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

IA. No. 1894 of 2020

IN

C.P.No.(IB)2284(MB) of 2018

Under Section 33(3), r/w 14 of Insolvency & Bankruptcy Code, 2016

In the matter of

Herodex Power Systems Pvt Ltd.

.... CORPORATE DEBTOR

<u>I. A. No. 1894 of 2020</u>

Mr. Prakash Nath Mishra.

.... Applicant/Liquidator

Order Reserved on : 30.01.2023

Order Pronounced on : 10.02.2023

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Shri Prabhat Kumar, Member (Technical)

For the Applicant: Mr. Devul Dighe (Advocate)

Per: Shri H.V. Subba Rao, Member (Judicial)

1. The above application I.A. No. 1894/2020 is filed by Resolution Professional, Mr. Prakash Nath Mishra (hereinafter referred to as the "Applicant") seeking liquidation of Herodex Power Systems Private Ltd. (hereinafter referred to as the "Corporate Debtor") under Section 33(3) of the Insolvency and Bankruptcy

Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:

a. *Consider and allow the present application for liquidation of the Corporate Debtor under Section 33(2) of the Insolvency & Bankruptcy Code, 2016;*
b. *To appoint Mr. Prakash Nath Mishra, Resolution Professional of the Corporate Debtor having Registration No. IBBI/IPA-003/IP-N000115/2017-2018/11219 as the Liquidator of the Corporate Debtor.*
c. *Issue such other orders as may be necessary in the matter.*

2. The brief facts of the application are as follows:

A. The present Application has been filed by, **Mr. Prakash Nath Mishra** the Resolution Professional of **Herodex Power Systems Pvt Ltd**. ("Corporate Debtor") under Section 33(3) of the Insolvency and Bankruptcy code,2016 ("the code"), in order to bring to the kind notice of this Hon'ble Tribunal that the Committee of Creditors ("COC") of the Corporate Debtor, which consists of the sole financial creditor, namely Canara Bank, has resolved to liquidate the Corporate Debtor.
B. On 09.09.2019, the Corporate Debtor was ordered CIRP filed u/s 9 and thereafter Mr. Hajari Lal Saini as the Interim Resolution Professional (IRP) of the Corporate Debtor.
C. On 03.10.2019, the Public announcement of CIRP was made inviting claims from all creditors and the last date for filing of claims by the Creditors of the Company was 15.10.2019.
D. Thereafter the IRP Mr. Hajari Lal Saini continued to work as deemed RP in terms of provisions of Section 16(5) of the code.

The Applicant further states as that claim from on financial creditor namely Canara Bank was received and verified by the IRP. Accordingly, Committee of Creditors ("CoC") comprising of one or sole financial creditor i.e. Canara Bank was constituted.

E. On 01.01.2020, Pursuant to the approval of CoC in its 4th meeting, the Invitation for Expression of interest in Form G was published by the IRP in Four newspaper i.e. "The Times of India" and "The Trinity Mirror" (English) for the both state Maharashtra and Tamil Nadu, "Maharashtra Times" and "Makkal Kural" for the both state Maharashtra and Tamil Nadu, where the company carries operations/material business with Tamilnadu Generation & Distribution Corporation Limited as per Regualtion 36-A(2)(i). The same was also hosted on the website of the IBBI as per Regulation 36-A(2)(iii).

F. Further that the last date for submission of the EOI by Prospective Resolution Applicant (PRA) on 17.01.2020 and EOI was received from 4 Prospective Resolution Applicants.

G. On 19.02.2020, the deemed Resolution Professional Mr. Hajari Lal Saini was replaced by Resolution Professional Mr. Prakash Nath Mishra.

H. Applicant further stated that on 8th CoC meeting held on 23.06.2020 due to the lockdown and other severe issues faced due to Covid-19 pandemic and also general progress made from the last meeting held. The CoC further agreed to extend time limit for submission of Resolution Plan till 30.06.2020 on the request of Mr. Kalkar, due to prevailing covid-19 pandemic.

I. On 08.10.2020, in the 10 CoC meeting insisted on passing of resolution on liquidation of the corporate debtor. The CoC further on 14.10.2020 in its 11th CoC meeting decided to vote on liquidation of the corporate debtor in view of the fact that no resolution plan was submitted by prospective resolution applicants till date including Mr. Kalkar despite time limit for submission of resolution plan extended on his request earlier. The CoC also took note of the prevailing economic situation of the country, and decided that as no resolution of the Corporate Debtor could be expected in near future and its non-feasibility, it would be prudent to liquidate the corporate debtor and requested Resolution Professional to conduct e-voting during the period from 16.10.2020 at 11:00 a.m. till 17.10.2020 upto 11:00 a.m. The CoC by 100% voting rights approved liquidation of the Corporate Debtor.

J. On 14.10.2020 in the 11th CoC Meeting the members decided to unanimously opt for Liquidation. The Resolution Professional informed that there is no resolution plan received from any of the prospective applicant till date. He further informed that Mr. Shashank Kalkar has written an email on 14.10.2020 seeking further time for submission of the resolution Plan. The issue was deliberated, and it was observed that there is no other resolution plan for consideration from any of the prospective resolution applicant till date, considering the COVID-2019 pandemic situation it is unlikely to get any resolution plan in near future. CoC members maintain a considerate view with relaxed approach, due to prevailing economic and pandemic situation, to support the effort of Mr. Shashank Kalkar in providing a resolution plan, however he has not been able to present any evidence of specific and substantial development in the process, and have been asking for the extended time at each successive CoC meetings. Considering all the merits of present situation, it was a consensus that liquidation is inevitable, there is no advantage in prolonging the decision process any further, hence CoC members took the decision of taking the corporate debtor to liquidation. It was proposed by the CoC Members that the application for liquidation should be filled with NCLT and accordingly following resolution was proposed;

The relevant extract of the resolution is reproduced herein below for ready reference:-

> *"**RESOLVED THAT**, due to non receipt of any resolution plan considering the COVID-2019 situation, and non feasibility of resolution of the corporate debtor, CoC decides to apply for the liquidation under section 33(2) of the Insolvency and Bankruptcy Code, 2016 and related provisions."*
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> *"**RESOLVED FURTHER THAT** the Committee of Creditors hereby authorize Mr. Prakash Nath Mishra, the Resolution Professional to intimate the decision by filing appropriate application to the Adjudicating Authority for liquidation under Section 33 of the Insolvency and Bankruptcy Code,2016 and related provisions"*

3. After hearing the submissions made by the Counsel appearing for the Applicant and upon perusing the material available on record, it is observed from the minutes of the 11th CoC meeting that the CoC has unanimously decided to liquidate the Corporate Debtor and

appointed the Applicant as liquidator. This bench, therefore allows the above Interlocutory Application Number 1894 of 2020 and passed the following:

ORDER

1. The above I.A. No. 1894/2020 is Allowed, and the Corporate Debtor Herodex Power Systems Pvt. Ltd. is ordered to be liquidated.

    a. **Mr. Prakash Nath Mishra** (IP Registration No. IBBI/IPA-003/IP-N000115/2017-2018/11219 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
    b. That the Liquidator for the conduct of Liquidation proceedings would be entitled to a remuneration according to Liquidation fees (B) As per Regulation 4 of the IBBI (Liquidation Process) Regulation 2016.
    c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
    d. The Liquidator appointed under section 34(1) of the Code. Will have all powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.
    e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a

direction to the Liquidator to send this order to the ROC under which this Company has been registered.

f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
g. That the personnel 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.
h. That on having liquidation process initiated, 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 proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
i. This liquidation order shall be deemed to be a 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.
j. Registry is directed to communicate this order to the Liquidator.

With the above directions, this application i.e. I.A. No. 1894 of 2020 is hereby allowed and disposed of.

Sd/-
Prabhat Kumar
MEMBER (TECHNICAL)

Sd/-
H.V. Subba Rao
MEMBER (JUDICIAL)