

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

I.A. 2185/2021

In

C.P. No. (IB) 2284/MB/2018

Filed by

Shashank Kalkar,

P. No. 24, Opp. HPT College, Thatte Marg,
Nashik- 422005

...Applicant / Proposed Resolution Applicant

Vs.

Prakash Nath Mishra.

Resolution Professional,

Herodex Power Systems Pvt Ltd.

S-31, Regimental Plaza, Bitco Point,

Nashik Road, Nashik, Maharashtra- 422101

...Respondent No. 1

Canara Bank

(Committee of Creditors)

FP- 790 Part,

Jeejabai Bhosle Marg, Near Mangala Theatre,

...Respondent No. 2

IN THE MATTER OF

Raychem RPG Pvt Ltd

...Petitioner / Operational Creditor

Vs

Herodex Power Systems Pvt. Ltd.

...Respondent / Corporate Debtor

Reserved for Orders on: **30.01.2023**

Order delivered on: **10.02.2023**

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

Appearance:

For the Applicant: Mr. Manoj Kumar Mishra

For the Respondent/RP: Mr. Devul Dighe

Per: Shri H.V. Subba Rao, Member (J)

ORDER

1. The above I.A. is filed by Mr. Shashank Kalkar who was the member of the suspended board of the Corporate Debtor M/s. Herodex Power Systems Pvt Ltd for the following reliefs:

- a) *Direct the Committee of Creditors to re-consider the Resolution Plan without any biasedness against the Resolution Applicant.*
- b) *Direct the Resolution Professional to given an affidavit to the effect that the assets of the Corporate Debtor at Hyderabad is duly protected and safe.*
- c) *Pass such other or further order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

2. Heard, Mr. Manoj Kumar Mishra, counsel appearing for the Applicant and Mr. Devul Dighe, counsel appearing for the Resolution Professional.

3. After hearing the submissions of both sides and upon perusing the material available on record, this Bench observes that the present applicant has submitted a Resolution Plan in the capacity as ex-promoter of an MSME which was rejected by the COC. It is needless to mention here that the COC also filed another application bearing I.A. 1894/2020 for liquidation of the Corporate Debtor Company with 100% voting of COC which was also listed on board today along with the above application.
4. The bench further observed that the main grievance of the petitioner as mentioned in paras 8, 9, 12 and 13 are as follows;

Para 8

When the Applicant realized that there is no scope for his resolution plan to be considered by the Committee of Creditors then the Applicant approached to this Hon'ble Tribunal with IA No. 166 of 2021 with a prayer to direct the Resolution Professional to get the Resolution Plan considered by the Committee of Creditors.

Para 9

That the hearing took place for the Interlocutory Application No. 166 of 2021 on 10th February, 2021, wherein the Hon'ble Tribunal asked the Applicant about the features of the Resolution Plan and source of the funds to be used for the Resolution Plan. The Hon'ble Tribunal has also questioned the approach of Resolution Professional for not considering the Resolution Plan and going for the liquidation of the Corporate Debtor when there was a scope for the revival of the Corporate Debtor. The order dated 10th February, 2021 stated that "The respondent is directed to take instructions regarding certain information specifically with regard

to the offer made by Applicant of Rs. 7.00 crores towards the Resolution Plan.”

Para 12

The Applicant had a major concern about the Plot of land at Survey No. 6 situated at Jalapally, Hyderabad for which the Resolution Professional had not taken possession which was against the requirement of Insolvency and Bankruptcy Code, 2016. The said land was 5 Acres and 36 Gunthas which was a considerable asset of Corporate Debtor. The Applicant’s apprehension regarding the assets located at Survey No. 6 emanated from the fact that the Resolution Professional seems to have no idea of the asset, nor has he taken any step for the possession of said land. We are further concerned about the safety of the assets as it is prone to encroachment by the persons living nearby.

Para 13

For the reason of the safety of the agricultural land located at Jalapally, the Applicant sought an affidavit to the effect that entire land in Survey No. 6 is intact and the same can be handed over to the Corporate Debtor. The Resolution Applicant had been willing to pay an amount of Rs. 8 Crores as envisaged in the Plan after considering the land situated at Jalapally.

5. It appears, the present Petitioner is the owner/mortgagor who mortgaged the property in the capacity of personal guarantor of the Corporate Debtor and created mortgage in favour of the Financial Creditor. The Petitioner being the owner and mortgagor of the subject matter of land in question is expected to be more conversant with

the ownership title and possession of the land than the mortgagee and the Resolution Professional.

6. The above conduct of the Petitioner in expressing apprehension regarding occupation of land by third parties and insisting the Resolution Professional to confirm whether the land is intact or occupied by third party clearly raises suspicion about the conduct of the Applicant. The repeated insistence of the petitioner to confirm about the availability of land for sale as a condition precedent to submit his Plan clearly proves that he has mortgaged a disputed and defect property knowingly to one of the Financial Creditors and in order to cover up his foul play using the Resolution Professional's inaction if any as tool to escape the clutches of future criminal action if any initiated by RP/FC due to defect title without possession etc. since it is the responsibility of the petitioner to protect the property of Corporate Debtor till CIRP order dated 09.09.2019. The bona fides of the applicant in filing the above application is highly doubtful and needs to be investigated thoroughly.

7. This Bench further observes that the prospective Resolution Applicants including the applicant despite extension of time by COC for submitting plans did not choose to submit any concrete plan for approval and accordingly the COC after discussing thoroughly passed a Resolution for liquidation with 100% voting. Even otherwise, it is important to mention here that the CIRP order was passed in this case on 09.09.2019 and no Resolution has taken place so far even after more than three years and consequently neither the COC nor this Tribunal has no option except to pass an order of liquidation in order to prevent further deterioration of the value of

the assets of the Corporate Debtor and the applicant has no say in this regard.

8. For the aforesaid reasons, this Bench is of the considered opinion that the above application filed by petitioner is a deliberate attempt neither to allow the CIRP process nor the Liquidation of the Corporate Debtor and has no merits and is liable to be dismissed with heavy costs.
9. Accordingly, the above I.A. is rejected with costs of Rs. 1 lac (1,00,000/-) payable to the PM relief fund within two weeks from the date of the order.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

---Rajeev---

Sd/-

**H.V. SUBBA RAO
MEMBER (JUDICIAL)**

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

IA. No. 1894 of 2020

IN

C.P.No.(IB)2284(MB) of 2018

Under Section 33(3), r/w 14 of Insolvency
& Bankruptcy Code, 2016

In the matter of

Herodex Power Systems Pvt Ltd.

.... CORPORATE DEBTOR

I. A. No. 1894 of 2020

Mr. Prakash Nath Mishra.

.... Applicant/Liquidator

Order Reserved on : 30.01.2023

Order Pronounced on : 10.02.2023

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Shri Prabhat Kumar, Member (Technical)

For the Applicant: Mr. Devul Dighe (Advocate)

Per: Shri H.V. Subba Rao, Member (Judicial)

1. The above application I.A. No. 1894/2020 is filed by Resolution Professional, Mr. Prakash Nath Mishra (hereinafter referred to as the "Applicant") seeking liquidation of Herodex Power Systems Private Ltd. (hereinafter referred to as the "Corporate Debtor") under Section 33(3) of the Insolvency and Bankruptcy

Code, 2016 (hereinafter called as “the Code”), praying for following reliefs:

- a. Consider and allow the present application for liquidation of the Corporate Debtor under Section 33(2) of the Insolvency & Bankruptcy Code, 2016;*
- b. To appoint Mr. Prakash Nath Mishra, Resolution Professional of the Corporate Debtor having Registration No. IBBI/IPA-003/IP-N000115/2017-2018/11219 as the Liquidator of the Corporate Debtor.*
- c. Issue such other orders as may be necessary in the matter.*

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

- A. The present Application has been filed by, **Mr. Prakash Nath Mishra** the Resolution Professional of **Herodex Power Systems Pvt Ltd.** (“Corporate Debtor”) under Section 33(3) of the Insolvency and Bankruptcy code, 2016 (“the code”), in order to bring to the kind notice of this Hon’ble Tribunal that the Committee of Creditors (“COC”) of the Corporate Debtor, which consists of the sole financial creditor, namely Canara Bank, has resolved to liquidate the Corporate Debtor.
- B. On 09.09.2019, the Corporate Debtor was ordered CIRP filed u/s 9 and thereafter Mr. Hajari Lal Saini as the Interim Resolution Professional (IRP) of the Corporate Debtor.
- C. On 03.10.2019, the Public announcement of CIRP was made inviting claims from all creditors and the last date for filing of claims by the Creditors of the Company was 15.10.2019.
- D. Thereafter the IRP Mr. Hajari Lal Saini continued to work as deemed RP in terms of provisions of Section 16(5) of the code.

The Applicant further states as that claim from on financial creditor namely Canara Bank was received and verified by the IRP. Accordingly, Committee of Creditors (“CoC”) comprising of one or sole financial creditor i.e. Canara Bank was constituted.

- E. On 01.01.2020, Pursuant to the approval of CoC in its 4th meeting, the Invitation for Expression of interest in Form G was published by the IRP in Four newspaper i.e. “The Times of India” and “The Trinity Mirror” (English) for the both state Maharashtra and Tamil Nadu, “Maharashtra Times” and “Makkal Kural” for the both state Maharashtra and Tamil Nadu, where the company carries operations/material business with Tamilnadu Generation & Distribution Corporation Limited as per Regulation 36-A(2)(i). The same was also hosted on the website of the IBBI as per Regulation 36-A(2)(iii).
- F. Further that the last date for submission of the EOI by Prospective Resolution Applicant (PRA) on 17.01.2020 and EOI was received from 4 Prospective Resolution Applicants.
- G. On 19.02.2020, the deemed Resolution Professional Mr. Hajari Lal Saini was replaced by Resolution Professional Mr. Prakash Nath Mishra.
- H. Applicant further stated that on 8th CoC meeting held on 23.06.2020 due to the lockdown and other severe issues faced due to Covid-19 pandemic and also general progress made from the last meeting held. The CoC further agreed to extend time limit for submission of Resolution Plan till 30.06.2020 on the request of Mr. Kalkar, due to prevailing covid-19 pandemic.

- I. On 08.10.2020, in the 10 CoC meeting insisted on passing of resolution on liquidation of the corporate debtor. The CoC further on 14.10.2020 in its 11th CoC meeting decided to vote on liquidation of the corporate debtor in view of the fact that no resolution plan was submitted by prospective resolution applicants till date including Mr. Kalkar despite time limit for submission of resolution plan extended on his request earlier. The CoC also took note of the prevailing economic situation of the country, and decided that as no resolution of the Corporate Debtor could be expected in near future and its non-feasibility, it would be prudent to liquidate the corporate debtor and requested Resolution Professional to conduct e-voting during the period from 16.10.2020 at 11:00 a.m. till 17.10.2020 upto 11:00 a.m. The CoC by 100% voting rights approved liquidation of the Corporate Debtor.
- J. On 14.10.2020 in the 11th CoC Meeting the members decided to unanimously opt for Liquidation. The Resolution Professional informed that there is no resolution plan received from any of the prospective applicant till date. He further informed that Mr. Shashank Kalkar has written an email on 14.10.2020 seeking further time for submission of the resolution Plan. The issue was deliberated, and it was observed that there is no other resolution plan for consideration from any of the prospective resolution applicant till date, considering the COVID-2019 pandemic situation it is unlikely to get any resolution plan in near future. CoC members maintain a considerate view with relaxed approach, due to prevailing economic and pandemic situation, to support the effort of Mr. Shashank Kalkar in providing a

resolution plan, however he has not been able to present any evidence of specific and substantial development in the process, and have been asking for the extended time at each successive CoC meetings. Considering all the merits of present situation, it was a consensus that liquidation is inevitable, there is no advantage in prolonging the decision process any further, hence CoC members took the decision of taking the corporate debtor to liquidation. It was proposed by the CoC Members that the application for liquidation should be filled with NCLT and accordingly following resolution was proposed;

The relevant extract of the resolution is reproduced herein below for ready reference:-

*“**RESOLVED THAT**, due to non receipt of any resolution plan considering the COVID-2019 situation, and non feasibility of resolution of the corporate debtor, CoC decides to apply for the liquidation under section 33(2) of the Insolvency and Bankruptcy Code, 2016 and related provisions.”*

*“**RESOLVED FURTHER THAT** the Committee of Creditors hereby authorize Mr. Prakash Nath Mishra, the Resolution Professional to intimate the decision by filing appropriate application to the Adjudicating Authority for liquidation under Section 33 of the Insolvency and Bankruptcy Code,2016 and related provisions”*

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, it is observed from the minutes of the 11th CoC meeting that the CoC has unanimously decided to liquidate the Corporate Debtor and

appointed the Applicant as liquidator. This bench, therefore allows the above Interlocutory Application Number 1894 of 2020 and passed the following:

ORDER

1. The above I.A. No. 1894/2020 is Allowed, and the Corporate Debtor Herodex Power Systems Pvt. Ltd. is ordered to be liquidated.
 - a. **Mr. Prakash Nath Mishra** (IP Registration No. IBBI/IPA-003/IP-N000115/2017-2018/11219 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
 - b. That the Liquidator for the conduct of Liquidation proceedings would be entitled to a remuneration according to Liquidation fees (B) As per Regulation 4 of the IBBI (Liquidation Process) Regulation 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.
- j. Registry is directed to communicate this order to the Liquidator.

With the above directions, this application i.e. I.A. No. 1894 of 2020 is hereby allowed and disposed of.

Sd/-
Prabhat Kumar
MEMBER (TECHNICAL)

Sd/-
H.V. Subba Rao
MEMBER (JUDICIAL)