IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

IA 339/CB//2020
in
TP No. 182/CTB/2019
[Earlier COPET No. 55 of 2016]

In the Matter of:

An Application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read with the regulations of the Insolvency and Bankruptcy Board (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

and

In the Matter of:

Emerald Mineral Exim Private Limited, having its registered office at Mastan Road, P.O. Buxi Bazar, Cuttack, Orissa-753001.

... Corporate Debtor

versus

In the Matter of:

Dhanlakshmi Bank Limited, having its registered office at Dhanalakshmi Buildings, Naickanal, Thrissur-680001 and having one of its branch offices at 11/1, Sarat Bose Road, Ideal Plaza Building, Ground Floor, Kolkata PO: Betnoi Mayurbhanj, Odisha-757025.

... Financial Creditor

and

In the Matter of

Pratim Bayal, Resolution Professional appointed under Section 22 of the Insolvency and Bankruptcy Code, 2016, having office at CK 104, Sector -2, Salt Lake City, Kolkata- 700 091.

...Resolution Professional (RP)/Applicant

Order reserved on: 20.07.2021

Order pronounced on: 04.08.2021

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Coram:

Shri Rajasekhar V.K.	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

Appearances (through video conferencing)

For the Applicant	:	Mr, Pratim Bayal, Resolutional Professional
For the Respondent	:	Ms. M. Jesthi, Advocate Mr. Chandan Kumar Mohanty, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This IA has been filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 by the Resolution Professional in the matter of Emerald Mineral Exim Private Limited, seeking the following reliefs: -

   a) *Pass an order to liquidate the company under Section 33(2) of the Insolvency and Bankruptcy Code for liquidation of the company;*

   b) *To appoint the Resolution professional as Liquidator of the Corporate Debtor under Section 34; and*

   c) *Pass any other order or orders that this Tribunal may deem fit and proper in the circumstances of the case.*

2. The brief facts are that the application CA No. 19/CTB/2020 filed by Dhanlaxmi Bank Limited in TP No. 182/CTB/2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('**IBC**' for brevity) was admitted by this Adjudicating Authority on 20th February 2020 and the applicant herein has been appointed as the Interim Resolution Professional. Subsequently, the applicant herein was appointed as the Resolution Professional in the matter, as confirmed in the first

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COC meeting held on March 19, 2020. It is stated that due to non-cooperation from Promoter/Directors/Management of the Company the RP filed a non-cooperation application u/s/ 19 (2) before this Tribunal, accordingly orders were passed directing the Promoters/Directors/Management of the Corporate Debtor to co-operate with RP in providing relevant information during the CIRP. Despite the Order they failed to do so.

3. It is further stated that in absence of relevant documents/information/data the applicant herein could not prepare Information Memorandum and subsequently inviting Prospective Resolution Applicants by issuing Form – G. There is no business of the Corporate Debtor beyond 2013. Except for some fixed assets, mostly mortgaged with the lending banks, there were no other Assets available. Considering all the factors the COC opined that there is no scope for getting any resolution for the Corporate Debtor. Accordingly, COC resolved for liquidation of the Corporate Debtor in the 5th COC Meeting held on October 19, 2020 with 100% votes. The Minutes of COC Meeting along with voting results have been filed with the application in Annexure – B. COC has further recommended that Shri Pratim Bayal, Resolution Professional may continue as liquidator, whose fees etc. would be as has been prescribed by IBBI.

4. We have heard the learned Resolution Professional, who appeared in person through video conferencing and had gone through the details placed on record. The learned Resolution Professional has clearly stated in his application the reasons for seeking a direction for liquidation of the Corporate Debtor. The Resolution Professional has produced the relevant CoC resolutions in this regard. In the 5th meeting of the COC it was resolved with 100% voting right to liquidate the Corporate Debtor, Emerald Mineral Exim Private Limited. COC has also resolved to appoint the Resolution Professional Shri Pratim Bayal as the Liquidator.

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5. In this respect, it is relevant to reproduce section 33(2) of the Insolvency and Bankruptcy Code, which is as under:

"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 percent 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)."

6. From a reading of the above provision, it is clear that when a Resolution Professional at any time during the CIRP but before confirmation of Resolution Plan approaches the Adjudicating Authority with the decision of the COC approved by not less than sixty six percent of the voting share, the Adjudicating Authority shall pass a liquation order. In this case the CoC with 100% voting right approved the resolution for liquidation of the Corporate Debtor. Hence, this is a fit case to order liquidation under Section 33(2) of the IBC, 2016.

7. For the aforesaid reasons, IA 339/CB/2020 is **ALLOWED** with the following order: -

ORDER

(i) The Corporate Debtor, Emerald Mineral Exim Private Limited is ordered to be liquidated with immediate effect under Section 33(2) of IBC, 2016.

(ii) The Resolution Professional Shri Pratim Bayal (Registration No. IBBI/IPA-003/IP-N-00213/2018-2019/12385) of M/s. Emerald Mineral Exim Private Limited having office at: CK-104, Sector 2, Salt Lake, Kolkata – 700 091, West Bengal, is hereby appointed as Liquidator of the Corporate Debtor, since he has given his consent to be so appointed. This appointment is subject to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional

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member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019.

(iii) The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time.

(iv) Public Notice as contemplated under section 33(1) of the Code shall be issued in *The Financial Express* in English and *the Sambad* newspaper in Odia.

(v) All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel shall cease to exist in accordance with section 34(2) of the Code. These powers shall henceforth vest in the Liquidator.

(vi) The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in the liquidation process of the Corporate Debtor.

(vii) 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 a 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.

(viii) 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.

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(ix) In terms of Section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Odisha, Cuttack, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, Odisha, Cuttack.

(x) The application bearing IA No. 217/KB/2021 shall stand disposed of in accordance with the above directions.

(xi) TP (IB) No.182/CTB/2019 to come up for filing of periodical report by the Liquidator on 29.10.2021.

(xii) 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.

(xiii) Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

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Satya Ranjan Prasad
Member (Technical)

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Rajasekhar V.K.
Member (Judicial)

Signed on this 4th day of August, 2021

Ravijeet_P.S.