

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**



ITEM No.4

IA/607(AHM)2023 in C.P.(IB)/135(AHM)2021

**Proceedings under Section 33 IBC,2016**

**IN THE MATTER OF:**

Jigar Tarunkumar Bhatt RP of Eternal Motors Pvt Ltd

.....Applicant

**Order delivered on: 13/09/2023**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)

Mr.Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

**KAUSHALENDRA KUMAR SINGH  
MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN  
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY**  
**(NATIONAL COMPANY LAW TRIBUNAL)**  
**AHMEDABAD BENCH**  
**COURT No.-I**

**I.A. No. 607 of 2023**  
**in**  
**C.P. (I.B.) No.135/10/NCLT/AHM/2021**

*[Application u/s. 33(1), 33(2) and 34(1) of the Insolvency and Bankruptcy Code, 2016]*

**Mr. Jigar Tarunkumar Bhatt,**  
Resolution Professional of:

M/s. Eternal Motors Private Limited  
1012, Shilp-Zaveri, Shyamal Cross Road,  
Satellite, Ahmedabad-380015

**..... Applicant/ Resolution Professional**

**Order delivered on: 13.09.2023**

**Coram: Shammi Khan, Member (Judicial)**  
**Kaushalendra Kumar Singh, Member (Technical)**

**Appearance:**

For the Applicant: Mr. Rajiv Chawla, Advocate for  
Mr. Arjun Sheth, Advocate  
& Mr. Jigar Bhatt, RP in Person

**ORDER**

1. This instant application is filed by Mr. Jigar Tarunkumar Bhatt, Resolution Professional of the Corporate Debtor- **M/s. Eternal Motors Private Limited** under section 33 of the Insolvency and Bankruptcy Code,2016 (IBC,2016) for seeking liquidation order of the Corporate Debtor- Eternal Motors Private Limited.



2. The averments made in application and submitted by Counsel for the applicant are as follows:

(i) This Adjudicating Authority vide its order dated 10.08.2022 admitted the Petition under section 10 of the Code, filed by the Corporate Person i.e. M/s. Eternal Motors Pvt. Ltd. for initiation of its own Corporate Insolvency Resolution Process (herein after referred to as the “CIRP”). Mr. Manish Santosh Buchasia herein was appointed as the Interim Resolution Professional (hereinafter referred to as the “IRP”) of the Corporate Debtor by this Tribunal.

(ii) The IRP made public announcement of CIRP of the Corporate Debtor on 16.08.2022 for inviting submission of claim by the Creditors. The last date for submission of claims was 30.08.2022. The IRP then constituted the Committee of Creditors. A tabulated description is given in Para-4 of the application which depicts the name of CoC members and their percentages of voting shares.

(iii) In order to determine Liquidation Value and Fair value of Corporate Debtor in accordance with Regulation 35, the IRP had appointed different registered valuers for valuation of Plant & Machinery, Land & Building and Securities/Financial Assets.

(iv) In the 2<sup>nd</sup> meeting of the Committee of Creditors, it was resolved to appoint Applicant as Resolution Professional (“RP”). Pursuant thereto, the CoC filed an Interlocutory Application No.1000 of 2022 for seeking replacement of IRP by RP. This Adjudicating Authority, vide its order dated 21.11.2022 allowed the appointment of applicant as RP. The Applicant/RP proceeded with the CIRP.



(v) The Applicant/RP appointed transaction auditor M/s. Rajiv Ahuja & Associates, Chartered Accountants as the Auditor of the Corporate Debtor on 26.12.2022 and the same was informed to the CoC in the fifth CoC meeting held on 29.12.2022. The appointed Auditor prepared a transaction audit report dated 27.03.2023 for the transactions that have been carried out by the Corporate Debtor from 01.04.2020 to 09.08.2022.

(vi) Pursuant to the discussions in the fourth meeting of CoC held on 08.12.2022, the Applicant had published the Form-G on 12.12.2022 in two newspapers for inviting Expression of Interests from the Prospective Resolution Applicants (“PRA”). In response to Form G, the Applicant received EOIs from three (3) PRAs.

(vii) In 6<sup>th</sup> CoC meeting held on 27.01.2023, applicant informed the CoC that Information Memorandum, Evaluation Matrix and Request for Resolution Plans has been issued to PRAs. Further, he also issued final list of PRAs to CoC members wherein, there were two PRAs. In the said meeting CoC by 87.16% of voting share resolved to file an application for seeking extension of 90 days and exclusion of time taken in legal proceedings in IA. NO. 1037 of 2022.

(viii) The Applicant filed an application bearing I.A. No. 219 of 2023 seeking extension and exclusion in CIRP timeline. This Adjudicating Authority vide its order dated 20.02.2023 allowed the application only to the extent of extending the CIRP by 90 days.



(ix) In 7<sup>th</sup> CoC meeting held on 24.02.2023, members of the CoC on request of PRAs agreed to extend the time line for submission of resolution plan from 01.03.2023 till 14.03.2023. Further, CoC also passed resolution for publication of revised Form G for re-inviting EOI. The Applicant published revised Form G for re invitation of EOI on 03.03.2023 however, no EOI was received.

(x) The Applicant in 8<sup>th</sup> CoC meeting informed the members that PRA namely, Bhavesh Pravinchandra Shah & Kiritkumar Pranlal Sakhpara (Consortium) has submitted the Resolution Plan. The said plan was vetted post 8<sup>th</sup> CoC meeting and PRA was asked to submit revised resolution plan by 18.04.2023.

(xi) The Applicant in 9<sup>th</sup> CoC meeting informed the CoC that revised resolution plan submitted by Bhavesh Pravinchandra Shah & Kiritkumar Pranlal Sakhpara (Consortium) did not confirm to the condition referred to in sub-section (2) of Section 30 of the Code therefore, the same was not placed before the CoC for seeking approval. The CoC also denied to consider the said plan as commercials offered were much below the liquidation value of the Corporate Debtor.

(xii) Further, the Applicant informed the CoC that last day of CIRP would be 13.05.2023 and exclusion can be sought on the ground of time consumed in getting order of IA No. 1037 of 2022. However, the CoC was of an opinion that enough attempts were made for publishing Form G twice and that there is no commercial point in extending CIRP period considering the nature and state of business of the



Corporate Debtor therefore, agenda for liquidation of the Corporate Debtor was put for e-voting from 06.05.2023 till 11.05.2023.

(xiii) The resolutions passed by CoC which are recorded in the minutes of 9<sup>th</sup> CoC meeting are as follows:

(a) The CoC with 89.16% voting decided to liquidate the Corporate Debtor and appointed Mr. Jigar Tarunkumar Bhatt as Liquidator to carry on the process of liquidation of Corporate Debtor. Mr. Jigar Tarunkumar Bhatt has agreed to act as Liquidator to carry on the process of Liquidation and given his consent to act as Liquidator.

(b) The CoC with voting share of 87.66% agreed to explore compromise or arrangement for the Corporate Debtor.

(c) The CoC with voting share of 89.16% recommended liquidator to first explore sale of the Corporate Debtor as going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the Corporate Debtor as a going concern under clause (f) thereof, in the event of liquidation order is passed.

(d) The CoC with 81.04% voting share approved remuneration of liquidator as Rs.1,00,000/- per month plus GST, which shall be payable during the period of first 90 days from the date of liquidation order and

thereafter with discount of 40% for the liquidation of Corporate Debtor.

(e) The CoC with 81.04% voting share consented that if realisation value of the liquid assets of the Corporate Debtor falls less than the estimated liquidation costs, the committee shall be providing for contribution in their claim ratio for meeting the difference between the two as and when called upon by liquidator during the liquidation process.

(xiv) In 9<sup>th</sup> CoC meeting, the Applicant also informed the CoC about the CIRP Cost incurred and the projected additional CIRP Cost for next 3 months. The CoC assured the Applicant to remit the required contribution at the earliest.

3. On issuance of notice upon Suspended Management, the Counsel for Suspended Management appeared on 19.07.2023 and requested time to file reply, one week's time was granted for the same however, no reply has been filed.

4. After hearing the submissions made by Counsel for the Applicant and upon perusing the material available on record, it is observed that resolution plan submitted by Bhavesh Pravinchandra Shah & Kiritkumar Pranlal Sakhpara (Consortium) failed to comply with conditions referred to in sub-section (2) of Section 30 of the Code therefore; the same was not considered by CoC. Further, revised Form-G was also issued however, no EOI was received. We note that there is no other resolution plan pending for consideration before CoC and the CIRP period has expired. Therefore, the present Application is filed by Applicant for liquidation of Corporate Debtor.



Accordingly, in view of expiry of CIRP period and absence of resolution plan, it is a fit case to order liquidation under section 33 of the Insolvency and Bankruptcy Code, 2016.

5. It is further observed from the minutes of 9<sup>th</sup> CoC meeting that the CoC with 89.16% voting has decided to liquidate the Corporate Debtor and approved appointment of applicant as liquidator. It is also observed that CoC has recommended the Liquidator to sell the Corporate Debtor as going concern under clause (e) or (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and consented to contribute for meeting the difference between the realisation value of liquid assets of the Corporate Debtor and liquidation cost.

6. The Hon'ble Supreme Court in the matter of ***K. Sashidhar Versus Indian Overseas Bank & Ors in Civil Appeal No. 10673 of 2018*** has held that the commercial decision of CoC is non-justifiable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.

7. IBBI in its letter dated 18.07.2023, has recommended that IP other than the IRP/RP may be appointed as liquidator in all the cases where a liquidation order is to be passed henceforth, and the liquidator can be appointed from the panel list of IBBI.

8. In view of the facts and circumstances and documents available on record, we pass the following order:

- (i) The corporate debtor M/s Eternal Motors Private Limited shall be put into liquidation in terms of the provisions of section 33(2) of the Code r.w. Regulations



made thereunder which shall be effective from the date of this order. Accordingly, we allow IA/607/AHM/2023.

(ii) The Moratorium declared under section 14 of the Code shall cease to have effect from the date of the order of liquidation.

(iii) According to section 34(4)(b) of the Code and the letter dated 18.07.2023 of IBBI, we hereby appoint **Mr. Nimai Gautam Shah** having Registration No. IBBI/IPA-001/IP-P00154/2017-2018/10323E-mail Id: [cnjabd@gmail.com](mailto:cnjabd@gmail.com) as a liquidator of the corporate debtor i.e. M/s Eternal Motors Private Limited. The liquidator so appointed shall complete the liquidation process as per the provisions of the Code r.w. the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(iv) All the powers of the Board of Directors, key managerial persons, and the partner of the corporate debtor, as the case may be, hereafter cease to exist. All these power henceforth vest with the liquidator.

(v) The personnel of the corporate debtor are directed to extend all cooperation to the liquidator as required by him in managing the liquidation process of the corporate debtor.

(vi) The liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by IBBI and same shall be paid to the liquidator from the proceed of the liquidation estate under section 53 of the Code.

(vii) Once the liquidation process is initiated, subject to section 52 of the Code, no suit or other legal proceeding



shall be instituted by or against the corporate debtor. The liquidator has the liberty to institute a suit and other legal proceedings on behalf of the corporate debtor with the prior approval of this Adjudicating Authority, as provided in sub-section (5) of section 33 of the Code.

(viii) This liquidation order shall be deemed to be 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.

(ix) This Adjudicating Authority directs the liquidator to issue a public announcement stating that the corporate debtor is in liquidation. The liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the corporate debtor so that the authorities concerned are informed of the liquidation order timely. The liquidator will also provide a copy of this order to the trade unions/employee associations of the corporate debtor so that the workman/employees could also be informed of this liquidation order through their association.

(x) The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the corporate debtor, the resolution professional, and the liquidator by speed post as well as e-mail within one week from the date of this order, after completion of all the formalities.



(xi) The present resolution professional is directed to hand over the relevant documents and control of the corporate debtor to the newly appointed liquidator forthwith.

9. Accordingly, the present **I.A. No.607 of 2023** is allowed and stands disposed of.

-SD-

**KAUSHALENDRA KUMAR SINGH**

**MEMBER TECHNICAL**

-SD-

**SHAMMI KHAN**

**MEMBER JUDICIAL**

Arati Suryavanshi-LRA