



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

I.A. 5146/2023

IN

C.P.(IB)888/MB/C-III/2022

Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 11 of National Company Law Tribunal Rules, 2016.

Mr. Bijendra Kumar Jha)
Resolution Professional,)
2B/1804, Dreams Complex,)
LBS Marg, Bhandup (West))
Mumbai – 400078.) **Applicant/Resolution Professional**

IN THE MATTER OF

M/s. Vardhaman Cables & Conductors
129/C, Shinoli B.K Tal, Chandgad,
Kolhapur – 416507, Maharashtra. **...Operational Creditor**

Vs.

NEC Electromech (India) Pvt. Ltd.
Shop No. 14, Shah Heritage, plot No. 9,
Sector-42A, Nerul, Navi Mumbai,
Maharashtra – 400706. **....Corporate Debtor**

Order Pronounced on: 14.11.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)
Hon'ble Sh. Charanjeet Singh Gulati Member (Technical)

Appearances:

For the Applicant: Adv. Aditya S Mishra; Adv. Romill Jain



Per: Ms. Lakshmi Gurung, Member (Judicial)

1. The present Application has been filed by Mr. Bijendra Kumar Jha, Resolution Professional as per Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunals seeking the liquidation of the Corporate Debtor, NEC Electromech (India) Pvt. Ltd. along with the following reliefs: -

“a) That the Hon’ble Tribunal be pleased to allow this Interlocutory Application.

b) That the Hon’ble Tribunal direct the liquidation as per Section 33(2) of the Code.

c) To pass such other Order(s) as this Hon’ble Tribunal shall deem fit and expedient.”

Brief Facts

2. The Financial Creditor, M/s. Vardhaman Cables & Conductors filed the Company Petition No. (IB)888/IBC/MB/2022 under Section 9 of the Insolvency and Bankruptcy Code (“the Code”) before this Tribunal to initiate Corporate Insolvency Resolution Process (“the CIRP”) against the Corporate Debtor. Vide Tribunal order dated 02.03.2023, the CIRP was commenced and Mr. Bijendra Kumar Jha was appointed as the Interim Resolution Process (“IRP”).
3. Pursuant to the commencement of CIRP, the IRP made a Public Announcement in FORM A in the Financial Express and Navakal newspaper in English and Marathi languages respectively on 11.03.2023. As per FORM A the last date for the submission of the claim was 23.03.2023. The IRP received only one claim from the Operational Creditor, M/s. Vardhaman Cables & Conductors, who was also the Original Petitioner/Applicant in the captioned petition. Therefore, the



Committee of Creditors (CoC) comprised of a sole Operational Creditor, Mr. Praveen Mangilal Jain, Managing Partner of M/s. Vardhaman Cables & Conductors, having 100% voting rights. After the CoC was constituted, a report certifying the constitution of CoC was filed with this Tribunal. The status of the collated and verified claims is as follows:

Name of the Creditor	Type of Creditor	Secured/ Unsecured	Amount claimed	Amount Approved	Voting %
Paveen Mangilal Jain, Managing Partner, M/s. Vardhaman Cables & Conductors	Operational Creditor	Unsecured	2,19,25,342	2,19,25,342	100%

4. It is noticed that there are no Financial Creditors and only one Operational Creditor. Therefore, the CoC consisted of a sole Operational creditor with 100% voting share.
5. The 1st CoC Meeting was convened on 08.04.2023. The IRP apprised the members that because he did not receive a claim from any Financial Creditor, hence he was of the understanding that a financial debt does not exist.
6. The 2nd CoC Meeting was held on 22.05.2023 where the RP informed the CoC about requirement to publish invitation for Expression of Interest (EoI) in FORM G as per Regulation 36A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 not later than 60 days from the Insolvency Commencement Date. The RP further informed the CoC that, as per Section 25(2)(h) of the Code, the RP was required to lay down the eligibility criteria for the Prospective Resolution Applicants (PRA's) with the approval of the CoC. RP opined that disqualification



criteria as envisaged under Section 29 A of the Code can be kept as the only eligibility criteria for PRAs and requested the CoC for their views.

7. The CoC members stated that do not see any prospective applicants for the company and enquired whether application for liquidation can be filed instead of following the process of inviting resolution plans i.e. publication of Form G. The RP stated that the same is permissible as per the Code.
8. In the 3rd CoC Meeting held on 28.05.2023 in which before proceeding with the agendas of the meeting, the CoC members enquired about the continuous absence of the Suspended Directors from the CoC meetings. The RP informed the members that he had served the notices of the meetings to the Suspended Directors. The RP further informed the CoC members that he had been continuously following up with the Suspended Directors. The RP received information from the Suspended Directors, although incomplete in nature. Subsequently, the CoC members sought RP's advice on taking a strict action against the Suspended Directors. The RP stated that a non-cooperation application under Section 19(2) of the Code can be filed at any stage during CIRP or Liquidation if the Suspended Directors do not cooperate with the RP/Liquidator.
9. Thereafter, the members inquired about filing a liquidation application. After discussions, the following resolution was passed through voice-voting: -

“RESOLVED THAT pursuant to Section 33(2) of the Code read with the rules and regulations made thereunder, approval of the Committee of Creditors be and is hereby accorded for filing of an application before Hon’ble NCLT for initiation of liquidation of the Corporate Debtor – NEC Electromech (India) Private Limited.”



10. The RP expressed his unwillingness to act as the Liquidator of the Corporate Debtor due to prior commitments. The RP informed the CoC to propose a name of an Insolvency Professional to be appointed as the Liquidator of the Corporate Debtor. The CoC members advised the RP to leave it to the discretion of the Hon'ble NCLT to appoint a Liquidator. Furthermore, the RP informed the members that as per Regulation 39B of the CIRP Regulation, the CoC must make a best estimate of the Liquidation Costs, in consultation with the RP. The RP stated that the estimated liquidation cost for 6 months shall be around Rs. 11 Lakhs whereas the estimated liquid assets are NIL. After the discussions between the RP and CoC members, the following resolutions were approved through voice-voting:

“RESOLVED THAT approval of the Committee of Creditors of NEC Electromech (India) Private Limited be and is hereby accorded that for the purpose of Regulation 39B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the contribution towards the liquidation cost shall be made out of the liquidation proceeds.”

11. The RP informed the CoC, that as per Regulation 39C of the CIRP Regulations while deciding to liquidate the Corporate Debtor, the CoC may recommend that the liquidator may first explore sale of the Corporate Debtor as a 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, if an order for liquidation is passed under Section 33. The following resolution was approved through 100% voice-voting:

“RESOLVED THAT approval of the Committee of Creditors of NEC Electromech (India) Private Limited be and is hereby accorded that for the purpose of Regulation 39C of the IBBI



(Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Liquidator shall first explore the alternative of selling the corporate debtor as a going concern in case a liquidation order is passed by Hon'ble NCLT and thereafter, explore other options in consultation with the Stakeholder's Consultation Committee."

12. The RP apprised the members that as per Regulation 39D of the CIRP Regulations, the CoC shall fix the fee payable to the Liquidator in consultation with the RP. The following resolution was approved through 100% voice-voting:

***"RESOLVED THAT** approval of the Committee of Creditors of NEC Electromech (India) Private Limited be and is hereby accorded that for the purpose of Regulation 39D of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the fee payable to the liquidator shall be in accordance with Regulation 4 of the Liquidation Regulations."*

13. In the present case, the Committee of Creditors in its commercial wisdom has taken a decision to initiate liquidation of the corporate debtor without publishing FORM G. We have given our thoughtful consideration whether Corporate Debtor can be ordered to be liquidated even before issue of Form G inviting Expression of Interest (EoI) for submission of Resolution plans.
14. At this juncture, we may refer to Section 33(2) of the Code: -

"(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 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).”

15. The Hon’ble Appellate Tribunal on 12.10.2022, in the case of **Sreedhar Tripathy Vs. Gujarat State Financial Corporation and Ors., Company Appeal (AT) (Insolvency) No. 1062 of 2022** explained the scope of Section 33(2) of the Code. In that case, the CoC had taken a decision for the liquidation of the Corporate Debtor without issue of EoI. The Hon’ble NCLAT upheld the decision of the CoC to liquidate the Corporate Debtor even before the Issue of Form G after referring to the section 33(2) of the Code and the explanation thereof. The relevant observations are extracted below: -

“7. The Explanation under Section 33(2) has been inserted by Act of 26 of 2019 contains the legislative declaration and intention. The CoC in the Legislative Scheme has been empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The power given to the CoC to take decision for liquidation is very wide power which can be exercised immediately after constitution of the CoC.”

16. In the case of **Bhotika Trade & Services Pvt. Ltd. Vs. Avinash EM Projects Private Limited I.A. No. 6451/2023 in C.P.(IB)-598/ND/2022**, NCLT, New Delhi Bench in its order dated 18.03.2024, after noting that the CoC had taken conscious decision with 75.96% majority not to publish Form G for inviting EoI, and placing its reliance on Section 33(2) of the Code and following the judgment of Hon’ble Appellate Tribunal in **Sreedhar Tripathy** (supra) permitted the liquidation of the Corporate Debtor even prior to issue of Form G.



17. In the present case, the RP had placed the agenda and draft documents in relation to publication of EoI in Form G before the 2nd CoC Meeting held on 22.05.2023. The CoC members stated that they were not inclined to follow the process of inviting resolution plans and that they wish to file an application for liquidation as they do not see any prospective resolution applicants for the Corporate Debtor. The CoC had taken a conscious decision not to publish Form G to invite EoIs. The initiation of liquidation proceedings against the Corporate Debtor were approved in the 3rd CoC Meeting with 100% voting share.
18. In the wake of the provisions of Section 33(2) of the Code and the cases discussed above, and after perusing the averments made in the present application, this Bench is of the considered opinion that, it is a fit case for ordering liquidation of the Corporate Debtor and pass the following directions: -
- a. The **Corporate Debtor is directed to be liquidated** in accordance with the provisions of the IBC and applicable regulations.
 - b. We note that no Insolvency Professional has been appointed by the Applicant. Therefore, in accordance with Section 34(4)(c) of the Code and the power vested in this Tribunal, **we hereby appoint Mr. Rakesh Kumar Relan** bearing Registration No. **IBBI/IPA-001/IP-P-02009/2020-2021/13119** and having address at; 2501, A-Wing, Transcon Triumph, VLG Amboli, Hill Road, Andheri West Veera, Near Excel Industries, S No. 48 Oshiwara, Mumbai City, Maharashtra - 400053 as the Liquidator. His Authorization for Assignment is valid up to 30.06.2025.
 - c. The fees entitled to the Liquidator shall be as per Regulation 4(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.



- d. The Liquidation Process Cost borne by the Liquidator shall be made out from the Liquidation Proceeds and in case of any shortfall, SCC shall bear the expenses towards the liquidation cost.
- e. The Corporate Debtor to be Liquidated in the manner as laid down in Chapter III of the Part II of Insolvency and Bankruptcy Code, 2016 and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and issue Public Notice stating that the Corporate Debtor is in liquidation with further direction to the Liquidator to send copy of this order to the RoC, Mumbai.
- f. On having liquidation process initiated, a fresh moratorium shall commence under Section 33(5) of the Insolvency and Bankruptcy Code. Accordingly, 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 proceedings on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
- g. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33(7) of the IBC Code, 2016.
- h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) regulations, 2016.



- i. The Liquidator appointed under section 34 of the Code shall have all the powers of the Board of Directors, Key Managerial Personnel and the existing Board of the Corporate Debtor, the Key Managerial Persons and the partners shall cease to have effect.
 - j. The personnel of the corporate debtor shall extend all co-operation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.
 - k. A copy of the said order shall be sent to the Financial Creditors, Corporate Debtors and the Liquidator for taking necessary steps.
 - l. Registry is directed forward a copy of this order to the **Insolvency and Bankruptcy Board of India**, forthwith.
19. With the above directions, **I.A. No. 5146 of 2023** in C.P. No. 888 of 2022 **stands allowed and disposed of.**

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Vaishnavi, LRA

Sd/-

Lakshmi Gurung
Member (Judicial)