

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

IA. No. 221/2022

**In
CP(IB)No. 1059/MB/C-II/2017**

*Application filed under section 33 and section 60(5) of
the Insolvency and Bankruptcy Code, 2016.*

In the matter of

Schweitzer Systemtek India Pvt. Ltd.

Through its RP Mr. Rajesh Kumar Mittal

...Applicant

V/s

Phoenix ARC Pvt. Ltd.

...Respondent

Order Pronounced on :- 17.10.2023

Coram:

Shri. Kuldip Kumar Kareer : Member (Judicial)

Shri. Anil Raj Chellan : Member (Technical)

Appearances

For the Applicant : Ms. Kalyani Tulankar, Counsel.

For the Respondent : Ms. Manaswi Agarwal, Adv.

ORDER

Per : Kuldip Kumar Kareer, Member Judicial

1. This is an application filed u/s 33 (1) of the Insolvency & Bankruptcy Code, 2016 by Mr. Rajesh Kumar Mittal, Resolution Professional (RP) of M/s. Schweitzer Systemtek India Private Limited seeking liquidation order.
2. On perusal of this application, it appears that CP No. (IB)-1059 (MB)/2017 was admitted by this Tribunal on 03.07.2017 and one Mr. Martin S.K. Gola was appointed as Interim Resolution Professional (IRP). Thereafter, a meeting of creditors was called on 07th August, 2017. However, no resolution was passed u/s 22 of the Code approving the appointment of the aforementioned IRP as a Resolution Professional (RP). This Hon'ble Tribunal passed Orders in M.A. Nos. 378 and 407 of 2017, inter-alia, directing the IRP to call for a meeting of the CoC to consider a resolution for the appointment of a Resolution Professional u/s 22 of the Code. Thereafter, a meeting of CoC was held on 23rd November, 2017. However, the CoC could not agree upon a resolution professional to be appointed u/s 22. Therefore, this Tribunal vide Order dated 10th January, 2018 appointed Mr. Rajesh Kumar Mittal as the Resolution Professional ('RP') of the Corporate Debtor ('C.D.') i.e. Schweitzer Systemtek India Private Limited and also extended the period of C.I.R.P u/s 12 of the Code by 90 days since the period of 180 days to complete the C.I.R.P was coming to an end.

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3. The IRP had constituted the Committee of Creditors. At present, the CoC comprises of only one Financial Creditor namely M/s. Phoenix ARC Pvt Ltd. M/s. Imperial Multiventures Pvt Ltd has filed M.A No. 815 of 2018 impugning the rejection of its claim by the present RP. The Applicant had moved M.A. No. 509 of 2018 inter-alia for recovery of certain preferential payments made during the C.I.R.P.
4. Due to the ongoing litigations by and against the Corporate Debtor, applications were moved by the C.D. to exclude the period of litigation from the C.I.R.P and also for the further extension of period. Such applications were allowed from time to time for the sake of successful completion of the C.I.R.P of the C.D. As per the directions of this Hon'ble Tribunal, the RP caused to be published an advertisement for the invitation of Expression of Interest ('EOI') on 30.03.2018 in the newspapers viz. the Business Standard in English and in Mumbai Lakshdeep in Marathi. Form G for invitation of Resolution Plan was filed with IBBI via email on 31.03.2018. However, no expression of interest or resolution plan were received by the RP in response to the said invitation.
5. In the meanwhile, the Insolvency and Bankruptcy Code (Amendment) Act, 2019 came into force on 16th August, 2019. The amended section 12(3) states that the insolvency resolution process of a Corporate Debtor which is pending and has not been completed within a period of 330 days shall be

completed within a period of 90 days from the date of commencement of the aforementioned Amendment Act of 2019. The said 90 days period had come to an end on 14th November, 2019. Further, no resolution plan had been accepted/approved by the CoC during the C.I.R.P. It is in these circumstances that the Applicant had filed M.A. No. 3770 of 2019 for seeking certain directions from the Tribunal which inter-alia includes the direction for commencement of liquidation. The Applicant craved liberty of this Hon'ble Tribunal to withdraw the aforementioned M.A. with liberty to file a fresh application simpliciter for the purpose of seeking direction for commencing the liquidation of the Corporate Debtor.

6. **Findings:** Looking at the application and averments made therein, we are of the considered opinion that:
- a. No resolution plan has been received by the Corporate Debtor during the C.I.R.P.;
 - b. By virtue of the IBC (Amendment) Act, 2019, the amended section 12(3) states that the insolvency resolution process of a Corporate Debtor which is pending and has not been completed within a period of 330 days shall be completed within a period of 90 days from the date of commencement of the aforementioned Amendment Act of 2019. The said 90 days period had come to an end on 14th November, 2019. Thus, there is no further scope for extension of the C.I.R.P period.

- c. The Applicant Company has not carried on any business for more than 2 years and has remained non-operational throughout that period. The RP has also filed his consent to act as a Liquidator.
- d. Hence, we are of the considered opinion that this is a fit case for liquidation.
7. **ORDER:** We hereby order for the liquidation of the Corporate Debtor named M/s. Schweitzer Systemtek India Private Limited with the following directions:
- a. **Mr. Rajesh Kumar Mittal**, holding Registration No. **IBBI/IPA-002/IP-N00083/2017-2018/10224**, is appointed as the Liquidator in terms of Section 34 of the Code;
 - b. The Liquidator shall issue public announcement stating that the Corporate Debtor is in liquidation;
 - c. Registry is directed to communicate this Order to the Registrar of Companies, Mumbai and to the Insolvency and Bankruptcy Board of India;
 - d. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

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- e. All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in Liquidator.
- f. Personnel connected with the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as will be required for managing its affairs and to carry out the process of liquidation.
- 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 Insolvency and Bankruptcy Code, 2016.
- h. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- i. The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Sec.34(8) of the Code.
- j. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with

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provisions of Section 35(1) of the Code.

- k. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor if any as per law.
 1. 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;
 - m. Copy of this order shall be sent to the IBBI, Regional Director (Western Region), Registrar of Companies, Mumbai and Official Liquidator, Maharashtra, the Registered Office of the Corporate Debtor and the Liquidator for taking necessary steps.
8. The **IA-221/2022** filed by the RP for Liquidation of the Corporate Debtor stands **allowed accordingly in aforesaid terms.**

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)