

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

IA. No. 5734/2023

In
CP(IB)No.64/MB/C-III/2023

*Application filed under section 33(2) of Insolvency
and Bankruptcy Code, 2016 and Rule 11 of
National Company Law Tribunal Rules, 2016*

Mr. Rajeev Mannadiar, RP

M.P. Enterprises & Associates Limited

...Applicant

In the matter of

The Fedral Bank Ltd.

...Financial Creditor

V/s

M.P. Enterprises & Associates Limited

...Corporate Debtor

Order Pronounced on: 21.02.2024

CORAM:

**SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)**

Appearances:

For the Applicant/RP : Adv. Abdullah Qureshi

ORDER

Per- Charanjeet Singh Gulati, Member Technical

1. It is an application filed u/s 33(2) of the Insolvency & Bankruptcy Code, 2016 (“IBC”) r/w Rule 11 of National Company Law Tribunal Rules, 2016, by Mr. Rajeev Mannadiar, Resolution Professional (RP) of M.P. Enterprises & Associates Limited (“Corporate Debtor) seeking liquidation order and appointment of liquidator, based on the resolution passed by the Committee of Creditors (“CoC”) in its 4th and 5th meeting held on 23.10.2023 and 29.11.2023 respectively with a requisite majority as contemplated under IBC, 2016.
2. The Petition (CP(IB)64(MB)/2023) was admitted by this Tribunal on 20.04.2023 and CIRP of Corporate Debtor was initiated. Mr. Rajeev Mannadiar was appointed as Interim Resolution Professional (“IRP”) and subsequently appointed as Resolution Professional in the first CoC meeting. The Applicant submitted that during the course of Corporate Insolvency Resolution Process of the Corporate Debtor as many as five CoC meetings were held.
3. The Applicant issued a Public Announcement in Form 'A' inviting claims on 03.05.2023 in Free Press Journal (English Ed.) and Navshakti, (Marathi Ed.). Pursuant to this, the IRP received various claims. The said claims were verified on the basis of documents submitted by the Creditors. Accordingly, the CoC was constituted and the first meeting was convened on 24.05.2023.

4. The Applicant convened the second meeting of the CoC, wherein the CoC resolved with a 100% voting share to publish Form G Inviting Expression of Interest (EoI) from interested and eligible prospective resolution applicants (PRAs).
5. Form G was published inviting EoI from the PRAs on 14.07.2023 in the newspaper namely Business Standard in its Mumbai, Kolkata, Lucknow and Pune Edition (English) and Navshakti (Marathi). As per the Form G, the timeline for submission of EoI was upto 07.08.2023.
6. In the third CoC Meeting convened on 23.08.2023, the Applicant apprised the CoC that, in response to the aforesaid Form G, seven EOIs were received, out of which, only two applicants were found to be eligible, viz. One City Infrastructure Private Ltd. and Derit Infrastructure Private Limited. The Applicant thereafter discussed the Evaluation Matrix and the Request for Resolution Plans (RFRP) which was shared with the CoC, to which the CoC suggested some changes and accordingly resolved to authorize the Applicant to circulate the updated Evaluation Matrix and RFRP to the shortlisted PRAs for inviting their respective Resolution Plans.
7. Further, in the fourth CoC Meeting convened on 12.10.2023, the Applicant apprised the CoC that both the PRAs have shown unwillingness to submit the Resolution Plans. In the said meeting, the Applicant informed that the operations of the Corporate Debtor are closed since more than a year and there are no cash flows available. Therefore, the CoC took the

resolution for voting to liquidate the Corporate Debtor as per the section 33(2) of the Code.

8. The following resolutions were also put to E-voting and after the said e-voting concluded on 23.10.2023, the following resolutions were passed with 100% votes in favour:

“RESOLVED THAT approval of members of CoC be and is accorded to the Liquidation of the Corporate Debtor i.e., M.P. Enterprises and Associated Ltd. u/s 33(2) of the Insolvency and Bankruptcy Code, 2016 and other applicable provisions.”

“RESOLVED THAT the Resolution Professional be and is hereby authorized to apply and intimate the Hon’ble Adjudicating Authority decision of Committee of Creditors to liquidate the Corporate Debtor and obtain the order of liquidation.”

“RESOLVED THAT the Resolution Professional be and is hereby authorized to take such steps as may be necessary, in relation to the above, to the extent required and to settle all matters arising out of and incidental thereto sign and execute all applications, documents and writings that may be required and generally to do all acts, deeds and things that may be necessary. Expedient or incidental for the purpose of giving effect to the aforesaid resolution.”

9. In the fifth CoC Meeting held on 29.11.2023, wherein the CoC decided with 80.80% votes to appoint IP Subhash Laxminarayan Nathuramka having registration number IBBI/IPA-001/IP-P00472/2017-18/10815 as the liquidator in the matter. The following resolution was passed with 80.80% votes vide e-voting which concluded on 04.12.2023.

“RESOLVED THAT in continuation to the resolutions passed for the liquidation of M.P. Enterprises and Associates Limited in the fourth CoC meeting held on Oct. 12, 2023 (E voting completed on Oct. 23,2023) and the provisions of Section 34(1) of the Insolvency and Bankruptcy Code, 2016 and any other applicable provisions, Liquidation regulations consent of the members of the Committee of Creditors be and is hereby accorded to appoint IP Subhash Laxminarayan Nathuramka having registration number IBBI/IPA-001/IP-P00472/2017-18/10815 (AFA Valid till 10/09/2023) to act as Liquidator of the Corporate Debtor on a monthly remuneration of Rs. 150000 (Rupees One Lakh Fifty Thousand only) plus applicable taxes and out of pocket expenses. The arrangement would be valid for the entire period of liquidation of 12 months (one year) from the date of taking over as liquidator.”

10. In the aforesaid CoC Meeting, the reasons for liquidation in compliance of Regulation 40D of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) were discussed and the following resolution was passed by the CoC with 96.6% votes:

“RESOLVED that Resolution professional be and is hereby authorized to state following reasons for liquidation of the CD in compliance of CIRP Regulations 40D –

- 1. The operations of the company have been closed for the last more than one year;*
- 2. After invitation of expression of interest, no short-listed resolution applicant came forward with a resolution plan;*
- 3. The contracts with major customers viz. BEST and PMPML have already been terminated with little or no possibility of revival of the contracts;*

4. *The company has no major tangible assets except vehicles which are hypothecated in favour of various Banks/NBFCs;*
5. *The Company does not have any significant intangible assets, brand etc. which can bring value to the CD as a going concern;*
6. *The condition of vehicles has deteriorated as these have been non-operational for long period of time;*
7. *Prima facie the value of assets is significantly lower than the claims admitted of Rs.202.59 Cr.*
8. *Any further delay in going for the process of liquidation would further deteriorate the condition of hypothecated vehicles.”*

11. Upon further discussion, the CoC decided that in light of the above reasons, the Liquidation of the Corporate Debtor as a going concern under Regulation 32(e) of IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) or sale of the business of the Corporate Debtor as a going concern under Regulation 32(f) of Liquidation Regulations was not feasible. Therefore, the CoC passed a resolution with 96.6% majority requesting the Applicant to seek liquidation of Corporate Debtor without putting the said conditions of exploring the sale of the Corporate Debtor as a going concern. Similarly, due to the above reasons, a further resolution was passed by the CoC with a majority of 96.6% of votes directing the Applicant to not explore any compromise or arrangement of the Corporate Debtor under Regulation 39BA of CIRP Regulations, as the same was found ‘not feasible’ by the CoC members.

12. In such circumstances, the Applicant has filed the present Application under Section 33(2) of the Code for commencement of liquidation process of the Corporate Debtor without the condition of exploring the sale of the Corporate Debtor as a going concern or the condition of exploring compromise or arrangement of the Corporate Debtor.

13. Looking at the application and averments, we are of the considered opinion that this is a fit case for liquidation, therefore, we hereby order for liquidation of the company with directions as follows:

- a. After looking into the consent given by the Applicant/Insolvency Professional and the minutes of 2nd meeting of CoC, **Mr. Subhash Laxminarayan Nathuramka**, holding Registration **No. IBBI/IPA-001/IP-P-00472/2017-18/10815 (AFA valid till 10.09.2024)**, is appointed as the Liquidator in terms of Section 34 of the Code;
- b. 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;
- c. 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;

- d. The Liquidator for conduct of liquidation proceeding would be entitled to the fees as approved in the fifth CoC Meeting, and reproduced herein above at para 9 of this order.
- e. 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.
- f. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- g. 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 as per law.
- h. 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;
- i. Copy of this order be sent to the financial creditors, corporate debtor, the Liquidator for taking necessary steps.

j. Registry is directed to communicate this Order to the Registrar of Companies, Mumbai and to the Insolvency and Bankruptcy Board of India;

14. The **IA-5734/2023** filed by the RP for Liquidation of the Corporate Debtor stands **allowed**.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Arpan, LRA