IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 42

IA/585(AHM)2021 in CP(IB) 499 of 2019

Order under Section 33 r.w 34 IBC,2016

IN THE MATTER OF:

Dharit Kishorbhai Shah RP of Maktel Control & Systems Pvt Ltd ....**Applicant**

........**Respondent**

Order delivered on ..23/11/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the IRP/RP :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

(AJAI DAS MEHROTRA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD

I.A. No. 585 (AHM) of 2021
IN
C.P. (IB)499 OF 2019

[An Application under Section 33 of the Insolvency and Bankruptcy Code, 2016]

Through:

Mr. Dharit Kishorbhai Shah
Resolution Professional,
Market Control & Systems Private Limited
302, Center Point,
R C Dutt Road,
Alkapuri, Vadodara,
Gujrat- 390007 **Applicant/RP**

In the matter of:

M/s. Urja Shakti Sales & Service,
Through its Partner:
Mr. NimishPurohit
Having its registered office at:
706, Siddharth Complex,
R C Dutt Road,
Alkapuri, Vadodara,
Gujrat- 390007 **Operational Creditor**

Versus

1. **M/s Maktel Control & Systems Pvt. Ltd.**
(CIN: U31900GJ2009PTC056575)
Having its registered office at:
Plot No. 1421, GIDC,

Waghodia,
Gujrat- 391760

2. Mr.
JayramaroChandravadanMarathe
(DIN: 00063195)
B/12, Hariba Park, Diwalipura,
Race Course, Vadodara- 390007
3. Mr. Narendrakumar Manilal Patel
(DIN: 01734165)
60, Vikas Nagar, Old Padra Road,
Race Course Cirlce, Vadodara-
390007
4. Mr. Manoj Narendrakumar Patel
(DIN: 01764520)
302, Harsh Complex,
Old Padra Road, Vadodara- 390015
5. Mr. Akshat Bhatnagar
(DIN: 05294055)
D-42, 2nd Floor, Above Yadav
Namkeen,
Kamla Nagar, MalkaGanj, North
Delhi, Delhi- 110007

Respondents/Corporate Debtor

<u>Order delivered on 23rd November, 2021.</u>

Coram: Madan B. Gosavi, Hon'ble Member (J)
Ajai Das Mehrotra, Hon'ble Member (T)

<u>Present:</u>

For the Applicant: Ld. Adv. Mr. Atul Sharma
For the Respondent:

<u>Order</u>

[Per: Mr. Madan B. Gosavi, Member (J)]

1. The present application is filed by the Resolution Professional Mr. Dharit Kishorbhai Shah for Liquidation of the Corporate Debtor under section 33 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"IB Code"**) due to non-receiving of resolution Plan. The Corporate Debtor was admitted into CIRP vide order of this Adjudicating Authority dated 02.02.2021, and Mr. Dharit Kishorbhai Shah having Registration No. IBBI/IPA-001/IP-P00993/2017-2018/11640, was appointed as IRP.

2. During the course of CIRP, IRP made a public announcement in form-A for submission of claim by the creditors on date 04.02.2021, thereafter COC was constituted by IRP in compliance with section 21 of IB Code read with Rule 6 & 8 of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as a **"CIRP Regulations"**) on 25.02.2021. COC in its 1st meeting dated 04.03.2021, has resolved to confirm the name of Interim Resolution Professional as Resolution Professional.

3. The COC in the meeting dated 05.04.2021 decided to publish EOI and thereafter Resolution Professional published form-G on 18.04.2021. The last date for submission of EOI was

03.05.2021. No EOI has been received. Thereafter in 3rd COC meeting dated 08.05.2021, COC resolved to publish Form-G once again, the Resolution Professional again published Form-G on 12.05.2021, and the last date for submission of EOI was 27.05.2021.

4. Two EOI were received in pursuance of publication of form-G dated 12.05.2021.However, no resolution plan was received from either of the prospective resolution applicants up to the last date for submission of the resolution plan i.e. 10.07.2021. The COC in its 6th meeting dated 09.08.2021, resolved for initiation of liquidation process under section 33 of the Code due to non-receipt of resolution plan. The COC in the said meeting also resolved to appoint Resolution Professional as Liquidator.

5. On perusal of of 6th minutes of COC meeting, it is found that COC has not approved the Liquidation cost and also not approved to first explore the sale of the Corporate Debtor as a going concern to give effect of Regulation 39B and 39C of IBBI (Insovency Resolution Process for Corporate Person) Regulations, 2016 respectively. However, the sole COC member has approved the fee of liquidator under Regulation 39D of IBBI

(Insolvency Resolution Process for Corporate Person) Regulations, 2016.

6. We have heard the counsel for the Applicant and perused the material on record. It is noted that no resolution plan was received even after publishing of EOI many times, hence COC in its 6th meeting decided to liquidate the Corporate Debtor. In that very meeting, COC has resolved in respect of the fee of the liquidator. However the sole COC member has not approved the liquidation cost or that the liquidator should first attempt to sale the Corporate Debtor as a going concern, which is discretion of COC as per Regulation 39B and 39C of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. It is noted that the Corporate Debtor was admitted into CIRP on 02.02.2021 and, 180 days has expired on 31.07.2021. However, no application has been filed to obtain an extenstion of CIRP period, however in the 5th meeting dated 20.07.2021 the COC has discussed to liquidate the Corporate Debtor but same was stalled in absence of instruction from the higher authority of sole COC member i.e. State Bank of India, Stressed Assets Management Branch, Ahmedabad, which was well within the 180 days of the CIRP period. The COC has approved to liquidate the Corporate Debtor in its 6th meeting dated 09.08.2021, which was beyond 180 days and the present application was filed on 23.08.2021 which is within 270 days of CIRP. Though the application has not been filed by the applicant to extend the CIRP period beyond 180 days but it is in the interest of all the stakeholders to pass this liquidation order. Hence we are of the considered view by taking into consideration of present application we allow this application. This application has been filed by the present applicant whose name has been approved by COC to act as a Liquidator.

7. Accordingly, we allow this application and pass the following order:

ORDER

i. We hereby pass the order for initiation of liquidation of Corporate Debtor M/s Maktel Control & Systems Pvt. Ltd. and consequently allow IA No. 585 (AHM) of 2021. The Liquidation of the Corporate Debtor is effective from the date of this order.

ii. The Moratorium declared vide order dated 02.02.2021 on CP(IB) No.499/9/NCLT/AHM/2019, henceforth, ceases to exist, but moratorium under section 33(5) shall trigger from the date of this order.

iii. As per Section 34(1) of the IBC,2016 the Applicant/Resolution Professional, Mr. DharitKishorbhai

Shah (Registration No. IBBI/IPA-001/IP-P00993/2017-18/11640) is hereby appointed as a Liquidator of the Corporate Debtor i.e. M/s Maktel Control & Systems Pvt. Ltd., who shall complete the liquidation process as per the provision of Insolvency and Bankruptcy Code, 2016 r.w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016. He is further directed to endeavour to sale the Corporate Debtor firstly as a going concern. It is directed to the COC and liquidator to charge the reasonable liquidation cost plus expenses from the assets of the Corporate Debtor and further directed that if any short fall comes for liquidation cost the same shall be born by the sole COC member.

iv. The personnel(s) 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. Further, the Liquidator shall also provide all co-operation to various Government agency(s)/ authority(s) in ongoing investigations/ inquiry or inquiries initiated hereafter.

v. 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.

vi. A copy of this order be served to the Financial Creditor, Corporate Debtor, Registrar of the Company, Resolution Professional, and Liquidator by Speed-post within one week from this order.

8. Accordingly, the present I.A. No. 585 of 2021 stands allowed and disposed of.

(Ajai Das Mehrotra)
Member (Technical)

(Madan B. Gosavi)
Member (Judicial)

Keshav/LRA