

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (COURT-I), KOLKATA**

IA(IB)/1106(KB)2022

Connected with

CP (IB)/1237(KB)2018

*An application filed under Section 60(5) of the Insolvency and Bankruptcy Code,  
2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016;*

**In the matter of :**

**Beni Gopal Singh, carrying on business under the name of BG Associates, of  
Chowringhee Mansion, A/2D, Kyd Street, Kolkata - 700 016;**

**...Applicant / Operational Creditor**

**Versus**

EMC Limited, an unlisted public non-government company, limited by shares,  
registered under the provisions of the Companies Act, 1956 bearing CIN  
U70100WB2010PLC151197 having its Registered Office at 51 Canal (East)  
Road, Kolkata - 700 085.

**....Corporate Debtor**

**And**

**In the matter of:**

**Kannan Tiruvengadam, having registration number as IBBI/IPA-  
001/IP/P00253/2017-2018/10482, the Resolution Professional appointed by this  
Tribunal as Resolution Professional for EMC Limited.**

**....Applicant**

**Date of Pronouncement: 03/01/2023**

**Coram:**

**Shri Rohit Kapoor, Member (Judicial)**

**Shri Balraj Joshi, Member (Technical)**

**Counsel appeared physically/Video Conferencing:**

**For Power Grid Corporation of India**

1. Mr. Anirban Ray, Adv.
2. Mr. Partha Banerjee, Adv.
3. Mr. Aritra Basu, Adv.

**For the Applicant in E.S.M. 1008 / EB / 2022**

1. Mr. Tapan Bhanja, Adv.
2. Mr. Bhaskar Prosad Banerjee, Adv.

**For RP**

1. Mr. Joy Saha, Sr. Adv.
2. Mr. Pratik Mukhopadhyay, Adv.
3. Mr. Saptarishi Mandal, Adv.

**ORDER**

***Per Balraj Joshi, Member (Technical):***

1. This is an application filed by the RP appointed in the matter seeking following reliefs:

(a) Pass an order directing the applicant to conduct fresh valuation of the Corporate Debtor to determine the Fair Value of the Corporate Debtor as on 20<sup>th</sup> April 2022 and other consequential reliefs if any.

**Brief Facts of the case**

2. The corporate debtor was admitted to CIRP on 12<sup>th</sup> November 2018 subsequent to which the resolution process was initiated and a resolution plan was approved by this Adjudicating authority. However, as the successful resolution applicant failed to implement the Resolution Plan, this Adjudicating Authority vide Order dated 20<sup>th</sup> April 2018, directed a limited reboot of the CIRP from the stage of Form G publication.

3. Subsequently the Resolution Professional invited Expression of Interest (EoI), following which some PRAs showed interest. Consequent upon extension of the CIRP period vide order dated 17<sup>th</sup> June 2022, one resolution plan has been received and is presently under consideration of the CoC. The time period for the CIRP now stands extended till 16<sup>th</sup> January 2022 vide order dated 3<sup>rd</sup> November 2022 passed by this Adjudicating Authority.

#### **Submissions by Ld. Counsel on behalf of the Applicant**

4. It has been submitted by the Ld. Senior Counsel appearing for the RP that Since the valuation of the CD was carried out in the first phase of the CIRP and dates back to February 2019, the CoC felt that in order to have an effective resolution there appeared to be a necessity of the revision in the valuation of the CD. This aspect was deliberated by the CoC in its 18<sup>th</sup> meeting held on September 1<sup>st</sup> 2022, wherein 89.04% of the members of the CoC have voted in favour of such revaluation and for appointing registered valuers.

5. Ld. Sr. Counsel appearing for the RP stated that the Corporate Debtor viz. EMC Limited is basically an EPC Company whose assets consist of the contracts which had been bagged by it over a period. After the first CIRP was initiated, RP namely Mr. Kannan Tiruvengadam, having registration number as IBBI/IPA-001/IP/P00253/2017-2018/10482 continued to run the enterprise as a going concern.

6. It is further submitted that with the sustained efforts of the RP, 22 projects out of 32 projects in hand were completed by the Corporate Debtor. Whereas this reflects on the efficacy of the resolution concept wherein the enterprise is run by the RP as a going concern, it created a different situation for the Corporate Debtor as owing to the completion of the Project itself, the asset base of the corporate debtor has shrunk as the corporate debtor is an EPC company and a majority of its assets consisted of the EPC projects in hand.

7. Upon realization of this fact the PRAs sought a number of clarifications during their meeting with the CoC. The CoC after considering various representations, decided in 18<sup>th</sup> Meeting to go on for the revaluation of the assets and this necessity having arisen due to completion of a number of EPC projects and consequent reduction in the asset base.

8. It was, therefore, submitted by the Ld. Sr. Counsel that in the above scenario it appears plausible that the prospective PRA would quote a plan value which may be far too low in comparison the fair value of the CD , which was done almost 4 years ago and there is every possibility that CoC would not accept the plan and consequently the CD may have to be liquidated. As such it is necessary that the fresh valuation is carried out so that the Corporate Debtor can be revived.

9. The following reasons for the purpose of fresh valuation of the Corporate Debtor to determine the fair value and liquidation value of the Corporate Debtor as on 20<sup>th</sup> April, 2022 have been expressed largely on the basis of the minutes of 18<sup>th</sup> CoC meeting held on 1<sup>st</sup> September 2022:

a. The determination of fair value and liquidation value of the Corporate Debtor was done after commencement of CIRP of the Corporate Debtor on 12<sup>th</sup> November, 2018 and while a period of nearly 4 (four) years have passed thereafter, no fresh valuation has been done with respect to the Corporate Debtor.

b. In the 18<sup>th</sup> Meeting of the COC of the Corporate Debtor held on 1<sup>st</sup> September, 2022 though there was no specific agenda on valuation, however during discussions that were held to inter-alia deliberate on the resolution plan submitted by one Riddhi Siddhi Bullions Limited , the members of COC did discuss for conducting fresh valuation of the Corporate Debtor given the fact that close to 4 (four) years have elapsed since 12<sup>th</sup> November, 2018 i.e. the Insolvency Commencement date of the Corporate Debtor and that the current

valuation of the Corporate Debtor is most likely to have undergone a substantial change.

c. The value of the resolution plan received from the PRA is lower than the liquidation value arrived at pursuant to the first valuation exercise which was conducted pursuant to the initiation of CIRP of the Corporate Debtor on 12<sup>th</sup> November, 2018, even if such plan were to succeed, dissenting financial creditors would hold an undue edge in terms of financial reward in view of the mandatory minimum amount of payment to be made to such dissenting financial creditors in terms of the provisions of the IBC.

d. It was also discussed that the members of the COC needed to follow certain internal protocols while assessing resolution plans in relation to companies undergoing CIRP and for that purpose knowledge of the current valuation of the Corporate Debtor was crucial as it would serve as a reference point.

e. Most Financial Creditors may choose to vote against the resolution plan which would push the Corporate Debtor into liquidation. Accordingly the COC resolved by a voting percentage of 89.04% for fresh valuation to be conducted in respect of the Corporate Debtor.

f. Although no specific power has been provided to the COC to call for any valuation in respect of the CIRP of the Corporate Debtor, there is no bar under the IBC which prevents the COC from calling for a fresh valuation report. COC members must consider the valuation of the Corporate Debtor in great detail before taking any decision on whether they accept or reject the plan.

### **Analysis and Findings**

10. In the above perspective, it is seen that the matter is a unique one since first SRA had deposited Rupees 30 crores, which stands forfeited, in the earlier sanctioned Resolution Plan as the same had run into uncertainties due to the fact that erstwhile SRA was not able to make the payments as per the approved plan,

which necessitated this Adjudicating Authority to order a limited reboot of the CIRP vide its order dated:20<sup>th</sup> April 2022.

11. This Adjudicating Authority had ordered for a limited reboot of the CIRP being fully aware of the fact that a lot of time had already been consumed in the first phase of CIRP and that starting a new process is fraught with erosion in the value of the assets of the Corporate Debtor . The CIRP was therefore started at the stage of issuance of form G which was the least mandatory requirement and was a part of the well-defined CIRP , envisaged in the Code under regulation 40A of the IBBI (Insolvency resolution Process) Regulations 2016. There is no provision in the code for revaluation, much less if a plan has already been received and its value is known to the CoC, as this would be an infringement on the commercial wisdom of the CoC and can be regarded only as a change of frame of reference, without changing anything on the ground situation.

12. Further the view that since the Plan value given by the PRA is lower than the original liquidation value it would automatically mean that RP has proceeded to the situation where the company has to be referred for liquidation, is a simplified statement, as the CoC has to take a commercial call on the matter considering various Pros and Cons in terms of the recovery of their claims in an absolute sense and not on relative term. Since the revised revaluation has already been decided to be done by the CoC, this input would already be available with the CoC , who can take an informed decision on this basis.

13. In light of the above, we are of the opinion that this Adjudicating Authority can not at this stage direct for a fresh valuation of the assets of the CD and any decision that requires to be taken by the CoC in this unique case has to be taken on the basis of available inputs, using their commercial wisdom, which must be aligned with the main objective of the code i.e. value maximisation.

14. As such the Prayers in IA/1106(KB)/2022 are accordingly **rejected** and disposed **of** accordingly.

15. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.

16. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

Signed on this the 3<sup>rd</sup> day of January, 2023.