP under the guidance of the CoC, in their bid to achieve a resolution, took a series of attempts to resolve the stressed assets of the Corporate Debtor but none of them yield any fruitful result as the Corporate Debtor has virtually ceased to operate for more than three years. Further, there were no fixed assets except some valueless Goodwill, Investment, Trade Receivables and Loans & Advances and Cash & Bank balance. After review of accounts and other documents, the IRP/RP felt that there is a remote chance of realization / recovery of these assets / dues or achieve a successful resolution of the Corporate Debtor. Further, attempts were made to recover the dues and advances from the trade debtors / parties but no response so far has been received from any party. Hence, there is also an uncertainty of recovery of such advances.

7. Inspite of above unfavourable situations, CoC in its 2nd meeting held on 18.03.2022, decided to invite the Expression of Interest (EOI) for a resolution plan from the prospective resolution applicants through publication of Form-G. Thus, a Public Announcement in Form-G was made in *'The Financial Express'* (English edition) & *'Vijayavani'* (Kannada edition) on 21.03.2022, with last date for receipt of the EOI being 05.04.2022. However, no EOI was received from any of the parties.

8. CoC in its 3rd meeting held on 28.04.2022 approved the Request for Resolution Plan (RFRP) and eligibility criteria for selection of resolution applicants. Since no successful EOI / resolution application was received even after a wide publicity, the CoC did not feel to have chance to receive any successful response / EOI from the second public announcement and hence, CoC in its 4th meeting held on 14.05.2022 with 100% voting share approved the liquidation of the Corporate Debtor as under:

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"Resolved that liquidation of M/s. East Mond Infra & Trade Pvt. Ltd., the Corporate Debtor, be and is hereby approved for liquidation under Section 33(2) of the IBC 2016 as no expression of interest was received from any prospective resolution applicant."

"Further Resolved that the Resolution Professional be and is hereby authorized to file the petition with the NCLT for liquidation of the Corporate Debtor under Section 33(2) read with Section 32(e) and 32(f) and in accordance with the Regulation 39B, 39C and 39D."

9. CoC in its 5th meeting held on 17.05.2022 appointed the Applicant herein as Liquidator of the Corporate Debtor and authorized him to file necessary Application before this Adjudicating Authority for approval. Written consent in Form-AA to act as Liquidator of the Corporate Debtor is attached as Annexure-15. Hence, the I.A.

10. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

11. The Hon'ble NCLAT in *Praveen Kumar Nand Kumar v. VSL Securities Pvt. Ltd. & Ors.* in Restoration Application No. 01 of 2020 in Company Appeal (AT) (Insolvency) No. 308 of 2020 dated 09.06.2020 *inter alia* observed as under:

"Likewise, the decision of the Committee of Creditors recommending liquidation of the Corporate Debtor after proper evaluation of the assets and liabilities of Corporate Debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the Committee of Creditors which is not amenable to judicial review."

12. The relevant provisions of Sections 33(1) and 33(2) of the Code are 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 insolvency

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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, it 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 creditors 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)."

13. **Prescribed period for filing application -** In the present case, the application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 was admitted on 05.01.2022. The present application is filed on 05.07.2022, i.e., before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the CIRP u/s 12, since no resolution plan under sub-section (6) of Section 30 has been received. **Hence, this application shall be considered under section 33(1) of the Code and not u/s 33(2).**

14. **Appointment of Liquidator -** 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 appointed for the CIRP shall, subject to submission of a written consent by the Resolution Professional to the Adjudicating Authority, act as the Liquidator for the purposes of Liquidation. **Shri Sushanta Kumar Choudhury, Insolvency Professional with IBBI Regn. No. IBBI/IPA-003/00292/2020-2021/13238.** The Law Research Associate of this

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Adjudicating Authority has checked the credentials of proposed Liquidator and nothing adverse has been found on record. Therefore, **Shri Sushanta Kumar Choudhury** is appointed as the **Liquidator of the Corporate Debtor.**

15. Regulations 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG048 dt.25.07.2019. Relevant aspects in this respect are examined hereunder:

a. **Liquidation cost [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]** – The liquidation cost is as per the Item No.5 of Annexure 14 to the Application.

b. **Assessment of sale as a going concern [Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]** – The CoC has made recommendation regarding sale of the Corporate Debtor as a Going Concern as per the Item No.7 of Annexure 14 to the Application. Therefore, the Liquidator is directed to refer Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016 and take necessary action.

c. **Fee of the Liquidator [Regulation 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]** -The fee payable to the Liquidator is as per the resolution passed at Item No.6 of Annexure 14 to the Application.

16. Pending Legal Cases, if any, and its effects – Pursuant to order dated 04.08.2022 passed by this Tribunal seeking to file the status of pending legal cases by and against the Corporate Debtor, Ld. Counsel for the Applicant has filed an Affidavit *vide* Diary No.3474 dated 16.08.2022 wherein the RP has affirmed that there is no legal case filed by or against the Corporate Debtor. However, there was a demand of Rs.52,66,328/- from the Service Tax Department, Govt. of India during 2014-15

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and the same has been disputed by the CD and an appeal has also been filed before the Hon'ble CESTAT on 04.03.2019, which is yet to hear the matter. Further, no claim has been received from the Department against the Public Announcement made in the newspapers on 08.01.2022 u/s 13 of the Code r/w Regulation 6 of the IBBI (CIRP) Regulations, 2016.

17. In view of the satisfaction of the conditions provided under Section 33(1) of thc Code, the Corporate Debtor, namely, **M/s. East Mond Infra and Trade Private Limited** is directed to be liquidated in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:

i.) That as per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor;

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

ii.) That the provisions of sub-section (5) of Section 33 of the Code shall 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; and

iii.) That this order of liquidation under Section 33 of the Code 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; and

iv.) That 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 effect and shall be vested in the Liquidator; and

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v.) That 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 provision of Section 19 of the Code shall apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.

vi.) That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 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 claims, which shall be 30 days from the liquidation commencement date.

vii.) That the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

viii.) That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the 'Liquidator' shall file his Preliminary Report within seventy-five (75) days and to file regular Progress Reports as per the Regulation 15.

18. Thus, **I.A No. 252 of 2022** stands disposed of.

19. Copy of this order be supplied to the Counsel for the Liquidator as well as to the Registrar of Companies, Bengaluru forthwith. The Registry is also directed to send a copy of this Order to the Liquidator at his e-mail address.

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MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

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KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

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