

S.No.4

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
20-10-2023 AT 10:30 AM

IA (IBC) 1325/2023 in CP (IB) No. 237/9/HDB/2020
u/s. 9 of IBC, 2016

IN THE MATTER OF:

Action Group Associates

...Operational Creditor

VS

M/s. BEML Midwest Limited

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

ORDER

IA (IBC) 1325/2023

Orders pronounced. Liquidation order is passed, subject to the terms mentioned in the order.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I**

IA (IBC) 1325/2023 in

CP (IB) No. 237/9/HDB/2020

*Under Section 33(2) read with Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 seeking Initiation of Liquidation of the
Corporate Debtor*

In the matter of
M/s. BEML Midwest Private Limited (Under CIRP)

Between:

Ms. PADMA PRIYANKA VANGALA
Resolution Professional of
M/s. BEML Midwest Limited
H.No.2-2-1150/1A & 1B, HSR KBR Enclave,
Flat No.504, Street No.16, Brahmin Hostel Lane,
Tilak Nagar, New Nallakunta, Hyderabad – 500044.

...Applicant/Resolution Professional

AND

M/s. BEML MIDWEST LIMITED
Represented by it's Resolution Professional
Ms. Padma Priyanka Vangala
C-91, BEML, Janatha Flats, Punjagutta,
Hyderabad – 500082.

...Respondent/Corporate Applicant

DATE OF ORDER: 20.10.2023

CORAM:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)
SHRI. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Appearance:-

For the Applicant: - Mr. G. Bhupesh, Counsel

PER: BENCH

ORDER

1. This is an application filed by the applicant under Section 33(2) read with section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Liquidation of the Corporate Debtor, praying to pass the following orders:

- a. Pass an order requiring the Corporate Debtor to be liquidated in the manner laid down in Chapter III of the Insolvency and Bankruptcy Code, 2016.
- b. Pass an order appointing the Resolution Professional as the liquidator of the Corporate Debtor.
- c. Permit to issue a public announcement stating that the Corporate Debtor is in liquidation.

2. The gist of the Application in brief:

2.1. It is averred that this Adjudicating Authority ordered initiation of Corporate Insolvency Resolution Process in respect of the Corporate Applicant vide its orders dated 26.09.2022 in Company Petition. The last date for conducting CIRP with

extension is 9-8-2023. A copy of the order dated 26.09.2022 filed as Annexure – I.

- 2.2. It is averred that upon receipt of the Order of Admission, the applicant made Public Announcement in Financial Express and Mana Telangana on 05.10.2022. Further, the IRP had intimated the Corporate Debtor, the Banks, SEBI and other Government authorities about the commencement of CIRP in the matter of M/s BEML MIDWEST LIMITED.
- 2.3. It is averred that to receive and collate the claims, the IRP constituted COC. The IRP had filed Report certifying the Constitution of COC vide memo dated 27.10.2022.
- 2.4. It is averred that the Applicant called upon Suspended Directors of the CD to extend all assistance to her in managing the affairs of the Company in pursuance of section 19 of IBC, 2016. However, no co-operation in this regard was offered and she has not received the possession, control and custody of the inventories or any assets of the Corporate Debtor.
- 2.5. It is averred that the Applicant conducted second COC meeting on 28.11.2022 and brought to the notice of the COC that the company has never prepared its financial statements and got it audited by statutory auditors and there were disputes between the joint venture partners filed who filed Oppression and Mismanagement Petition before Company Law Board/ NCLT, Hyderabad and the same are pending adjudication. Further, erstwhile management/suspended board of directors have not provided details of land and buildings and plant and machinery owned/ acquired by the company, so it was also not possible to

carry out valuation by IBBI registered valuers and also for preparation of Information Memorandum of the CD.

- 2.6. It is averred that the applicant filed an IA No.1483 of 2022 before this Tribunal under section 19(2) of the IBC, 2016, in absence of any cooperation from the suspended Board of Directors.
- 2.7. It is averred that the Applicant brought to the notice of the COC that during the course of transaction audit by the Transaction Auditor, it is evident from the Investigation Report which was made available to all the parties, an amount of Rs. 51.00 Crores (Approximately) including other amounts were given to various suppliers against supply of material by the CD, most of the supplies were not made by the suppliers to the CD and accordingly the RP has sent Recovery notices to various parties/suppliers of the CD and is in the process of recovery of dues.
- 2.8. It is averred that there were oppression and mismanagement cases in CP No 55/2008 and 2/2009 filed by both the Joint Venture partners of the CD against each other before this Tribunal which were returned by this Tribunal vide its orders dated 25.07.2023, in view of existence of Moratorium in respect of the CD.
- 2.9. It is averred that on the basis of the Investigation Report filed by the Investigating Officers appointed by the MCA, in the matters of Oppression and Mismanagement, the applicant appointed Transaction Auditors to carry out a detailed transaction Audit.

- 2.10. It is averred that this Tribunal passed orders in IA No.1483/2022 on 10.04.202, directing the suspended management to extend necessary cooperation to the Applicant. Despite communicating the said orders, the Directors of the suspended management have deliberately chosen not to extend cooperation to the Applicant in providing the necessary documents/information as sought for by her against the said inaction of the suspended Board of Directors, the Applicant filed an application u/sec.70 of the IBC Code, 2016, before this Tribunal, seeking to pass necessary orders of punishment.
- 2.11. It is averred that Transactions Auditors submitted a detailed Transaction Audit Report on 24.07.2023 and the Applicant initiated steps for initiating appropriate application against the avoidance transactions.
- 2.12. It is averred that, while the CIRP period is coming to an end on 09.08.2023, the Applicant had called for seventh COC meeting which was scheduled on 07.08.2023. The COC constituting 100% voting share decided to liquidate the CD as the CD is not a going concern and not having any assets for sale and because of non-availability of audited books of accounts of the CD, Information Memorandum could not be prepared and Expression of Interest could not be published. The sole member of the COC had instructed the RP to intimate the AA of the decision of the COC to liquidate the CD and to initiate liquidation process under section 33(2) of the IBC, 2016 upon availing necessary liquidation orders from the AA. The COC requested the RP to continue as Liquidator and requested to

submit her consent in writing to act as liquidator of the CD. Accordingly, the present RP is submitting her written consent.

2.13. It is averred that the Resolution Applicant is approaching this Tribunal seeking orders for liquidation of the Corporate Debtor.

Thus the Application is accordingly allowed with the following directions:-

- a) The Corporate Person i.e., M/s. BEML MIDWEST LIMITED shall be liquidated in the manner laid down in Chapter-III of the Code.
- b) The Applicant Ms. Padma Priyanka Vangala, presently resolution Professional of M/s. BEML MIDWEST LIMITED is appointed as Liquidator.
- c) He shall issue public announcement stating that the Corporate Debtor is in liquidation.
- d) The Moratorium declared under Section 14 of the Code shall cease to operate here from.
- e) Subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- f) 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 the Liquidator.
- g) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code,

read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- h)** Personnel connected with the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as would be required for managing its affairs.
- i)** The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.
- j)** Accordingly, IA No.1325/2023 is disposed of.

Charan Singh
Member Technical

Dr. N.V. Ramakrishna Badarinath
Member Judicial

Apoorva