

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO:II**

SPECIAL BENCH(Video Conference)

**CORAM: HON'BLE MADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL
HON'BLE DR.BINOD KUMAR SINHA-MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 08.07.2021 AT 12:30 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA(IBC)/309/2021 in CP(IB) No.506/7/HDB/2019
NAME OF THE COMPANY	M.S.M.Energy Ltd
NAME OF THE PETITIONER(S)	Acquint Engineers & Infrastructure Pvt Ltd
NAME OF THE RESPONDENT(S)	M.S.M.Energy Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA 309/2021 in CP(IB) No.506/7/HDB/2019 is listed for orders. Orders pronounced vide separate Order.


MEMBER (T)


MEMBER(J)

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IA No. 309/2021
In
CP (IB) No. 506/7/HDB/2019
Date of Order: 08.07.2021

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH-2, HYDERABAD**

**IA No. 309/2021
In CP (IB) No.506/7/HDB/2019**

Application under Section 33 read with Section
34 of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF

M/s M.S.M ENERGY LIMITED
Represented by Mr. Anup Kumar Singh
Resolution Professional of M/s M.S.M.Energy Limited.

...Applicant/
Corporate Debtor

BETWEEN:

ACQUAINT ENGINEERS & INFRASTRUCTURE PRIVATE
LIMITED

Registered office at H.No. 2-86/8/G-3,
Koppula Towers, Road No.1, Budha Nagar,
Peerzadiguda Village, Medipalli Mandal, Hyderabad,
Rangareddi, Telangana-500.092.

Date of order: 08.07.2021

Coram:

Shri Madan Bhalchandra Gosavi, Member (Judicial)

Dr. Binod Kumar Sinha, Member (Technical).

Parties/ Counsels present:

For the Applicant: Mr.V.V.S.N.Raju, A.V.Padma Reddy, and other
Counsels:

Heard on: 02/07/2021.

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In
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PER BENCH

1. This is an Application filed by the Resolution Professional under Section 33 & 34 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as **Code**) seeking orders for liquidation of M/s M.S.M.Energy Limited/Corporate Debtor.
2. This Tribunal vide order dated 15.10.2019 admitted the petition bearing CP (IB) No. 506/7/HDB/2019 under Section 7 of the Code initiating Corporate Insolvency Resolution Process (CIRP) of the Company. Shri Anup Kumar Singh, the Applicant herein is appointed as Resolution Professional in the First COC meeting dated 19th September, 2019. The Applicant issued Form G and the last date for submission of Expression of Interest was 18th January, 2020. The copy of Form G and the paper publications were attached to the instant Application as **Annexure-C & D.**
3. It is averred by the Applicant that before the stipulated timeline no EOI's has been received due to ongoing holidays. However, enquires from prospective resolution Applicants were received by the Applicant, requesting time for submission of EOI's for the Corporate Debtor. Thus the Applicant requested the COC for extension of time for submitting the EOI's which has been approved by the COC till 17.02.2020. Thus Form-G version 2 was uploaded on the website of the corporate debtor. The Form G version 2 is attached to the application as **Annexure-E.**

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4. It is averred that the Applicant received EOI's from two prospective Resolution Applicants i.e M/s. S.C.Agarwal and Rainbow Food Products Private Limited. Further averred that COC is of the view that more EOI's need to be scouted to reduce over dependence on two Applicants and therefore extended the date for submission of EOI's till 6th March, 2020. Therefore, the revised Form-G Version 3 was uploaded on the website of the corporate debtor and also sent to IBBI to upload the same in its website. Later the prospective resolution applicant i.e Rainbow Foods Products Private Limited issued mail for withdrawal of their proposal for participation in the Resolution Process of the Corporate Debtor, and the same has been approved.
5. It is submitted that the applicant appointed two registered valuers as per Regulation 27 of the IBBI Regulations, 2016 on 04.12.2019 for arriving at the fair value and the liquidation value of the corporate debtor. Meanwhile, Applicant filed an application before this Tribunal for extension of CIRP period by 90 days. The same has been granted by this Tribunal vide order dated 06.10.2020.
6. It is averred that the resolution applicant i.e M/s. S.C.Agarwal, who had submitted the EOI as per Form G version 2 was unable to submit the resolution plan on or before the stipulated timelines due to lockdown at containment Zones and travel restrictions put in place due to outbreak of the Covid-19 in the state of Maharashtra, where the factory of the Corporate debtor is situated.

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7. It is further averred that the Applicant has filed two different applications i.e IA no.1123/2020 seeking extension of 60 days and IA no.46/2021 seeking exclusion of 60 days from the CIRP period, the same has been allowed by the Tribunal. The said orders are annexed to the Application as **Annexure-I&J**.
8. In the 6th CoC meeting dated 10.05.2021 the CoC members were of the view that the resolution plan submitted by the PRA was commercially unviable therefore rejected the Plan and resolved to seek Liquidation of the corporate debtor with 99% voting share and to appoint the Applicant herein, the RP as Liquidator of the Corporate Debtor.
9. It is further averred that there is no scope for Insolvency resolution of the corporate debtor and the COC decided to recommend for the liquidation of the corporate debtor since there is no alternative except liquidation. Thus the application is filed by the RP praying to pass an order for liquidation of the corporate debtor. The said resolution is extracted below:

“Resolved that pursuant to Section 30 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Including all the amendments and modifications for the time being in force), consent of Committee of Creditors be & is hereby accorded to disapprove the Resolution Plan as submitted by M/s. S.C. Agarwal, Resolution Applicant for MSM Energy Limited, Corporate Debtor as envisaged under the Insolvency and Bankruptcy Code, 2016 and

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shall be liquidated in the manner specified as per the provisions of Section 33(1) of the Code.

Resolved further that pursuant to Section 30(6) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Including all the amendments and modifications for the time being in force), the committee be and is hereby authorize Mr. Anup Kumar Singh, Resolution Professional to submit the Liquidation Application to the Adjudicating Authority and do all the acts, deeds and things as may be necessary to give effect to said resolution.”

10. We have heard the Applicant in the matter. The Hon'ble Apex Court in K. Sashidhar vs. Indian Overseas Bank and Ors (2019) 148 LA 497 (SC) inter-alia held that, **“The Adjudicating Authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33 (1) of I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors”.**
11. From the above, it would appear that despite all possible steps as required under the Code taken during the CIRP, the CoC did not receive any viable resolution plan/proposal for revival of the Company. The CoC in its wisdom has resolved with 99% voting share in favour of

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the liquidation of the Company. This Authority has no reason before it to take a contrary view in terms of Section 33 (1) (a) of the Code. Therefore, we have no option than to pass an order for liquidation of the Company in the manner laid down in Chapter-III of the Code.

ORDER

The Application is accordingly allowed with the following directions:-

1. This Adjudicating Authority hereby appoint Mr. Anup Kumar Singh, to act as Liquidator in the present case. He is further directed to file the Authorisation for Assignment (AoA) within 3 days from date of this order. He shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation;
2. The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of Liquidation;
3. Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
4. This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate



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Debtor, except when the business of the Corporate Debtor is continued during the Liquidation process by the Liquidator.

5. All the 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 in the Company Liquidator viz., Mr. Anup Kumar Singh. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
6. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
7. The Liquidator shall keep in view the provisions of Regulation 32A of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and shall endeavour to first sell the Corporate Debtor or its business as going concern. However, if he is unable to sell the Corporate Debtor or its business within 90 days from liquidation commencement date, Liquidator shall proceed to sell the assets of the Corporate Debtor under clauses (a) to (d) of Regulation 32 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.


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8. The Company Liquidator shall be entitled to charge such fee for conducting the Liquidation proceedings in such a proportion to the value of the Liquidation estate assets as specified by the Board under Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016. Accordingly, the fees for conducting the Liquidation proceedings shall be paid to the Company Liquidator from the proceeds of the Liquidation estate.
9. Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Company Liquidator viz., Mr. Anup Kumar Singh for information and compliance.
10. Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator.


DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)


MADAN BHALCHANDRA GOSAVI
MEMBER (JUDICIAL)

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